

**As Re-Referred by the House Rules and Reference Committee**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Am. H. B. No. 5**

**Representatives Hillyer, Leland**

**Cosponsors: Representatives Plummer, Galonski, Rogers, Smith, T., West**

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**A BILL**

To amend section 5747.01 and to enact sections 1  
120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 2  
120.67, and 120.68 of the Revised Code to 3  
establish the Ohio Public Defender State Loan 4  
Repayment Program. 5

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

**Section 1.** That section 5747.01 be amended and sections 6  
120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 120.67, and 7  
120.68 of the Revised Code be enacted to read as follows: 8

**Sec. 120.61.** As used in sections 120.61 to 120.68 of the 9  
Revised Code: 10

"Employed as a public defender" means an attorney employed 11  
by the state public defender, a county public defender 12  
commission, or a joint county public defender commission to 13  
represent indigent persons. 14

"Full-time practice" means working a minimum of forty 15  
hours per week for a minimum of forty-five weeks each service 16  
year. 17

"Part-time practice" means working a minimum of twenty and 18  
a maximum of thirty-nine hours per week for a minimum of forty- 19  
five weeks per service year. 20

"Teaching activities" means providing education to 21  
students regarding the attorney's normal course of practice and 22  
expertise as a public defender. 23

**Sec. 120.62.** There is hereby created the Ohio public 24  
defender state loan repayment program, which shall be 25  
administered by the state public defender. The program shall 26  
provide loan repayment on behalf of attorneys who agree to 27  
employment as public defenders in areas designated as public 28  
defender shortage areas by the state public defender pursuant to 29  
section 120.63 of the Revised Code. 30

Under the program, the state public defender, by means of 31  
a contract entered into under section 120.66 of the Revised 32  
Code, may agree to repay up to the amount set pursuant to 33  
section 120.66 of the Revised Code of the principal and interest 34  
of a government or other educational loan taken by an individual 35  
for the following expenses, so long as the expenses were 36  
incurred while the individual was enrolled in a law school in 37  
the United States that was, during the time enrolled, accredited 38  
by the American bar association, or a law school located outside 39  
the United States for which the individual received a foreign 40  
equivalency evaluation: 41

(A) Tuition; 42

(B) Other educational expenses, such as fees, books, and 43  
expenses, for specific purposes and in amounts determined to be 44  
reasonable by the state public defender; 45

(C) Room and board, in an amount determined reasonable by 46

the state public defender. 47

Sec. 120.63. The state public defender shall designate 48  
public defender shortage areas in this state based on case load 49  
relative to the number of public defenders. The designations 50  
shall be made by rule and may apply geographically by county. 51

Sec. 120.64. (A) An individual who meets both of the 52  
following requirements may apply for participation in the Ohio 53  
public defender state loan repayment program: 54

(1) The individual is a citizen of the United States, a 55  
national of the United States, or a permanent resident of the 56  
United States. 57

(2) The individual either: 58

(a) Is a student enrolled in the final year of law school; 59  
or 60

(b) Has been admitted to the practice of law in this state 61  
by the Ohio supreme court and remains in good standing. 62

(B) An application for participation in the Ohio public 63  
defender state loan repayment program shall be submitted to the 64  
state public defender on a form that the state public defender 65  
shall prescribe. The individual shall submit the following 66  
information with an application: 67

(1) The individual's name, permanent address or address at 68  
which the individual is currently residing if different from the 69  
permanent address, and telephone number; 70

(2) The law school the individual is attending or 71  
attended, the dates of attendance, and verification of 72  
attendance; 73

<u>(3) The individual's employer, as applicable;</u>	74
<u>(4) A summary and verification of the educational expenses for which the individual seeks reimbursement under the program;</u>	75 76
<u>(5) Verification that the individual has been admitted to the practice of law in this state by the Ohio supreme court and remains in good standing, unless the individual is a student;</u>	77 78 79
<u>(6) Verification the individual is a citizen of the United States, a national of the United States, or a permanent resident of the United States.</u>	80 81 82
<u>Sec. 120.65. If funds are available in the Ohio public defender state loan repayment fund created under section 120.67 of the Revised Code and the general assembly has appropriated funds for the Ohio public defender state loan repayment program, the state public defender shall approve an individual for participation in the program if the state public defender finds that the individual is eligible for participation in the program.</u>	83 84 85 86 87 88 89 90
<u>Upon approval, the state public defender shall notify and enter into discussions with the individual. The object of the discussions is to facilitate the recruitment of the individual to become or remain employed as a public defender within a public defender shortage area.</u>	91 92 93 94 95
<u>If the state public defender and individual agree on the individual's employment as a public defender within a public defender shortage area, the individual shall prepare, sign, and deliver to the state public defender a letter of intent agreeing to that placement.</u>	96 97 98 99 100
<u>Sec. 120.66. (A) After signing a letter of intent under section 120.65 of the Revised Code, an individual and the state</u>	101 102

public defender may enter into a contract for the individual's 103  
participation in the Ohio public defender state loan repayment 104  
program. The individual's employer also may be a party to the 105  
contract. 106

(B) The contract shall include all of the following 107  
obligations: 108

(1) The individual agrees to remain employed as a public 109  
defender within the public defender shortage area identified in 110  
the letter of intent for the number of hours and duration 111  
specified in the contract; 112

(2) The state public defender agrees, as provided in 113  
section 120.62 of the Revised Code, to repay, so long as the 114  
individual satisfies the service obligation agreed to under 115  
division (B)(1) of this section, the following amount of the 116  
principal and interest of a government or other educational loan 117  
taken by the individual for expenses described in section 120.62 118  
of the Revised Code: 119

(a) For a three-year service obligation, up to fifty 120  
thousand dollars to an individual practicing full time or up to 121  
twenty-five thousand dollars to an individual practicing part 122  
time; 123

(b) For an additional fourth or fifth year of service, up 124  
to an additional thirty-five thousand dollars to an individual 125  
practicing full time and up to an additional seventeen thousand 126  
five hundred dollars to an individual practicing part time. 127

(3) The individual agrees to pay the state public defender 128  
an amount established by rules adopted under section 120.68 of 129  
the Revised Code if the individual fails to complete the service 130  
obligation agreed to under division (B)(1) of this section. 131

(C) The contract shall include the following terms as 132  
agreed upon by the parties: 133

(1) The individual's required length of service in the 134  
public defender shortage area, which must be at least three 135  
years with an optional fourth year and optional fifth year; 136

(2) The number of weekly hours the individual will be 137  
engaged in full-time practice or part-time practice in the 138  
public defender shortage area; 139

(3) The maximum amount that the state public defender will 140  
repay on behalf of the individual; 141

(4) The extent to which the individual's teaching 142  
activities will be counted toward the individual's full-time 143  
practice or part-time practice hours under the contract. 144

(D) If the amount specified in division (C) (3) of this 145  
section includes federal funds, the amount of state funds repaid 146  
on the individual's behalf shall be the same as the amount of 147  
those federal funds. 148

**Sec. 120.67.** The state public defender may accept gifts of 149  
money from any source for the implementation and administration 150  
of sections 120.61 to 120.68 of the Revised Code. The state 151  
public defender shall pay all gifts accepted under this section 152  
into the state treasury to the credit of the public defender 153  
shortage area fund, which is hereby created. 154

The state public defender shall pay all damages collected 155  
under division (B) (3) of section 120.66 of the Revised Code into 156  
the state treasury to the credit of the public defender loan 157  
repayment fund, which is hereby created. 158

The state public defender shall use the public defender 159

shortage area fund and the public defender loan repayment fund 160  
for the implementation and administration of sections 120.61 to 161  
120.68 of the Revised Code. 162

