

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 203

Representative Stinziano

Cosponsors: Representatives Bishoff, Lepore-Hagan

A BILL

To amend sections 150.03, 322.02, 5739.02, 5739.03, 1
5747.01, and 5751.01 and to enact sections 2
195.01 to 195.14 and 5709.071 of the Revised 3
Code to establish the Startup Ohio initiative in 4
which universities and partnering business may 5
collaborate in tax-free areas near campuses in 6
this state to create jobs, attract 7
entrepreneurs, and spur academic enrichment and 8
to direct the Director of Budget and Management 9
to transfer \$100 million to the Ohio Venture 10
Capital Program Fund. 11

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

Section 1. That sections 150.03, 322.02, 5739.02, 5739.03, 12
5747.01, and 5751.01 be amended and sections 195.01, 195.02, 13
195.03, 195.04, 195.05, 195.06, 195.07, 195.08, 195.09, 195.10, 14
195.11, 195.12, 195.13, 195.14, and 5709.071 of the Revised Code 15
be enacted to read as follows: 16

Sec. 150.03. Within ninety days after April 9, 2003, the 17
authority shall establish, and subsequently may modify as it 18
considers necessary, a written investment policy governing the 19

investment of money from the program fund, which is hereby 20
created. The program fund shall consist of the proceeds of loans 21
acquired by a program administrator and money transferred or 22
appropriated to it by the general assembly. The authority is 23
subject to Chapter 119. of the Revised Code with respect to the 24
establishment or modification of the policy. The policy shall 25
meet all the following requirements: 26

(A) It is consistent with the purpose of the program 27
stated in section 150.01 of the Revised Code. 28

(B) Subject to divisions (C), (D), and (E) of this 29
section, it permits the investment of money from the program 30
fund in private, for-profit venture capital funds, including 31
funds of funds, that invest in enterprises in the seed or early 32
stage of business development or established business 33
enterprises developing new methods or technologies, and that 34
demonstrate potential to generate high levels of successful 35
investment performance. 36

(C) It specifies that a program administrator or fund 37
manager employed by the program administrator shall invest not 38
less than seventy-five per cent of program fund money under its 39
investment authority in Ohio-based venture capital funds. 40

(D) It specifies both of the following: 41

(1) That not less than an amount equal to fifty per cent 42
of program fund money invested in any venture capital fund be 43
invested by the venture capital fund in Ohio-based business 44
enterprises; 45

(2) That, commencing with the first program fund 46
commitment to each venture capital fund, the aggregate amount 47
funded into Ohio-based business enterprises by all venture 48

capital funds to which the program fund has committed be not 49
less than the aggregate amount of all program fund money funded 50
into those venture capital funds. 51

(E) It specifies that a program administrator or fund 52
manager employed by the program administrator shall not invest 53
money from the program fund in a venture capital fund to the 54
extent that the total amount of program fund money invested in 55
the venture capital fund, when combined with any program fund 56
money invested in a venture capital fund under the same 57
management as that venture capital fund, exceeds the lesser of 58
the following: 59

(1) Ten million dollars; 60

(2) (a) In the case of an Ohio-based venture capital fund, 61
fifty per cent of the total amount of capital committed to the 62
fund from all sources, after accounting for capital committed 63
from the program fund; 64

(b) In the case of any other venture capital fund, twenty 65
per cent of the total amount of capital committed to the fund 66
from all sources, after accounting for capital committed from 67
the program fund. 68

(F) It specifies that a program administrator or fund 69
manager employed by the program administrator shall not commit 70
capital from the program fund to a venture capital fund until 71
the venture capital fund receives commitment of at least the 72
same amount from other investors in the fund. 73

(G) It specifies the general conditions a private, for- 74
profit investment fund must meet to be selected as a program 75
administrator under section 150.05 of the Revised Code, 76
including, as a significant selection standard, direct 77

experience managing external or nonproprietary capital in 78
private equity fund of funds formats. 79

(H) It specifies the criteria the authority must consider 80
when making a determination under division (B)(1) of section 81
150.04 of the Revised Code. 82

(I) It includes investment standards and general 83
limitations on allowable investments that the authority 84
considers reasonable and necessary to achieve the purposes of 85
this chapter as stated in division (B) of section 150.01 of the 86
Revised Code, minimize the need for the authority to grant tax 87
credits under section 150.07 of the Revised Code, ensure 88
compliance of the program administrators with all applicable 89
laws of this state and the United States, and ensure the safety 90
and soundness of investments of money from the program fund. 91

(J) It prohibits the investment of money from the program 92
fund directly in persons other than venture capital funds, 93
except for temporary investment in investment grade debt 94
securities or temporary deposit in interest-bearing accounts or 95
funds pending permanent investment in venture capital funds. 96

Sec. 195.01. As used in this chapter: 97

(A) "University" means a state university as defined in 98
section 3345.011 of the Revised Code, a community college as 99
defined in section 3354.01 of the Revised Code, or a private 100
college or university. 101

(B) "Private college or university" has the same meaning 102
as in section 1713.50 of the Revised Code. 103

(C) "Campus" means land, buildings, or other real property 104
owned or leased by a university. 105