Sec. 120.68. The state public defender, in accordance with 163  
section 111.15 of the Revised Code, shall adopt rules as 164  
necessary to implement and administer sections 120.61 to 120.67 165  
of the Revised Code. 166

**Sec. 5747.01.** Except as otherwise expressly provided or 167  
clearly appearing from the context, any term used in this 168  
chapter that is not otherwise defined in this section has the 169  
same meaning as when used in a comparable context in the laws of 170  
the United States relating to federal income taxes or if not 171  
used in a comparable context in those laws, has the same meaning 172  
as in section 5733.40 of the Revised Code. Any reference in this 173  
chapter to the Internal Revenue Code includes other laws of the 174  
United States relating to federal income taxes. 175

As used in this chapter: 176

(A) "Adjusted gross income" or "Ohio adjusted gross 177  
income" means federal adjusted gross income, as defined and used 178  
in the Internal Revenue Code, adjusted as provided in this 179  
section: 180

(1) Add interest or dividends on obligations or securities 181  
of any state or of any political subdivision or authority of any 182  
state, other than this state and its subdivisions and 183  
authorities. 184

(2) Add interest or dividends on obligations of any 185  
authority, commission, instrumentality, territory, or possession 186  
of the United States to the extent that the interest or 187  
dividends are exempt from federal income taxes but not from 188

state income taxes.	189
(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.	190 191 192 193 194 195
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	196 197
(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.	198 199 200 201
(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter. "Undistributed net income of a trust" means the taxable income of the trust increased by (a) (i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b) (i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and	202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218



(iii) the amount of taxable income that has been included in the 219  
adjusted gross income of a beneficiary by reason of a prior 220  
accumulation distribution. Any undistributed net income included 221  
in the adjusted gross income of a beneficiary shall reduce the 222  
undistributed net income of the trust commencing with the 223  
earliest years of the accumulation period. 224

(7) Deduct the amount of wages and salaries, if any, not 225  
otherwise allowable as a deduction but that would have been 226  
allowable as a deduction in computing federal adjusted gross 227  
income for the taxable year, had the targeted jobs credit 228  
allowed and determined under sections 38, 51, and 52 of the 229  
Internal Revenue Code not been in effect. 230

(8) Deduct any interest or interest equivalent on public 231  
obligations and purchase obligations to the extent that the 232  
interest or interest equivalent is included in federal adjusted 233  
gross income. 234

(9) Add any loss or deduct any gain resulting from the 235  
sale, exchange, or other disposition of public obligations to 236  
the extent that the loss has been deducted or the gain has been 237  
included in computing federal adjusted gross income. 238

(10) Deduct or add amounts, as provided under section 239  
5747.70 of the Revised Code, related to contributions to 240  
variable college savings program accounts made or tuition units 241  
purchased pursuant to Chapter 3334. of the Revised Code. 242

(11) (a) Deduct, to the extent not otherwise allowable as a 243  
deduction or exclusion in computing federal or Ohio adjusted 244  
gross income for the taxable year, the amount the taxpayer paid 245  
during the taxable year for medical care insurance and qualified 246  
long-term care insurance for the taxpayer, the taxpayer's 247

spouse, and dependents. No deduction for medical care insurance 248  
under division (A) (11) of this section shall be allowed either 249  
to any taxpayer who is eligible to participate in any subsidized 250  
health plan maintained by any employer of the taxpayer or of the 251  
taxpayer's spouse, or to any taxpayer who is entitled to, or on 252  
application would be entitled to, benefits under part A of Title 253  
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 254  
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 255  
of this section, "subsidized health plan" means a health plan 256  
for which the employer pays any portion of the plan's cost. The 257  
deduction allowed under division (A) (11) (a) of this section 258  
shall be the net of any related premium refunds, related premium 259  
reimbursements, or related insurance premium dividends received 260  
during the taxable year. 261

(b) Deduct, to the extent not otherwise deducted or 262  
excluded in computing federal or Ohio adjusted gross income 263  
during the taxable year, the amount the taxpayer paid during the 264  
taxable year, not compensated for by any insurance or otherwise, 265  
for medical care of the taxpayer, the taxpayer's spouse, and 266  
dependents, to the extent the expenses exceed seven and one-half 267  
per cent of the taxpayer's federal adjusted gross income. 268

(c) Deduct, to the extent not otherwise deducted or 269  
excluded in computing federal or Ohio adjusted gross income, any 270  
amount included in federal adjusted gross income under section 271  
105 or not excluded under section 106 of the Internal Revenue 272  
Code solely because it relates to an accident and health plan 273  
for a person who otherwise would be a "qualifying relative" and 274  
thus a "dependent" under section 152 of the Internal Revenue 275  
Code but for the fact that the person fails to meet the income 276  
and support limitations under section 152(d) (1) (B) and (C) of 277  
the Internal Revenue Code. 278

(d) For purposes of division (A)(11) of this section, 279  
"medical care" has the meaning given in section 213 of the 280  
Internal Revenue Code, subject to the special rules, 281  
limitations, and exclusions set forth therein, and "qualified 282  
long-term care" has the same meaning given in section 7702B(c) 283  
of the Internal Revenue Code. Solely for purposes of divisions 284  
(A)(11)(a) and (c) of this section, "dependent" includes a 285  
person who otherwise would be a "qualifying relative" and thus a 286  
"dependent" under section 152 of the Internal Revenue Code but 287  
for the fact that the person fails to meet the income and 288  
support limitations under section 152(d)(1)(B) and (C) of the 289  
Internal Revenue Code. 290

(12)(a) Deduct any amount included in federal adjusted 291  
gross income solely because the amount represents a 292  
reimbursement or refund of expenses that in any year the 293  
taxpayer had deducted as an itemized deduction pursuant to 294  
section 63 of the Internal Revenue Code and applicable United 295  
States department of the treasury regulations. The deduction 296  
otherwise allowed under division (A)(12)(a) of this section 297  
shall be reduced to the extent the reimbursement is attributable 298  
to an amount the taxpayer deducted under this section in any 299  
taxable year. 300

(b) Add any amount not otherwise included in Ohio adjusted 301  
gross income for any taxable year to the extent that the amount 302  
is attributable to the recovery during the taxable year of any 303  
amount deducted or excluded in computing federal or Ohio 304  
adjusted gross income in any taxable year. 305

(13) Deduct any portion of the deduction described in 306  
section 1341(a)(2) of the Internal Revenue Code, for repaying 307  
previously reported income received under a claim of right, that 308

meets both of the following requirements:	309
(a) It is allowable for repayment of an item that was	310
included in the taxpayer's adjusted gross income for a prior	311
taxable year and did not qualify for a credit under division (A)	312
or (B) of section 5747.05 of the Revised Code for that year;	313
(b) It does not otherwise reduce the taxpayer's adjusted	314
gross income for the current or any other taxable year.	315
(14) Deduct an amount equal to the deposits made to, and	316
net investment earnings of, a medical savings account during the	317
taxable year, in accordance with section 3924.66 of the Revised	318
Code. The deduction allowed by division (A) (14) of this section	319
does not apply to medical savings account deposits and earnings	320
otherwise deducted or excluded for the current or any other	321
taxable year from the taxpayer's federal adjusted gross income.	322
(15) (a) Add an amount equal to the funds withdrawn from a	323
medical savings account during the taxable year, and the net	324
investment earnings on those funds, when the funds withdrawn	325
were used for any purpose other than to reimburse an account	326
holder for, or to pay, eligible medical expenses, in accordance	327
with section 3924.66 of the Revised Code;	328
(b) Add the amounts distributed from a medical savings	329
account under division (A) (2) of section 3924.68 of the Revised	330
Code during the taxable year.	331
(16) Add any amount claimed as a credit under section	332
5747.059 or 5747.65 of the Revised Code to the extent that such	333
amount satisfies either of the following:	334
(a) The amount was deducted or excluded from the	335
computation of the taxpayer's federal adjusted gross income as	336
required to be reported for the taxpayer's taxable year under	337

the Internal Revenue Code; 338

(b) The amount resulted in a reduction of the taxpayer's 339  
federal adjusted gross income as required to be reported for any 340  
of the taxpayer's taxable years under the Internal Revenue Code. 341