(D) "Business" means a sole proprietorship, a corporation for profit, or a pass-through entity as defined in section 5733.04 of the Revised Code. 106
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(E) "Partnering business" means a business that is a party to a partnership contract approved by the startup Ohio board under section 195.08 of the Revised Code. A business is no longer a partnering business when the partnership contract expires. 109
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(F) "Partnership contract" means a contract negotiated and agreed to by a university and a partnering business under section 195.07 of the Revised Code. 114
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(G) "Owner" means a partner of a partnership, a member of a limited liability company, a majority shareholder of an S corporation, a person with a majority ownership interest in a pass-through entity, the sole proprietor of a sole proprietorship, or any officer, employee, or agent with authority to make decisions legally binding upon a business. 117
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(H) "Startup space" means vacant land or building space that satisfies the criteria described under section 195.05 of the Revised Code. 123
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(I) "New job" means a position filled by one full-time employee performing a particular set of tasks and duties. The position must be new to this state and, except as provided in division (A)(3) of section 195.07 of the Revised Code, the individual filling the position must not have been transferred from a related business or any other business located in this state by means of acquisition, merger, consolidation, or reorganization of a business. 126
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(J) "Full-time employee" means an individual who is 134

employed for consideration by a partnering business for at least 135
thirty-five hours per week, or who renders any other standard of 136
service generally accepted by custom or specified by contract as 137
full-time employment. 138

(K) "Startup Ohio board" or "board" means the board 139
appointed under section 195.04 of the Revised Code. 140

(L) "Vacant" means land or building space not occupied by 141
any person or business or used for some other productive 142
purpose. For the purposes of this division, "occupied" means 143
actual, continuous, and exclusive use and possession of land or 144
building space by a person having lawful right to such use and 145
possession. 146

(M) "Appointing authority" means the governor, the 147
president of the senate, or the speaker of the house of 148
representatives. 149

(N) "Startup zone certificate" means a certificate issued 150
to a partnering business by the startup Ohio board under section 151
195.08 of the Revised Code. 152

(O) "Related businesses" are businesses the majority of 153
the ownership interests of which are held directly or indirectly 154
by the same person. 155

(P) "New employee certificate" means a certificate awarded 156
by a partnering business to a full-time employee hired to fill a 157
new job under section 195.09 of the Revised Code. 158

Sec. 195.02. (A) The startup Ohio initiative is hereby 159
established to facilitate job creation, attract private economic 160
investment, encourage entrepreneurial activity, and create 161
educational enrichment opportunities in this state. The 162
initiative shall be administered by the startup Ohio board in 163

collaboration with universities and partnering businesses in 164
this state. 165

(B) The president or chief executive officer of a 166
university in this state may seek to create a startup zone by 167
identifying startup space and writing a strategic plan to 168
attract one or more businesses to operate in the startup space 169
under a partnership contract with the university. The strategic 170
plan shall include the following: 171

(1) A detailed description of the startup space. The 172
description shall delineate the boundaries of the space and the 173
permanent parcel number associated with each parcel wholly or 174
partially located within the space. 175

(2) An explanation of the university's rationale in 176
choosing the startup space. The university shall consider the 177
following in identifying startup space: 178

(a) The need for economic development in the startup space 179
and the surrounding community. The university shall give 180
preference to underutilized land or buildings, blighted areas, 181
and other neighborhoods that are ready for development but 182
lacking resources to improve infrastructure. 183

(b) The expected effects of developing the startup space 184
on the economic and social welfare of the surrounding community. 185
The university shall endeavor to propose startup space in 186
communities where the positive economic and social impact will 187
be the greatest. The university shall avoid startup space in 188
communities where further development would lead to competition 189
with existing businesses, excessive demand for available public 190
infrastructure, or poorer conditions for individuals living or 191
working nearby. 192

(c) The conduciveness of the startup space to fostering academic enrichment opportunities for students of the university. For the purposes of this division, close proximity of the startup space to academic buildings, recreational areas, housing facilities, and other areas of campus frequented by students, ease of access to the space by public or university transportation, and flexibility of the startup space for accommodating commercial and academic environments shall be regarded as contributing positively to the conduciveness of a startup space to fostering academic enrichment. 193
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(3) The methodology the university intends to use for the purposes of identifying one or more businesses to operate in the startup space and entering partnership contracts with such businesses. The methodology shall describe the following: 203
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(a) The type of business or businesses the university seeks to operate in the startup space. The university shall seek businesses that are unique to the community surrounding the startup space and that cannot reasonably be expected to compete with or otherwise hamper the success of existing businesses in the community. 207
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(b) The proposed measures to ensure that partnership contracts with businesses in the startup space align with or further the academic mission of the university; 213
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(c) The proposed methods by which the university will consult with affected counties, municipal corporations, townships, economic development agencies, citizens, and university governance in developing and choosing businesses for the startup space. Such methods may include public hearings, focus groups, meetings, telephone calls, and other forms of communication. 216
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<u>(4) A conflicts of interest policy that, at a minimum,</u>	223
<u>complies with section 195.14 of the Revised Code;</u>	224
<u>(5) Any other information or supporting documents deemed</u>	225
<u>necessary or desirable by the university or the startup Ohio</u>	226
<u>board to fully explain the strategic plan and the proposed</u>	227
<u>startup space.</u>	228
<u>(C) Subject to the limitations prescribed by divisions (B)</u>	229
<u>and (C) of section 195.03 of the Revised Code, the president or</u>	230
<u>chief executive officer of a university may submit or amend a</u>	231
<u>strategic plan for a startup zone under division (B) of this</u>	232
<u>section at any time. A university may submit a strategic plan</u>	233
<u>for more than one startup zone or multiple strategic plans for</u>	234
<u>multiple startup zones simultaneously.</u>	235
<u>Sec. 195.03. (A) The startup Ohio board shall review and</u>	236
<u>consider strategic plans submitted by universities under section</u>	237
<u>195.02 of the Revised Code based on merit and not on the time of</u>	238
<u>submission. The board may approve a strategic plan only by</u>	239
<u>affirmative vote of at least two board members. The board shall</u>	240
<u>consider the following in determining to approve or reject a</u>	241
<u>strategic plan under this section:</u>	242
<u>(1) Compliance of the startup space and the strategic plan</u>	243
<u>with the requirements of this chapter;</u>	244
<u>(2) Reasonableness of the economic and fiscal assumptions</u>	245
<u>contained in the strategic plan and any supporting documents;</u>	246
<u>(3) Likelihood that the proposed startup zone would lead</u>	247
<u>to the creation of new jobs, attract entrepreneurs, and enrich</u>	248
<u>the education of the university's students;</u>	249
<u>(4) Congruence of the strategic plan with the mission and</u>	250
<u>activities of the university;</u>	251

(5) Desirability of the startup space according to the 252
factors described in divisions (B) (2) (a), (b), and (c) of 253
section 195.02 of the Revised Code; 254

(6) Practicality and desirability of the university's 255
methodology for identifying and entering partnerships with 256
businesses to operate in the startup space according to the 257
factors described in divisions (B) (3) (a), (b), and (c) of 258
section 195.02 of the Revised Code; 259

(7) Geographic balance of the startup space with other 260
startup zones in the state; 261

(8) Variance of urban, rural, and suburban startup zones 262
throughout the state; 263

(9) Participation of a diverse range of universities in 264
the state; 265

(10) Support or opposition of counties, municipal 266
corporations, townships, economic development agencies, 267
citizens, and the governing body of the university. 268

(B) The aggregate area of all startup zones sponsored by a 269
single university and located off campus shall not exceed two 270
hundred thousand square feet. 271

(C) The aggregate area of all startup zones sponsored by 272
private colleges and universities shall not exceed three million 273
square feet. 274

(D) Acceptance of a strategic plan by the startup Ohio 275
board immediately designates the startup space described in the 276
plan as a startup zone. The board shall send written notice of 277
its approval to the university within fourteen days after 278
accepting the plan. 279

(E) If the startup Ohio board rejects the strategic plan, 280
the board shall send written notice to the university that 281
submitted the plan within fourteen days after that 282
determination. The notice shall include the reasons for the 283
board's determination and suggestions for how the strategic plan 284
could be modified to meet the board's approval. 285

Sec. 195.04. (A) There is hereby created the startup Ohio 286
board consisting of three members with significant expertise and 287
experience in academic-based economic development projects. The 288
governor, the president of the senate, and the speaker of the 289
house of representatives each shall appoint one individual to 290
serve as a member of the board. The board shall do all of the 291
following: 292

(1) Review strategic plans for startup zones submitted by 293
universities under section 195.02 of the Revised Code and 294
determine to accept or to reject the plans; 295

(2) Review and make determinations with respect to 296
partnership contracts between universities and partnering 297
businesses under section 195.08 of the Revised Code; 298

(3) Assist and oversee universities in carrying out 299
strategic plans accepted by the board; 300

(4) Monitor the compliance of universities and partnering 301
businesses with respect to the strategic plan and partnership 302
contract; 303

(5) Evaluate the effectiveness of the startup Ohio 304
initiative in terms of jobs created, private economic investment 305
attracted, and educational enrichment opportunities provided in 306
an annual report submitted to the governor, the president of the 307
senate, and the speaker of the house of representatives. 308

(B) The governor, the president of the senate, and the speaker of the house of representatives shall make initial appointments to the startup Ohio board within ninety days after the effective date of the enactment of this section. The initial appointees shall serve the following terms of office:

(1) The board member appointed by the governor shall serve a term of four years;

(2) The board member appointed by the president of the senate shall serve a term of three years;

(3) The board member appointed by the speaker of the house of representatives shall serve a term of two years.

(C) All board members appointed after the expiration of the initial appointee's term shall serve terms of four years. The terms of office for initial appointees to the startup Ohio board begin on the ninetieth day following the effective date of the enactment of this section. Subsequent terms of office begin the day the appointee's predecessor's term expires. If an appointing authority does not appoint a new board member or reappoint the current board member before the expiration of the current board member's term, the current board member shall continue in office until the appointing authority appoints a successor. A board member may serve an unlimited number of consecutive terms if the board member is reappointed by an appointing authority.