(17) Deduct the amount contributed by the taxpayer to an 342  
individual development account program established by a county 343  
department of job and family services pursuant to sections 344  
329.11 to 329.14 of the Revised Code for the purpose of matching 345  
funds deposited by program participants. On request of the tax 346  
commissioner, the taxpayer shall provide any information that, 347  
in the tax commissioner's opinion, is necessary to establish the 348  
amount deducted under division (A) (17) of this section. 349

(18) Beginning in taxable year 2001 but not for any 350  
taxable year beginning after December 31, 2005, if the taxpayer 351  
is married and files a joint return and the combined federal 352  
adjusted gross income of the taxpayer and the taxpayer's spouse 353  
for the taxable year does not exceed one hundred thousand 354  
dollars, or if the taxpayer is single and has a federal adjusted 355  
gross income for the taxable year not exceeding fifty thousand 356  
dollars, deduct amounts paid during the taxable year for 357  
qualified tuition and fees paid to an eligible institution for 358  
the taxpayer, the taxpayer's spouse, or any dependent of the 359  
taxpayer, who is a resident of this state and is enrolled in or 360  
attending a program that culminates in a degree or diploma at an 361  
eligible institution. The deduction may be claimed only to the 362  
extent that qualified tuition and fees are not otherwise 363  
deducted or excluded for any taxable year from federal or Ohio 364  
adjusted gross income. The deduction may not be claimed for 365  
educational expenses for which the taxpayer claims a credit 366  
under section 5747.27 of the Revised Code. 367

(19) Add any reimbursement received during the taxable 368  
year of any amount the taxpayer deducted under division (A) (18) 369  
of this section in any previous taxable year to the extent the 370  
amount is not otherwise included in Ohio adjusted gross income. 371

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 372  
(v) of this section, add five-sixths of the amount of 373  
depreciation expense allowed by subsection (k) of section 168 of 374  
the Internal Revenue Code, including the taxpayer's 375  
proportionate or distributive share of the amount of 376  
depreciation expense allowed by that subsection to a pass- 377  
through entity in which the taxpayer has a direct or indirect 378  
ownership interest. 379

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 380  
of this section, add five-sixths of the amount of qualifying 381  
section 179 depreciation expense, including the taxpayer's 382  
proportionate or distributive share of the amount of qualifying 383  
section 179 depreciation expense allowed to any pass-through 384  
entity in which the taxpayer has a direct or indirect ownership 385  
interest. 386

(iii) Subject to division (A) (20) (a) (v) of this section, 387  
for taxable years beginning in 2012 or thereafter, if the 388  
increase in income taxes withheld by the taxpayer is equal to or 389  
greater than ten per cent of income taxes withheld by the 390  
taxpayer during the taxpayer's immediately preceding taxable 391  
year, "two-thirds" shall be substituted for "five-sixths" for 392  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 393

(iv) Subject to division (A) (20) (a) (v) of this section, 394  
for taxable years beginning in 2012 or thereafter, a taxpayer is 395  
not required to add an amount under division (A) (20) of this 396  
section if the increase in income taxes withheld by the taxpayer 397

and by any pass-through entity in which the taxpayer has a 398  
direct or indirect ownership interest is equal to or greater 399  
than the sum of (I) the amount of qualifying section 179 400  
depreciation expense and (II) the amount of depreciation expense 401  
allowed to the taxpayer by subsection (k) of section 168 of the 402  
Internal Revenue Code, and including the taxpayer's 403  
proportionate or distributive shares of such amounts allowed to 404  
any such pass-through entities. 405

(v) If a taxpayer directly or indirectly incurs a net 406  
operating loss for the taxable year for federal income tax 407  
purposes, to the extent such loss resulted from depreciation 408  
expense allowed by subsection (k) of section 168 of the Internal 409  
Revenue Code and by qualifying section 179 depreciation expense, 410  
"the entire" shall be substituted for "five-sixths of the" for 411  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 412

The tax commissioner, under procedures established by the 413  
commissioner, may waive the add-backs related to a pass-through 414  
entity if the taxpayer owns, directly or indirectly, less than 415  
five per cent of the pass-through entity. 416

(b) Nothing in division (A) (20) of this section shall be 417  
construed to adjust or modify the adjusted basis of any asset. 418

(c) To the extent the add-back required under division (A) 419  
(20) (a) of this section is attributable to property generating 420  
nonbusiness income or loss allocated under section 5747.20 of 421  
the Revised Code, the add-back shall be situated to the same 422  
location as the nonbusiness income or loss generated by the 423  
property for the purpose of determining the credit under 424  
division (A) of section 5747.05 of the Revised Code. Otherwise, 425  
the add-back shall be apportioned, subject to one or more of the 426  
four alternative methods of apportionment enumerated in section 427

5747.21 of the Revised Code. 428

(d) For the purposes of division (A) (20) (a) (v) of this 429  
section, net operating loss carryback and carryforward shall not 430  
include the allowance of any net operating loss deduction 431  
carryback or carryforward to the taxable year to the extent such 432  
loss resulted from depreciation allowed by section 168(k) of the 433  
Internal Revenue Code and by the qualifying section 179 434  
depreciation expense amount. 435

(e) For the purposes of divisions (A) (20) and (21) of this 436  
section: 437

(i) "Income taxes withheld" means the total amount 438  
withheld and remitted under sections 5747.06 and 5747.07 of the 439  
Revised Code by an employer during the employer's taxable year. 440

(ii) "Increase in income taxes withheld" means the amount 441  
by which the amount of income taxes withheld by an employer 442  
during the employer's current taxable year exceeds the amount of 443  
income taxes withheld by that employer during the employer's 444  
immediately preceding taxable year. 445

(iii) "Qualifying section 179 depreciation expense" means 446  
the difference between (I) the amount of depreciation expense 447  
directly or indirectly allowed to a taxpayer under section 179 448  
of the Internal Revised Code, and (II) the amount of 449  
depreciation expense directly or indirectly allowed to the 450  
taxpayer under section 179 of the Internal Revenue Code as that 451  
section existed on December 31, 2002. 452

(21) (a) If the taxpayer was required to add an amount 453  
under division (A) (20) (a) of this section for a taxable year, 454  
deduct one of the following: 455

(i) One-fifth of the amount so added for each of the five 456



succeeding taxable years if the amount so added was five-sixths 457  
of qualifying section 179 depreciation expense or depreciation 458  
expense allowed by subsection (k) of section 168 of the Internal 459  
Revenue Code; 460

(ii) One-half of the amount so added for each of the two 461  
succeeding taxable years if the amount so added was two-thirds 462  
of such depreciation expense; 463

(iii) One-sixth of the amount so added for each of the six 464  
succeeding taxable years if the entire amount of such 465  
depreciation expense was so added. 466

(b) If the amount deducted under division (A) (21) (a) of 467  
this section is attributable to an add-back allocated under 468  
division (A) (20) (c) of this section, the amount deducted shall 469  
be situated to the same location. Otherwise, the add-back shall 470  
be apportioned using the apportionment factors for the taxable 471  
year in which the deduction is taken, subject to one or more of 472  
the four alternative methods of apportionment enumerated in 473  
section 5747.21 of the Revised Code. 474