(D) Startup Ohio board members serve at the pleasure of their appointing authority. Board members may be removed from the position at any time by the member's appointing authority for malfeasance, misfeasance, or nonfeasance in office. A vacancy in an unexpired term on the startup Ohio board shall be

filled in the same manner as the initial appointment. A board 338
member appointed to fill a vacancy on the startup Ohio board 339
shall hold office for the remainder of the member's 340
predecessor's term. The presence of two board members 341
constitutes a quorum to conduct the board's business under this 342
chapter. A vacancy on the board does not impair the board from 343
carrying out its business if at least two board members are 344
present. 345

(E) The startup Ohio board is a public body for the 346
purposes of section 121.22 of the Revised Code, and it is a 347
public office for the purposes of section 149.43 of the Revised 348
Code. Board members shall not be considered to be holding a 349
direct or indirect interest in a contract or expenditure of 350
money by a university or a partnering business because of their 351
affiliation with the board. Board members shall not be paid for 352
their service, but may be reimbursed by the director of budget 353
and management from the general revenue fund for reasonable 354
expenses incurred in carrying out their duties under this 355
section. 356

Sec. 195.05. (A) Startup space shall be located on land or 357
in building space that is vacant at the time the university 358
submits the strategic plan to the startup Ohio board under 359
section 195.02 of the Revised Code. The university shall not 360
relocate or eliminate academic programs, administrative 361
programs, offices, housing facilities, dining facilities, 362
athletic facilities, or any other facility, space, or program 363
that actively serves students, faculty, or staff in order to 364
create vacant land or building space for the purposes of this 365
chapter. 366

(B) Except as provided in division (C) of this section, 367

startup space shall be located within one mile of the 368
university's campus. If the startup space is located in a 369
building outside of the university's campus, its area shall not 370
exceed two hundred thousand square feet. 371

(C) A university may apply to the startup Ohio board for 372
special consideration of land or building space that does not 373
meet the criteria described in division (B) of this section. The 374
board may approve such land or building space as startup space 375
if the board determines that such approval is consistent with 376
the purposes of the startup Ohio initiative and that the land or 377
building space otherwise meets the requirements of this section. 378

Sec. 195.06. (A) After the startup Ohio board designates a 379
startup zone under section 195.03 of the Revised Code, the 380
university shall follow the methodology described in its 381
strategic plan to identify and enter a partnership contract with 382
one or more businesses to operate within the startup zone. The 383
business shall meet all of the following criteria: 384

(1) The mission and activities of the business align with 385
or further the academic mission of the university. 386

(2) The business is not a direct or indirect competitor of 387
an existing business located near the startup zone. 388

(3) The business has the capacity to meet the performance 389
benchmarks in the partnership contract. 390

(4) Except as provided in divisions (C) and (D) of this 391
section, the business was not operating in this state at the 392
time of entering the partnership contract or in any of the 393
preceding five years. 394

(5) Except as provided in divisions (C) and (D) of this 395
section, the business is not substantially similar, in terms of 396

ownership and operation, to a business operating in this state 397
at the time of entering the partnership contract or in any of 398
the preceding five years. 399

(6) The business is in compliance with all worker 400
protection and environmental laws and regulations. 401

(7) The business does not owe past due federal, state, or 402
local taxes. 403

(8) The business is not engaged in any of the following 404
commercial activities: 405

(a) Retail; 406

(b) Wholesale; 407

(c) Real estate brokerage or management; 408

(d) Law practice; 409

(e) Medical or dental practice; 410

(f) Hospitality; 411

(g) Finance or financial services; 412

(h) Personal services; 413

(i) Administrative support services; 414

(j) Accountant services; 415

(k) Utility services; 416

(l) Electricity generation or distribution; 417

(m) Natural gas generation or distribution; 418

(n) Insurance. 419

(B) If, after reasonable efforts, the university 420

determines it is not practical to identify and enter a 421
partnership contract with a business using the methodology 422
described in the strategic plan, the university may seek to 423
amend the methodology by submitting a proposed amendment to the 424
startup Ohio board. The board may approve or reject the 425
amendment by a majority vote. The board shall send notice of its 426
determination with respect to the amendment to the university 427
within fourteen days of its determination under this division. 428

(C) Notwithstanding divisions (A) (4) and (5) of this 429
section, a university may enter a partnership contract with a 430
returning business if the contract includes a provision whereby 431
the business agrees to substantially restore all jobs previously 432
moved by the business out of this state. For the purposes of 433
this division, "returning business" means a business that moved 434
jobs out of this state on or before the effective date of the 435
enactment of this section. 436

(D) Notwithstanding divisions (A) (4) and (5) of this 437
section, a university may enter a partnership contract with an 438
expanding business if the contract contains a provision whereby 439
the business agrees to create new jobs in the startup zone 440
without eliminating or relocating jobs from elsewhere in the 441
state. For the purposes of this division, "expanding business" 442
means a business currently operating in this state that intends 443
to increase its Ohio operations and create new jobs. 444

Sec. 195.07. After the university has identified a 445
business that meets the criteria prescribed by division (A) of 446
section 195.06 of the Revised Code, the university may negotiate 447
the terms of a partnership contract with the business concerning 448
the business's operation in the startup zone. 449

(A) The partnership contract shall include the following 450

terms for the partnering business: 451

(1) An agreement to create new jobs in the startup zone 452
during its first year of operation under the contract and to 453
retain those jobs for the duration of the contract; 454

(2) An agreement not to move existing jobs from another 455
area of the state to the startup zone; 456

(3) An agreement not to cause individuals to transfer 457
employment from a related business located in this state to 458
similar employment with the partnering business in the startup 459
zone. This agreement does not apply if the partnering business 460
demonstrates that the related business did not eliminate the 461
transferring employee's position in this state after the 462
transfer. 463

(4) Specific performance benchmarks, including: 464

(a) The number of new jobs the partnering business agrees 465
to create; 466

(b) A schedule for when the new jobs will be created; 467

(c) The job titles and expected salaries associated with 468
the new jobs. 469

(5) An agreement to share tax returns, employment 470
information, and other documents that the university and the 471
startup Ohio board deem necessary to monitor the partnering 472
business's compliance with the partnership contract; 473

(6) An agreement to collaborate with the university in 474
creating and administering academic enrichment opportunities for 475
the university's students. 476

(B) The partnership contract shall specify the date on 477

which the contract expires. Such date shall be not later than 478
ten years from the date the contract is submitted to the startup 479
Ohio board for approval under section 195.08 of the Revised 480
Code. 481

(C) The partnership contract may include terms additional 482
to but not in derogation of those described in this section. The 483
university or partnering business may seek to include any 484
provisions deemed necessary or desirable to govern the mechanics 485
of their collaboration in the startup zone for business and 486
educational purposes. 487

Sec. 195.08. (A) After the president or chief executive 488
officer of the university and the owner of the partnering 489
business have agreed to the terms of the partnership contract, 490
the university shall submit a copy of the contract to the 491
startup Ohio board. The board shall review the contract and 492
determine if its terms are consistent with the strategic plan 493
submitted by the university under section 195.02 of the Revised 494
Code and the goals of the startup Ohio initiative. The board may 495
approve or reject the contract by affirmative vote of at least 496
two board members. The board shall send notice of its 497
determination on the contract to the university and the 498
partnering business within fourteen days of voting. 499

(B) (1) If the board votes to approve the contract, the 500
notice shall take the form of a startup zone certificate. The 501
startup zone certificate shall include the following: 502

(a) The name, address, and telephone number of the 503
university; 504

(b) The name, address, telephone number, and social 505
security number or federal tax identification number of the 506

partnering business; 507

(c) The location of the startup zone and the parcel 508
numbers, if any, assigned to parcels in the zone or other legal 509
description of such parcels; 510

(d) The date the partnership contract takes effect and the 511
date it expires. 512

(2) The startup zone certificate shall serve as 513
documentation that the partnership contract has been approved 514
for the purposes of the tax incentives described in section 515
322.02, section 5709.071, division (B) (54) of section 5739.02, 516
division (A) (32) of section 5747.01, and division (F) (2) (jj) of 517
section 5751.01 of the Revised Code. 518

(3) The startup zone certificate expires on the same date 519
the partnership contract expires or is terminated. 520

(4) The board shall transmit a copy of the startup zone 521
certificate to the tax commissioner. 522

(5) Along with the startup zone certificate, the startup 523
Ohio board shall give notice to the partnering business of the 524
number of new employee certificates that the partnering business 525
is authorized to award. Except as provided in division (D) of 526
this section, the number of new employee certificates shall 527
equal the number of new jobs the partnering business agreed to 528
create in the partnership contract. 529

(C) If the board rejects the partnership contract, the 530
notice shall include the reasons for the board's determination 531
and suggestions for ways in which the contract may be revised to 532
meet the approval of the board. The university and the 533
partnering business may amend and resubmit a previously rejected 534
partnership contract to the board at any time. 535

(D) The startup Ohio board shall monitor the issuance and use of new employee certificates under this section and section 195.09 of the Revised Code to ensure that not more than ten thousand full-time employees use new employee certificates to claim deductions under division (A) (33) of section 5747.01 of the Revised Code in any taxable year. To comply with this division, the board may reduce the number of new employee certificates a partnering business is authorized to award. 536
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(E) A partnering business shall not assign or transfer a startup zone certificate issued under this section to any other person. 544
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Sec. 195.09. (A) A partnering business may award a new employee certificate to any full-time employee hired to fill a new job described in the partnership contract. The new employee certificate shall be in a form prescribed by the startup Ohio board and shall include the name, address, and social security number or federal tax identification number of the employee and the partnering business. 547
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(B) Each time a partnering business awards a new employee certificate, it shall transmit a copy of the completed new employee certificate to the startup Ohio board and the tax commissioner. 554
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(C) If the partnering business or the full-time employee ends the employment relationship before the expiration of the partnership contract or if the full-time employee is transferred outside the startup zone, the partnering business shall revoke the new employee certificate and transmit notice of such revocation to the board and the commissioner. 558
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(D) A partnering business shall not revoke a new employee 564

certificate awarded to any full-time employee for reasons other 565
than those described in division (C) of this section. 566

(E) A full-time employee awarded a new employee 567
certificate under this section may claim an income tax deduction 568
under division (A) (33) of section 5747.01 of the Revised Code. 569
The deduction is based on the income earned by the full-time 570
employee from the partnering business for work performed in the 571
startup zone. The full-time employee may claim the deduction for 572
taxable years ending after the date the new employee certificate 573
is awarded and beginning before the expiration of the 574
partnership contract. 575

(F) A partnering business may apply to the startup Ohio 576
board for authorization to award more new employee certificates 577
than initially authorized under division (B) (5) of section 578
195.08 of the Revised Code. The board, in its discretion and 579
subject to the limitation prescribed by division (D) of section 580
195.08 of the Revised Code, may authorize the partnering 581
business to award additional new employee certificates under 582
this section. 583

Sec. 195.10. (A) If a university determines that a 584
partnering business is not complying with a provision of the 585
partnership contract, the university shall notify the startup 586
Ohio board. The board shall conduct a hearing on the alleged 587
noncompliance and allow opportunities for the university and the 588
partnering business to present testimony at the hearing. At the 589
conclusion of the hearing, the board, by affirmative vote of at 590
least two of its members, may do any of the following: 591