(c) No deduction is available under division (A) (21) (a) of 475  
this section with regard to any depreciation allowed by section 476  
168(k) of the Internal Revenue Code and by the qualifying 477  
section 179 depreciation expense amount to the extent that such 478  
depreciation results in or increases a federal net operating 479  
loss carryback or carryforward. If no such deduction is 480  
available for a taxable year, the taxpayer may carry forward the 481  
amount not deducted in such taxable year to the next taxable 482  
year and add that amount to any deduction otherwise available 483  
under division (A) (21) (a) of this section for that next taxable 484  
year. The carryforward of amounts not so deducted shall continue 485  
until the entire addition required by division (A) (20) (a) of 486

this section has been deducted.	487
(d) No refund shall be allowed as a result of adjustments made by division (A) (21) of this section.	488 489
(22) 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.	490 491 492 493 494
(23) 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.	495 496 497 498 499
(24) 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.	500 501 502 503 504 505 506 507 508 509
(25) 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	510 511 512 513 514 515

organ donation expenses only once for all taxable years	516
beginning with taxable years beginning in 2007.	517
For the purposes of division (A) (25) of this section:	518
(a) "Human organ" means all or any portion of a human	519
liver, pancreas, kidney, intestine, or lung, and any portion of	520
human bone marrow.	521
(b) "Qualified organ donation expenses" means travel	522
expenses, lodging expenses, and wages and salary forgone by a	523
taxpayer in connection with the taxpayer's donation, while	524
living, of one or more of the taxpayer's human organs to another	525
human being.	526
(26) Deduct, to the extent not otherwise deducted or	527
excluded in computing federal or Ohio adjusted gross income for	528
the taxable year, amounts received by the taxpayer as retired	529
personnel pay for service in the uniformed services or reserve	530
components thereof, or the national guard, or received by the	531
surviving spouse or former spouse of such a taxpayer under the	532
survivor benefit plan on account of such a taxpayer's death. If	533
the taxpayer receives income on account of retirement paid under	534
the federal civil service retirement system or federal employees	535
retirement system, or under any successor retirement program	536
enacted by the congress of the United States that is established	537
and maintained for retired employees of the United States	538
government, and such retirement income is based, in whole or in	539
part, on credit for the taxpayer's uniformed service, the	540
deduction allowed under this division shall include only that	541
portion of such retirement income that is attributable to the	542
taxpayer's uniformed service, to the extent that portion of such	543
retirement income is otherwise included in federal adjusted	544
gross income and is not otherwise deducted under this section.	545

Any amount deducted under division (A) (26) of this section is 546  
not included in a taxpayer's adjusted gross income for the 547  
purposes of section 5747.055 of the Revised Code. No amount may 548  
be deducted under division (A) (26) of this section on the basis 549  
of which a credit was claimed under section 5747.055 of the 550  
Revised Code. 551

(27) Deduct, to the extent not otherwise deducted or 552  
excluded in computing federal or Ohio adjusted gross income for 553  
the taxable year, the amount the taxpayer received during the 554  
taxable year from the military injury relief fund created in 555  
section 5902.05 of the Revised Code. 556

(28) Deduct, to the extent not otherwise deducted or 557  
excluded in computing federal or Ohio adjusted gross income for 558  
the taxable year, the amount the taxpayer received as a veterans 559  
bonus during the taxable year from the Ohio department of 560  
veterans services as authorized by Section 2r of Article VIII, 561  
Ohio Constitution. 562

(29) Deduct, to the extent not otherwise deducted or 563  
excluded in computing federal or Ohio adjusted gross income for 564  
the taxable year, any income derived from a transfer agreement 565  
or from the enterprise transferred under that agreement under 566  
section 4313.02 of the Revised Code. 567

(30) Deduct, to the extent not otherwise deducted or 568  
excluded in computing federal or Ohio adjusted gross income for 569  
the taxable year, Ohio college opportunity or federal Pell grant 570  
amounts received by the taxpayer or the taxpayer's spouse or 571  
dependent pursuant to section 3333.122 of the Revised Code or 20 572  
U.S.C. 1070a, et seq., and used to pay room or board furnished 573  
by the educational institution for which the grant was awarded 574  
at the institution's facilities, including meal plans 575

administered by the institution. For the purposes of this 576  
division, receipt of a grant includes the distribution of a 577  
grant directly to an educational institution and the crediting 578  
of the grant to the enrollee's account with the institution. 579

(31) (a) For taxable years beginning in 2015, deduct from 580  
the portion of an individual's adjusted gross income that is 581  
business income, to the extent not otherwise deducted or 582  
excluded in computing federal or Ohio adjusted gross income for 583  
the taxable year, the lesser of the following amounts: 584

(i) Seventy-five per cent of the individual's business 585  
income; 586

(ii) Ninety-three thousand seven hundred fifty dollars for 587  
each spouse if spouses file separate returns under section 588  
5747.08 of the Revised Code or one hundred eighty-seven thousand 589  
five hundred dollars for all other individuals. 590

(b) For taxable years beginning in 2016 or thereafter, 591  
deduct from the portion of an individual's adjusted gross income 592  
that is business income, to the extent not otherwise deducted or 593  
excluded in computing federal adjusted gross income for the 594  
taxable year, one hundred twenty-five thousand dollars for each 595  
spouse if spouses file separate returns under section 5747.08 of 596  
the Revised Code or two hundred fifty thousand dollars for all 597  
other individuals. 598

(32) Deduct, as provided under section 5747.78 of the 599  
Revised Code, contributions to ABLE savings accounts made in 600  
accordance with sections 113.50 to 113.56 of the Revised Code. 601

(33) (a) Deduct, to the extent not otherwise deducted or 602  
excluded in computing federal or Ohio adjusted gross income 603  
during the taxable year, all of the following: 604

(i) Compensation paid to a qualifying employee described 605  
in division (A) (14) (a) of section 5703.94 of the Revised Code to 606  
the extent such compensation is for disaster work conducted in 607  
this state during a disaster response period pursuant to a 608  
qualifying solicitation received by the employee's employer; 609

(ii) Compensation paid to a qualifying employee described 610  
in division (A) (14) (b) of section 5703.94 of the Revised Code to 611  
the extent such compensation is for disaster work conducted in 612  
this state by the employee during the disaster response period 613  
on critical infrastructure owned or used by the employee's 614  
employer; 615

(iii) Income received by an out-of-state disaster business 616  
for disaster work conducted in this state during a disaster 617  
response period, or, if the out-of-state disaster business is a 618  
pass-through entity, a taxpayer's distributive share of the 619  
pass-through entity's income from the business conducting 620  
disaster work in this state during a disaster response period, 621  
if, in either case, the disaster work is conducted pursuant to a 622  
qualifying solicitation received by the business. 623

(b) All terms used in division (A) (33) of this section 624  
have the same meanings as in section 5703.94 of the Revised 625  
Code. 626

(34) Deduct, to the extent included in federal adjusted 627  
gross income, income attributable to loan repayments on behalf 628  
of the taxpayer under the Ohio public defender state loan 629  
repayment program under section 120.66 of the Revised Code. 630

(B) "Business income" means income, including gain or 631  
loss, arising from transactions, activities, and sources in the 632  
regular course of a trade or business and includes income, gain, 633

or loss from real property, tangible property, and intangible 634  
property if the acquisition, rental, management, and disposition 635  
of the property constitute integral parts of the regular course 636  
of a trade or business operation. "Business income" includes 637  
income, including gain or loss, from a partial or complete 638  
liquidation of a business, including, but not limited to, gain 639  
or loss from the sale or other disposition of goodwill. 640