(1) Suspend the partnering business's startup zone 592
certificate until the partnering business complies with the 593
terms of the partnership contract; 594

(2) Terminate the partnership contract; 595

(3) Terminate the partnership contract and require the 596
partnering business to refund to the state all or a portion of 597
the amounts realized by the partnering business through the tax 598
incentives described in division (A) (32) of section 5747.01 and 599
division (F) (2) (jj) of section 5751.01 of the Revised Code. 600

(B) In reaching a determination under division (A) of this 601
section, the startup Ohio board shall consider the effect of 602
market conditions on the partnering business's performance under 603
the partnership contract and whether the partnering business 604
continues to maintain other operations in this state. 605

(C) After making a determination under division (A) of 606
this section, the board shall certify the amount to be refunded 607
to the tax commissioner. The commissioner shall make an 608
assessment for that amount against the partnering business under 609
Chapters 5747. and 5751. of the Revised Code. 610

(D) Full-time employees awarded new employee certificates 611
by a partnering business under section 195.09 of the Revised 612
Code shall not be subject to assessment under this section. If 613
the partnering business's partnership contract is terminated 614
under this section, the employee may claim the deduction 615
described in division (A) (33) of section 5747.01 of the Revised 616
Code only for income received before the date the contract is 617
terminated. 618

Sec. 195.11. (A) The startup Ohio board shall file an 619
annual report to the governor, the president of the senate, and 620
the speaker of the house of representatives on the effectiveness 621
of the startup Ohio initiative. The report shall include the 622
following: 623

<u>(1) A list of the universities that have submitted</u>	624
<u>strategic plans under section 195.02 of the Revised Code;</u>	625
<u>(2) A list of the startup zones approved by the board</u>	626
<u>under section 195.03 of the Revised Code and the location of</u>	627
<u>each;</u>	628
<u>(3) A list of the partnering businesses operating in</u>	629
<u>startup zones and the number of new jobs created by each</u>	630
<u>partnering business;</u>	631
<u>(4) The types of industries represented by partnering</u>	632
<u>businesses operating in startup zones;</u>	633
<u>(5) A list of the noncompliance issues raised by</u>	634
<u>universities under section 195.10 of the Revised Code in the</u>	635
<u>preceding year.</u>	636
<u>(B) The report required under division (A) of this section</u>	637
<u>shall be completed by the first day of each April occurring at</u>	638
<u>least six months after the effective date of this section.</u>	639
<u>(C) The startup Ohio board may request, and universities</u>	640
<u>and partnering businesses shall provide, any information or</u>	641
<u>documents needed by the board to complete the report required by</u>	642
<u>this section.</u>	643
<u>Sec. 195.12. No university may contract with a partnering</u>	644
<u>business to perform services or work that is similar in nature</u>	645
<u>or in scope to services or work that was performed by employees</u>	646
<u>of the university at any time during the five years preceding</u>	647
<u>the date the partnership contract is submitted to the startup</u>	648
<u>Ohio board under section 195.08 of the Revised Code.</u>	649
<u>Sec. 195.13. Financial statements and other information</u>	650
<u>submitted by a university or a partnering business to the</u>	651

startup Ohio board, and any information taken by the board for 652
the purposes described in this chapter, are not public records 653
subject to section 149.43 of the Revised Code. However, the 654
startup Ohio board may make use of such information for purposes 655
of issuing public reports or in connection with court 656
proceedings concerning partnership contracts under this chapter. 657

Upon the request of the tax commissioner, the startup Ohio 658
board and the university shall provide the commissioner any 659
statement or other information submitted by or obtained from a 660
partnering business. The commissioner shall preserve the 661
confidentiality of the statement or information. 662

Sec. 195.14. (A) For the purposes of this section, 663
"interested individual" means a person who is the president or 664
chief executive officer of the university or who is an employee, 665
alumnus, or donor of the university with the ability to 666
influence or make decisions on a partnership contract, and who 667
has, directly or indirectly, through business, investment, or 668
family, any of the following: 669

(1) An ownership or investment interest in a partnering 670
business; 671

(2) A compensation agreement with a partnering business; 672

(3) A potential ownership or investment interest in, or 673
compensation arrangement with, any person with which the 674
university is negotiating a partnership contract. Compensation 675
includes direct and indirect remuneration as well as material 676
gifts or favors. 677

(B) A university participating in the startup Ohio 678
initiative shall adopt a conflicts of interest policy with 679
respect to its activities under this chapter. The conflicts of 680

interest policy shall protect the university's interest when it 681
is considering a partnership contract that might benefit the 682
private interest of an interested individual. The conflicts of 683
interest policy shall include the following: 684

(1) The procedure for interested individuals to disclose a 685
financial interest in a partnering business; 686

(2) The procedure for screening such interested 687
individuals from negotiations on the partnership contract; 688

(3) The procedure for reporting conflicts of interest to 689
the startup Ohio board. 690

(C) If the university determines that an interested 691
individual failed to report a financial interest in a partnering 692
business before the approval of the partnership contract under 693
section 195.08 of the Revised Code, the university shall report 694
such failure to the startup Ohio board. The board shall hold a 695
hearing on the potential conflict of interest and, if the board 696
determines that the partnership contract is not in the 697
university's best interest, may terminate the partnership 698
contract and revoke the partnering business's startup zone 699
certificate. 700

Sec. 322.02. (A) For the purpose of paying the costs of 701
enforcing and administering the tax and providing additional 702
general revenue for the county, any county may levy and collect 703
a tax to be known as the real property transfer tax on each deed 704
conveying real property or any interest in real property located 705
wholly or partially within the boundaries of the county at a 706
rate not to exceed thirty cents per hundred dollars for each one 707
hundred dollars or fraction thereof of the value of the real 708
property or interest in real property located within the 709

boundaries of the county granted, assigned, transferred, or 710
otherwise conveyed by the deed. The tax shall be levied pursuant 711
to a resolution adopted by the board of county commissioners of 712
the county and, except as provided in division (C) of this 713
section and division (A) of section 322.07 of the Revised Code, 714
shall be levied at a uniform rate upon all deeds as defined in 715
division (D) of section 322.01 of the Revised Code. Prior to the 716
adoption of any such resolution, the board of county 717
commissioners shall conduct two public hearings thereon, the 718
second hearing to be not less than three nor more than ten days 719
after the first. Notice of the date, time, and place of the 720
hearings shall be given by publication in a newspaper of general 721
circulation in the county once a week on the same day of the 722
week for two consecutive weeks or as provided in section 7.16 of 723
the Revised Code. The second publication shall be not less than 724
ten nor more than thirty days prior to the first hearing. The 725
tax shall be levied upon the grantor named in the deed and shall 726
be paid by the grantor for the use of the county to the county 727
auditor at the time of the delivery of the deed as provided in 728
section 319.202 of the Revised Code and prior to the 729
presentation of the deed to the recorder of the county for 730
recording. 731

(B) No resolution levying a real property transfer tax 732
pursuant to this section or a manufactured home transfer tax 733
pursuant to section 322.06 of the Revised Code shall be 734
effective sooner than thirty days following its adoption. Such a 735
resolution is subject to a referendum as provided in sections 736
305.31 to 305.41 of the Revised Code, unless the resolution is 737
adopted as an emergency measure necessary for the immediate 738
preservation of the public peace, health, or safety, in which 739
case it shall go into immediate effect. An emergency measure 740

must receive an affirmative vote of all of the members of the board of commissioners, and shall state the reasons for the necessity. A resolution may direct the board of elections to submit the question of levying the tax to the electors of the county at the next primary or general election in the county occurring not less than ninety days after the resolution is certified to the board. No such resolution shall go into effect unless approved by a majority of those voting upon it.

(C) No real property transfer tax levied pursuant to this section shall apply to any deed conveying real property or any interest in real property located within a startup zone to a partnering business holding a valid startup zone certificate. The exemption under this division applies only to conveyances occurring on or after the date the startup zone certificate takes effect and before the certificate expires. As used in this division, "startup zone," "partnering business," and "startup zone certificate" have the same meanings as in section 195.01 of the Revised Code.

Sec. 5709.071. Real property constituting or situated on a parcel designated as a startup zone by the startup Ohio board and used exclusively for that purpose by a university and one or more partnering businesses shall be exempt from taxation for the term of the partnership contract between the university and the partnering business beginning with the tax year that includes the effective date of the contract. This exemption does not apply to any portion of the real property not designated and used exclusively as a startup zone. The exemption does not apply to any tax year ending after the expiration of the partnership contract. For the purposes of this section, "startup zone," "startup Ohio board," "university," "partnership contract," and "partnering business" have the same meanings as in section

195.01 of the Revised Code. 772

Sec. 5739.02. For the purpose of providing revenue with 773
which to meet the needs of the state, for the use of the general 774
revenue fund of the state, for the purpose of securing a 775
thorough and efficient system of common schools throughout the 776
state, for the purpose of affording revenues, in addition to 777
those from general property taxes, permitted under 778
constitutional limitations, and from other sources, for the 779
support of local governmental functions, and for the purpose of 780
reimbursing the state for the expense of administering this 781
chapter, an excise tax is hereby levied on each retail sale made 782
in this state. 783

(A) (1) The tax shall be collected as provided in section 784
5739.025 of the Revised Code. The rate of the tax shall be five 785
and three-fourths per cent. The tax applies and is collectible 786
when the sale is made, regardless of the time when the price is 787
paid or delivered. 788

(2) In the case of the lease or rental, with a fixed term 789
of more than thirty days or an indefinite term with a minimum 790
period of more than thirty days, of any motor vehicles designed 791
by the manufacturer to carry a load of not more than one ton, 792
watercraft, outboard motor, or aircraft, or of any tangible 793
personal property, other than motor vehicles designed by the 794
manufacturer to carry a load of more than one ton, to be used by 795
the lessee or renter primarily for business purposes, the tax 796
shall be collected by the vendor at the time the lease or rental 797
is consummated and shall be calculated by the vendor on the 798
basis of the total amount to be paid by the lessee or renter 799
under the lease agreement. If the total amount of the 800
consideration for the lease or rental includes amounts that are 801

not calculated at the time the lease or rental is executed, the 802
tax shall be calculated and collected by the vendor at the time 803
such amounts are billed to the lessee or renter. In the case of 804
an open-end lease or rental, the tax shall be calculated by the 805
vendor on the basis of the total amount to be paid during the 806
initial fixed term of the lease or rental, and for each 807
subsequent renewal period as it comes due. As used in this 808
division, "motor vehicle" has the same meaning as in section 809
4501.01 of the Revised Code, and "watercraft" includes an 810
outdrive unit attached to the watercraft. 811