(C) "Nonbusiness income" means all income other than 641  
business income and may include, but is not limited to, 642  
compensation, rents and royalties from real or tangible personal 643  
property, capital gains, interest, dividends and distributions, 644  
patent or copyright royalties, or lottery winnings, prizes, and 645  
awards. 646

(D) "Compensation" means any form of remuneration paid to 647  
an employee for personal services. 648

(E) "Fiduciary" means a guardian, trustee, executor, 649  
administrator, receiver, conservator, or any other person acting 650  
in any fiduciary capacity for any individual, trust, or estate. 651

(F) "Fiscal year" means an accounting period of twelve 652  
months ending on the last day of any month other than December. 653

(G) "Individual" means any natural person. 654

(H) "Internal Revenue Code" means the "Internal Revenue 655  
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 656

(I) "Resident" means any of the following, provided that 657  
division (I)(3) of this section applies only to taxable years of 658  
a trust beginning in 2002 or thereafter: 659

(1) An individual who is domiciled in this state, subject 660  
to section 5747.24 of the Revised Code; 661

(2) The estate of a decedent who at the time of death was 662  
domiciled in this state. The domicile tests of section 5747.24 663  
of the Revised Code are not controlling for purposes of division 664  
(I) (2) of this section. 665

(3) A trust that, in whole or part, resides in this state. 666  
If only part of a trust resides in this state, the trust is a 667  
resident only with respect to that part. 668

For the purposes of division (I) (3) of this section: 669

(a) A trust resides in this state for the trust's current 670  
taxable year to the extent, as described in division (I) (3) (d) 671  
of this section, that the trust consists directly or indirectly, 672  
in whole or in part, of assets, net of any related liabilities, 673  
that were transferred, or caused to be transferred, directly or 674  
indirectly, to the trust by any of the following: 675

(i) A person, a court, or a governmental entity or 676  
instrumentality on account of the death of a decedent, but only 677  
if the trust is described in division (I) (3) (e) (i) or (ii) of 678  
this section; 679

(ii) A person who was domiciled in this state for the 680  
purposes of this chapter when the person directly or indirectly 681  
transferred assets to an irrevocable trust, but only if at least 682  
one of the trust's qualifying beneficiaries is domiciled in this 683  
state for the purposes of this chapter during all or some 684  
portion of the trust's current taxable year; 685

(iii) A person who was domiciled in this state for the 686  
purposes of this chapter when the trust document or instrument 687  
or part of the trust document or instrument became irrevocable, 688  
but only if at least one of the trust's qualifying beneficiaries 689  
is a resident domiciled in this state for the purposes of this 690



chapter during all or some portion of the trust's current 691  
taxable year. If a trust document or instrument became 692  
irrevocable upon the death of a person who at the time of death 693  
was domiciled in this state for purposes of this chapter, that 694  
person is a person described in division (I) (3) (a) (iii) of this 695  
section. 696

(b) A trust is irrevocable to the extent that the 697  
transferor is not considered to be the owner of the net assets 698  
of the trust under sections 671 to 678 of the Internal Revenue 699  
Code. 700

(c) With respect to a trust other than a charitable lead 701  
trust, "qualifying beneficiary" has the same meaning as 702  
"potential current beneficiary" as defined in section 1361(e) (2) 703  
of the Internal Revenue Code, and with respect to a charitable 704  
lead trust "qualifying beneficiary" is any current, future, or 705  
contingent beneficiary, but with respect to any trust 706  
"qualifying beneficiary" excludes a person or a governmental 707  
entity or instrumentality to any of which a contribution would 708  
qualify for the charitable deduction under section 170 of the 709  
Internal Revenue Code. 710

(d) For the purposes of division (I) (3) (a) of this 711  
section, the extent to which a trust consists directly or 712  
indirectly, in whole or in part, of assets, net of any related 713  
liabilities, that were transferred directly or indirectly, in 714  
whole or part, to the trust by any of the sources enumerated in 715  
that division shall be ascertained by multiplying the fair 716  
market value of the trust's assets, net of related liabilities, 717  
by the qualifying ratio, which shall be computed as follows: 718

(i) The first time the trust receives assets, the 719  
numerator of the qualifying ratio is the fair market value of 720

those assets at that time, net of any related liabilities, from 721  
sources enumerated in division (I) (3) (a) of this section. The 722  
denominator of the qualifying ratio is the fair market value of 723  
all the trust's assets at that time, net of any related 724  
liabilities. 725

(ii) Each subsequent time the trust receives assets, a 726  
revised qualifying ratio shall be computed. The numerator of the 727  
revised qualifying ratio is the sum of (1) the fair market value 728  
of the trust's assets immediately prior to the subsequent 729  
transfer, net of any related liabilities, multiplied by the 730  
qualifying ratio last computed without regard to the subsequent 731  
transfer, and (2) the fair market value of the subsequently 732  
transferred assets at the time transferred, net of any related 733  
liabilities, from sources enumerated in division (I) (3) (a) of 734  
this section. The denominator of the revised qualifying ratio is 735  
the fair market value of all the trust's assets immediately 736  
after the subsequent transfer, net of any related liabilities. 737

(iii) Whether a transfer to the trust is by or from any of 738  
the sources enumerated in division (I) (3) (a) of this section 739  
shall be ascertained without regard to the domicile of the 740  
trust's beneficiaries. 741

(e) For the purposes of division (I) (3) (a) (i) of this 742  
section: 743

(i) A trust is described in division (I) (3) (e) (i) of this 744  
section if the trust is a testamentary trust and the testator of 745  
that testamentary trust was domiciled in this state at the time 746  
of the testator's death for purposes of the taxes levied under 747  
Chapter 5731. of the Revised Code. 748

(ii) A trust is described in division (I) (3) (e) (ii) of 749

this section if the transfer is a qualifying transfer described 750  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 751  
trust is an irrevocable inter vivos trust, and at least one of 752  
the trust's qualifying beneficiaries is domiciled in this state 753  
for purposes of this chapter during all or some portion of the 754  
trust's current taxable year. 755

(f) For the purposes of division (I) (3) (e) (ii) of this 756  
section, a "qualifying transfer" is a transfer of assets, net of 757  
any related liabilities, directly or indirectly to a trust, if 758  
the transfer is described in any of the following: 759

(i) The transfer is made to a trust, created by the 760  
decedent before the decedent's death and while the decedent was 761  
domiciled in this state for the purposes of this chapter, and, 762  
prior to the death of the decedent, the trust became irrevocable 763  
while the decedent was domiciled in this state for the purposes 764  
of this chapter. 765

(ii) The transfer is made to a trust to which the 766  
decedent, prior to the decedent's death, had directly or 767  
indirectly transferred assets, net of any related liabilities, 768  
while the decedent was domiciled in this state for the purposes 769  
of this chapter, and prior to the death of the decedent the 770  
trust became irrevocable while the decedent was domiciled in 771  
this state for the purposes of this chapter. 772

(iii) The transfer is made on account of a contractual 773  
relationship existing directly or indirectly between the 774  
transferor and either the decedent or the estate of the decedent 775  
at any time prior to the date of the decedent's death, and the 776  
decedent was domiciled in this state at the time of death for 777  
purposes of the taxes levied under Chapter 5731. of the Revised 778  
Code. 779

(iv) The transfer is made to a trust on account of a 780  
contractual relationship existing directly or indirectly between 781  
the transferor and another person who at the time of the 782  
decedent's death was domiciled in this state for purposes of 783  
this chapter. 784

(v) The transfer is made to a trust on account of the will 785  
of a testator who was domiciled in this state at the time of the 786  
testator's death for purposes of the taxes levied under Chapter 787  
5731. of the Revised Code. 788

(vi) The transfer is made to a trust created by or caused 789  
to be created by a court, and the trust was directly or 790  
indirectly created in connection with or as a result of the 791  
death of an individual who, for purposes of the taxes levied 792  
under Chapter 5731. of the Revised Code, was domiciled in this 793  
state at the time of the individual's death. 794

(g) The tax commissioner may adopt rules to ascertain the 795  
part of a trust residing in this state. 796

(J) "Nonresident" means an individual or estate that is 797  
not a resident. An individual who is a resident for only part of 798  
a taxable year is a nonresident for the remainder of that 799  
taxable year. 800

(K) "Pass-through entity" has the same meaning as in 801  
section 5733.04 of the Revised Code. 802

(L) "Return" means the notifications and reports required 803  
to be filed pursuant to this chapter for the purpose of 804  
reporting the tax due and includes declarations of estimated tax 805  
when so required. 806

(M) "Taxable year" means the calendar year or the 807  
taxpayer's fiscal year ending during the calendar year, or 808

fractional part thereof, upon which the adjusted gross income is 809  
calculated pursuant to this chapter. 810

(N) "Taxpayer" means any person subject to the tax imposed 811  
by section 5747.02 of the Revised Code or any pass-through 812  
entity that makes the election under division (D) of section 813  
5747.08 of the Revised Code. 814

(O) "Dependents" means dependents as defined in the 815  
Internal Revenue Code and as claimed in the taxpayer's federal 816  
income tax return for the taxable year or which the taxpayer 817  
would have been permitted to claim had the taxpayer filed a 818  
federal income tax return. 819

(P) "Principal county of employment" means, in the case of 820  
a nonresident, the county within the state in which a taxpayer 821  
performs services for an employer or, if those services are 822  
performed in more than one county, the county in which the major 823  
portion of the services are performed. 824

(Q) As used in sections 5747.50 to 5747.55 of the Revised 825  
Code: 826

(1) "Subdivision" means any county, municipal corporation, 827  
park district, or township. 828

(2) "Essential local government purposes" includes all 829  
functions that any subdivision is required by general law to 830  
exercise, including like functions that are exercised under a 831  
charter adopted pursuant to the Ohio Constitution. 832

(R) "Overpayment" means any amount already paid that 833  
exceeds the figure determined to be the correct amount of the 834  
tax. 835

(S) "Taxable income" or "Ohio taxable income" applies only 836

to estates and trusts, and means federal taxable income, as 837  
defined and used in the Internal Revenue Code, adjusted as 838  
follows: 839

(1) Add interest or dividends, net of ordinary, necessary, 840  
and reasonable expenses not deducted in computing federal 841  
taxable income, on obligations or securities of any state or of 842  
any political subdivision or authority of any state, other than 843  
this state and its subdivisions and authorities, but only to the 844  
extent that such net amount is not otherwise includible in Ohio 845  
taxable income and is described in either division (S) (1) (a) or 846  
(b) of this section: 847

(a) The net amount is not attributable to the S portion of 848  
an electing small business trust and has not been distributed to 849  
beneficiaries for the taxable year; 850

(b) The net amount is attributable to the S portion of an 851  
electing small business trust for the taxable year. 852

(2) Add interest or dividends, net of ordinary, necessary, 853  
and reasonable expenses not deducted in computing federal 854  
taxable income, on obligations of any authority, commission, 855  
instrumentality, territory, or possession of the United States 856  
to the extent that the interest or dividends are exempt from 857  
federal income taxes but not from state income taxes, but only 858  
to the extent that such net amount is not otherwise includible 859  
in Ohio taxable income and is described in either division (S) 860  
(1) (a) or (b) of this section; 861

(3) Add the amount of personal exemption allowed to the 862  
estate pursuant to section 642(b) of the Internal Revenue Code; 863

(4) Deduct interest or dividends, net of related expenses 864  
deducted in computing federal taxable income, on obligations of 865

the United States and its territories and possessions or of any 866  
authority, commission, or instrumentality of the United States 867  
to the extent that the interest or dividends are exempt from 868  
state taxes under the laws of the United States, but only to the 869  
extent that such amount is included in federal taxable income 870  
and is described in either division (S)(1)(a) or (b) of this 871  
section; 872

(5) Deduct the amount of wages and salaries, if any, not 873  
otherwise allowable as a deduction but that would have been 874  
allowable as a deduction in computing federal taxable income for 875  
the taxable year, had the targeted jobs credit allowed under 876  
sections 38, 51, and 52 of the Internal Revenue Code not been in 877  
effect, but only to the extent such amount relates either to 878  
income included in federal taxable income for the taxable year 879  
or to income of the S portion of an electing small business 880  
trust for the taxable year; 881

(6) Deduct any interest or interest equivalent, net of 882  
related expenses deducted in computing federal taxable income, 883  
on public obligations and purchase obligations, but only to the 884  
extent that such net amount relates either to income included in 885  
federal taxable income for the taxable year or to income of the 886  
S portion of an electing small business trust for the taxable 887  
year; 888

(7) Add any loss or deduct any gain resulting from sale, 889  
exchange, or other disposition of public obligations to the 890  
extent that such loss has been deducted or such gain has been 891  
included in computing either federal taxable income or income of 892  
the S portion of an electing small business trust for the 893  
taxable year; 894

(8) Except in the case of the final return of an estate, 895

add any amount deducted by the taxpayer on both its Ohio estate 896  
tax return pursuant to section 5731.14 of the Revised Code, and 897  
on its federal income tax return in determining federal taxable 898  
income; 899

(9) (a) Deduct any amount included in federal taxable 900  
income solely because the amount represents a reimbursement or 901  
refund of expenses that in a previous year the decedent had 902  
deducted as an itemized deduction pursuant to section 63 of the 903  
Internal Revenue Code and applicable treasury regulations. The 904  
deduction otherwise allowed under division (S) (9) (a) of this 905  
section shall be reduced to the extent the reimbursement is 906  
attributable to an amount the taxpayer or decedent deducted 907  
under this section in any taxable year. 908

(b) Add any amount not otherwise included in Ohio taxable 909  
income for any taxable year to the extent that the amount is 910  
attributable to the recovery during the taxable year of any 911  
amount deducted or excluded in computing federal or Ohio taxable 912  
income in any taxable year, but only to the extent such amount 913  
has not been distributed to beneficiaries for the taxable year. 914

(10) Deduct any portion of the deduction described in 915  
section 1341(a) (2) of the Internal Revenue Code, for repaying 916  
previously reported income received under a claim of right, that 917  
meets both of the following requirements: 918

(a) It is allowable for repayment of an item that was 919  
included in the taxpayer's taxable income or the decedent's 920  
adjusted gross income for a prior taxable year and did not 921  
qualify for a credit under division (A) or (B) of section 922  
5747.05 of the Revised Code for that year. 923

(b) It does not otherwise reduce the taxpayer's taxable 924



income or the decedent's adjusted gross income for the current 925  
or any other taxable year. 926

(11) Add any amount claimed as a credit under section 927  
5747.059 or 5747.65 of the Revised Code to the extent that the 928  
amount satisfies either of the following: 929

(a) The amount was deducted or excluded from the 930  
computation of the taxpayer's federal taxable income as required 931  
to be reported for the taxpayer's taxable year under the 932  
Internal Revenue Code; 933

(b) The amount resulted in a reduction in the taxpayer's 934  
federal taxable income as required to be reported for any of the 935  
taxpayer's taxable years under the Internal Revenue Code. 936

(12) Deduct any amount, net of related expenses deducted 937  
in computing federal taxable income, that a trust is required to 938  
report as farm income on its federal income tax return, but only 939  
if the assets of the trust include at least ten acres of land 940  
satisfying the definition of "land devoted exclusively to 941  
agricultural use" under section 5713.30 of the Revised Code, 942  
regardless of whether the land is valued for tax purposes as 943  
such land under sections 5713.30 to 5713.38 of the Revised Code. 944  
If the trust is a pass-through entity investor, section 5747.231 945  
of the Revised Code applies in ascertaining if the trust is 946  
eligible to claim the deduction provided by division (S)(12) of 947  
this section in connection with the pass-through entity's farm 948  
income. 949

Except for farm income attributable to the S portion of an 950  
electing small business trust, the deduction provided by 951  
division (S)(12) of this section is allowed only to the extent 952  
that the trust has not distributed such farm income. Division 953

(S) (12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter.	954 955
(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.	956 957 958
(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A) (20) or (21) 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. In the case of a trust, division (S) (14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter.	959 960 961 962 963 964 965
(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.	966 967 968
(U) As used in divisions (A) (8), (A) (9), (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.	969 970 971 972
(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.	973 974 975
(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.	976 977 978 979
(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.	980 981

(Y) "Month" means a calendar month.	982
(Z) "Quarter" means the first three months, the second	983
three months, the third three months, or the last three months	984
of the taxpayer's taxable year.	985
(AA) (1) "Eligible institution" means a state university or	986
state institution of higher education as defined in section	987
3345.011 of the Revised Code, or a private, nonprofit college,	988
university, or other post-secondary institution located in this	989
state that possesses a certificate of authorization issued by	990
the chancellor of higher education pursuant to Chapter 1713. of	991
the Revised Code or a certificate of registration issued by the	992
state board of career colleges and schools under Chapter 3332.	993
of the Revised Code.	994
(2) "Qualified tuition and fees" means tuition and fees	995
imposed by an eligible institution as a condition of enrollment	996
or attendance, not exceeding two thousand five hundred dollars	997
in each of the individual's first two years of post-secondary	998
education. If the individual is a part-time student, "qualified	999
tuition and fees" includes tuition and fees paid for the	1000
academic equivalent of the first two years of post-secondary	1001
education during a maximum of five taxable years, not exceeding	1002
a total of five thousand dollars. "Qualified tuition and fees"	1003
does not include:	1004
(a) Expenses for any course or activity involving sports,	1005
games, or hobbies unless the course or activity is part of the	1006
individual's degree or diploma program;	1007
(b) The cost of books, room and board, student activity	1008
fees, athletic fees, insurance expenses, or other expenses	1009
unrelated to the individual's academic course of instruction;	1010

(c) Tuition, fees, or other expenses paid or reimbursed 1011  
through an employer, scholarship, grant in aid, or other 1012  
educational benefit program. 1013

(BB)(1) "Modified business income" means the business 1014  
income included in a trust's Ohio taxable income after such 1015  
taxable income is first reduced by the qualifying trust amount, 1016  
if any. 1017

(2) "Qualifying trust amount" of a trust means capital 1018  
gains and losses from the sale, exchange, or other disposition 1019  
of equity or ownership interests in, or debt obligations of, a 1020  
qualifying investee to the extent included in the trust's Ohio 1021  
taxable income, but only if the following requirements are 1022  
satisfied: 1023

(a) The book value of the qualifying investee's physical 1024  
assets in this state and everywhere, as of the last day of the 1025  
qualifying investee's fiscal or calendar year ending immediately 1026  
prior to the date on which the trust recognizes the gain or 1027  
loss, is available to the trust. 1028

(b) The requirements of section 5747.011 of the Revised 1029  
Code are satisfied for the trust's taxable year in which the 1030  
trust recognizes the gain or loss. 1031

Any gain or loss that is not a qualifying trust amount is 1032  
modified business income, qualifying investment income, or 1033  
modified nonbusiness income, as the case may be. 1034

(3) "Modified nonbusiness income" means a trust's Ohio 1035  
taxable income other than modified business income, other than 1036  
the qualifying trust amount, and other than qualifying 1037  
investment income, as defined in section 5747.012 of the Revised 1038  
Code, to the extent such qualifying investment income is not 1039

otherwise part of modified business income. 1040

(4) "Modified Ohio taxable income" applies only to trusts, 1041  
and means the sum of the amounts described in divisions (BB) (4) 1042  
(a) to (c) of this section: 1043

(a) The fraction, calculated under section 5747.013, and 1044  
applying section 5747.231 of the Revised Code, multiplied by the 1045  
sum of the following amounts: 1046

(i) The trust's modified business income; 1047

(ii) The trust's qualifying investment income, as defined 1048  
in section 5747.012 of the Revised Code, but only to the extent 1049  
the qualifying investment income does not otherwise constitute 1050  
modified business income and does not otherwise constitute a 1051  
qualifying trust amount. 1052

(b) The qualifying trust amount multiplied by a fraction, 1053  
the numerator of which is the sum of the book value of the 1054  
qualifying investee's physical assets in this state on the last 1055  
day of the qualifying investee's fiscal or calendar year ending 1056  
immediately prior to the day on which the trust recognizes the 1057  
qualifying trust amount, and the denominator of which is the sum 1058  
of the book value of the qualifying investee's total physical 1059  
assets everywhere on the last day of the qualifying investee's 1060  
fiscal or calendar year ending immediately prior to the day on 1061  
which the trust recognizes the qualifying trust amount. If, for 1062  
a taxable year, the trust recognizes a qualifying trust amount 1063  
with respect to more than one qualifying investee, the amount 1064  
described in division (BB) (4) (b) of this section shall equal the 1065  
sum of the products so computed for each such qualifying 1066  
investee. 1067

(c) (i) With respect to a trust or portion of a trust that 1068

is a resident as ascertained in accordance with division (I) (3) 1069  
(d) of this section, its modified nonbusiness income. 1070

(ii) With respect to a trust or portion of a trust that is 1071  
not a resident as ascertained in accordance with division (I) (3) 1072  
(d) of this section, the amount of its modified nonbusiness 1073  
income satisfying the descriptions in divisions (B) (2) to (5) of 1074  
section 5747.20 of the Revised Code, except as otherwise 1075  
provided in division (BB) (4) (c) (ii) of this section. With 1076  
respect to a trust or portion of a trust that is not a resident 1077  
as ascertained in accordance with division (I) (3) (d) of this 1078  
section, the trust's portion of modified nonbusiness income 1079  
recognized from the sale, exchange, or other disposition of a 1080  
debt interest in or equity interest in a section 5747.212 1081  
entity, as defined in section 5747.212 of the Revised Code, 1082  
without regard to division (A) of that section, shall not be 1083  
allocated to this state in accordance with section 5747.20 of 1084  
the Revised Code but shall be apportioned to this state in 1085  
accordance with division (B) of section 5747.212 of the Revised 1086  
Code without regard to division (A) of that section. 1087

If the allocation and apportionment of a trust's income 1088  
under divisions (BB) (4) (a) and (c) of this section do not fairly 1089  
represent the modified Ohio taxable income of the trust in this 1090  
state, the alternative methods described in division (C) of 1091  
section 5747.21 of the Revised Code may be applied in the manner 1092  
and to the same extent provided in that section. 1093

(5) (a) Except as set forth in division (BB) (5) (b) of this 1094  
section, "qualifying investee" means a person in which a trust 1095  
has an equity or ownership interest, or a person or unit of 1096  
government the debt obligations of either of which are owned by 1097  
a trust. For the purposes of division (BB) (2) (a) of this section 1098

and for the purpose of computing the fraction described in 1099  
division (BB) (4) (b) of this section, all of the following apply: 1100

(i) If the qualifying investee is a member of a qualifying 1101  
controlled group on the last day of the qualifying investee's 1102  
fiscal or calendar year ending immediately prior to the date on 1103  
which the trust recognizes the gain or loss, then "qualifying 1104  
investee" includes all persons in the qualifying controlled 1105  
group on such last day. 1106

(ii) If the qualifying investee, or if the qualifying 1107  
investee and any members of the qualifying controlled group of 1108  
which the qualifying investee is a member on the last day of the 1109  
qualifying investee's fiscal or calendar year ending immediately 1110  
prior to the date on which the trust recognizes the gain or 1111  
loss, separately or cumulatively own, directly or indirectly, on 1112  
the last day of the qualifying investee's fiscal or calendar 1113  
year ending immediately prior to the date on which the trust 1114  
recognizes the qualifying trust amount, more than fifty per cent 1115  
of the equity of a pass-through entity, then the qualifying 1116  
investee and the other members are deemed to own the 1117  
proportionate share of the pass-through entity's physical assets 1118  
which the pass-through entity directly or indirectly owns on the 1119  
last day of the pass-through entity's calendar or fiscal year 1120  
ending within or with the last day of the qualifying investee's 1121  
fiscal or calendar year ending immediately prior to the date on 1122  
which the trust recognizes the qualifying trust amount. 1123

(iii) For the purposes of division (BB) (5) (a) (iii) of this 1124  
section, "upper level pass-through entity" means a pass-through 1125  
entity directly or indirectly owning any equity of another pass- 1126  
through entity, and "lower level pass-through entity" means that 1127  
other pass-through entity. 1128

An upper level pass-through entity, whether or not it is 1129  
also a qualifying investee, is deemed to own, on the last day of 1130  
the upper level pass-through entity's calendar or fiscal year, 1131  
the proportionate share of the lower level pass-through entity's 1132  
physical assets that the lower level pass-through entity 1133  
directly or indirectly owns on the last day of the lower level 1134  
pass-through entity's calendar or fiscal year ending within or 1135  
with the last day of the upper level pass-through entity's 1136  
fiscal or calendar year. If the upper level pass-through entity 1137  
directly and indirectly owns less than fifty per cent of the 1138  
equity of the lower level pass-through entity on each day of the 1139  
upper level pass-through entity's calendar or fiscal year in 1140  
which or with which ends the calendar or fiscal year of the 1141  
lower level pass-through entity and if, based upon clear and 1142  
convincing evidence, complete information about the location and 1143  
cost of the physical assets of the lower pass-through entity is 1144  
not available to the upper level pass-through entity, then 1145  
solely for purposes of ascertaining if a gain or loss 1146  
constitutes a qualifying trust amount, the upper level pass- 1147  
through entity shall be deemed as owning no equity of the lower 1148  
level pass-through entity for each day during the upper level 1149  
pass-through entity's calendar or fiscal year in which or with 1150  
which ends the lower level pass-through entity's calendar or 1151  
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 1152  
shall be construed to provide for any deduction or exclusion in 1153  
computing any trust's Ohio taxable income. 1154

(b) With respect to a trust that is not a resident for the 1155  
taxable year and with respect to a part of a trust that is not a 1156  
resident for the taxable year, "qualifying investee" for that 1157  
taxable year does not include a C corporation if both of the 1158  
following apply: 1159



(i) During the taxable year the trust or part of the trust 1160  
recognizes a gain or loss from the sale, exchange, or other 1161  
disposition of equity or ownership interests in, or debt 1162  
obligations of, the C corporation. 1163

(ii) Such gain or loss constitutes nonbusiness income. 1164

(6) "Available" means information is such that a person is 1165  
able to learn of the information by the due date plus 1166  
extensions, if any, for filing the return for the taxable year 1167  
in which the trust recognizes the gain or loss. 1168

(CC) "Qualifying controlled group" has the same meaning as 1169  
in section 5733.04 of the Revised Code. 1170

(DD) "Related member" has the same meaning as in section 1171  
5733.042 of the Revised Code. 1172

(EE) (1) For the purposes of division (EE) of this section: 1173

(a) "Qualifying person" means any person other than a 1174  
qualifying corporation. 1175

(b) "Qualifying corporation" means any person classified 1176  
for federal income tax purposes as an association taxable as a 1177  
corporation, except either of the following: 1178

(i) A corporation that has made an election under 1179  
subchapter S, chapter one, subtitle A, of the Internal Revenue 1180  
Code for its taxable year ending within, or on the last day of, 1181  
the investor's taxable year; 1182

(ii) A subsidiary that is wholly owned by any corporation 1183  
that has made an election under subchapter S, chapter one, 1184  
subtitle A of the Internal Revenue Code for its taxable year 1185  
ending within, or on the last day of, the investor's taxable 1186  
year. 1187

(2) For the purposes of this chapter, unless expressly 1188  
stated otherwise, no qualifying person indirectly owns any asset 1189  
directly or indirectly owned by any qualifying corporation. 1190

(FF) For purposes of this chapter and Chapter 5751. of the 1191  
Revised Code: 1192

(1) "Trust" does not include a qualified pre-income tax 1193  
trust. 1194

(2) A "qualified pre-income tax trust" is any pre-income 1195  
tax trust that makes a qualifying pre-income tax trust election 1196  
as described in division (FF)(3) of this section. 1197

(3) A "qualifying pre-income tax trust election" is an 1198  
election by a pre-income tax trust to subject to the tax imposed 1199  
by section 5751.02 of the Revised Code the pre-income tax trust 1200  
and all pass-through entities of which the trust owns or 1201  
controls, directly, indirectly, or constructively through 1202  
related interests, five per cent or more of the ownership or 1203  
equity interests. The trustee shall notify the tax commissioner 1204  
in writing of the election on or before April 15, 2006. The 1205  
election, if timely made, shall be effective on and after 1206  
January 1, 2006, and shall apply for all tax periods and tax 1207  
years until revoked by the trustee of the trust. 1208

(4) A "pre-income tax trust" is a trust that satisfies all 1209  
of the following requirements: 1210

(a) The document or instrument creating the trust was 1211  
executed by the grantor before January 1, 1972; 1212

(b) The trust became irrevocable upon the creation of the 1213  
trust; and 1214

(c) The grantor was domiciled in this state at the time 1215

the trust was created. 1216

(GG) "Uniformed services" has the same meaning as in 10 1217  
U.S.C. 101. 1218

(HH) "Taxable business income" means the amount by which 1219  
an individual's business income that is included in federal 1220  
adjusted gross income exceeds the amount of business income the 1221  
individual is authorized to deduct under division (A) (31) of 1222  
this section for the taxable year. 1223

(II) "Employer" does not include a franchisor with respect 1224  
to the franchisor's relationship with a franchisee or an 1225  
employee of a franchisee, unless the franchisor agrees to assume 1226  
that role in writing or a court of competent jurisdiction 1227  
determines that the franchisor exercises a type or degree of 1228  
control over the franchisee or the franchisee's employees that 1229  
is not customarily exercised by a franchisor for the purpose of 1230  
protecting the franchisor's trademark, brand, or both. For 1231  
purposes of this division, "franchisor" and "franchisee" have 1232  
the same meanings as in 16 C.F.R. 436.1. 1233

**Section 2.** That existing section 5747.01 of the Revised 1234  
Code is hereby repealed. 1235