A lease with a renewal clause and a termination penalty or 812
similar provision that applies if the renewal clause is not 813
exercised is presumed to be a sham transaction. In such a case, 814
the tax shall be calculated and paid on the basis of the entire 815
length of the lease period, including any renewal periods, until 816
the termination penalty or similar provision no longer applies. 817
The taxpayer shall bear the burden, by a preponderance of the 818
evidence, that the transaction or series of transactions is not 819
a sham transaction. 820

(3) Except as provided in division (A) (2) of this section, 821
in the case of a sale, the price of which consists in whole or 822
in part of the lease or rental of tangible personal property, 823
the tax shall be measured by the installments of that lease or 824
rental. 825

(4) In the case of a sale of a physical fitness facility 826
service or recreation and sports club service, the price of 827
which consists in whole or in part of a membership for the 828
receipt of the benefit of the service, the tax applicable to the 829
sale shall be measured by the installments thereof. 830

(B) The tax does not apply to the following: 831

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;	832 833 834 835
(2) Sales of food for human consumption off the premises where sold;	836 837
(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;	838 839 840
(4) Sales of newspapers and sales or transfers of magazines distributed as controlled circulation publications;	841 842
(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;	843 844 845 846
(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;	847 848 849 850 851 852 853 854 855 856
(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of	857 858 859 860

communications services by a telegraph company, all terms as 861
defined in section 5727.01 of the Revised Code, and sales of 862
electricity delivered through wires; 863

(8) Casual sales by a person, or auctioneer employed 864
directly by the person to conduct such sales, except as to such 865
sales of motor vehicles, watercraft or outboard motors required 866
to be titled under section 1548.06 of the Revised Code, 867
watercraft documented with the United States coast guard, 868
snowmobiles, and all-purpose vehicles as defined in section 869
4519.01 of the Revised Code; 870

(9) (a) Sales of services or tangible personal property, 871
other than motor vehicles, mobile homes, and manufactured homes, 872
by churches, organizations exempt from taxation under section 873
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 874
organizations operated exclusively for charitable purposes as 875
defined in division (B) (12) of this section, provided that the 876
number of days on which such tangible personal property or 877
services, other than items never subject to the tax, are sold 878
does not exceed six in any calendar year, except as otherwise 879
provided in division (B) (9) (b) of this section. If the number of 880
days on which such sales are made exceeds six in any calendar 881
year, the church or organization shall be considered to be 882
engaged in business and all subsequent sales by it shall be 883
subject to the tax. In counting the number of days, all sales by 884
groups within a church or within an organization shall be 885
considered to be sales of that church or organization. 886

(b) The limitation on the number of days on which tax- 887
exempt sales may be made by a church or organization under 888
division (B) (9) (a) of this section does not apply to sales made 889
by student clubs and other groups of students of a primary or 890

secondary school, or a parent-teacher association, booster 891
group, or similar organization that raises money to support or 892
fund curricular or extracurricular activities of a primary or 893
secondary school. 894

(c) Divisions (B) (9) (a) and (b) of this section do not 895
apply to sales by a noncommercial educational radio or 896
television broadcasting station. 897

(10) Sales not within the taxing power of this state under 898
the Constitution or laws of the United States or the 899
Constitution of this state; 900

(11) Except for transactions that are sales under division 901
(B) (3) (r) of section 5739.01 of the Revised Code, the 902
transportation of persons or property, unless the transportation 903
is by a private investigation and security service; 904

(12) Sales of tangible personal property or services to 905
churches, to organizations exempt from taxation under section 906
501(c) (3) of the Internal Revenue Code of 1986, and to any other 907
nonprofit organizations operated exclusively for charitable 908
purposes in this state, no part of the net income of which 909
inures to the benefit of any private shareholder or individual, 910
and no substantial part of the activities of which consists of 911
carrying on propaganda or otherwise attempting to influence 912
legislation; sales to offices administering one or more homes 913
for the aged or one or more hospital facilities exempt under 914
section 140.08 of the Revised Code; and sales to organizations 915
described in division (D) of section 5709.12 of the Revised 916
Code. 917

"Charitable purposes" means the relief of poverty; the 918
improvement of health through the alleviation of illness, 919

disease, or injury; the operation of an organization exclusively 920
for the provision of professional, laundry, printing, and 921
purchasing services to hospitals or charitable institutions; the 922
operation of a home for the aged, as defined in section 5701.13 923
of the Revised Code; the operation of a radio or television 924
broadcasting station that is licensed by the federal 925
communications commission as a noncommercial educational radio 926
or television station; the operation of a nonprofit animal 927
adoption service or a county humane society; the promotion of 928
education by an institution of learning that maintains a faculty 929
of qualified instructors, teaches regular continuous courses of 930
study, and confers a recognized diploma upon completion of a 931
specific curriculum; the operation of a parent-teacher 932
association, booster group, or similar organization primarily 933
engaged in the promotion and support of the curricular or 934
extracurricular activities of a primary or secondary school; the 935
operation of a community or area center in which presentations 936
in music, dramatics, the arts, and related fields are made in 937
order to foster public interest and education therein; the 938
production of performances in music, dramatics, and the arts; or 939
the promotion of education by an organization engaged in 940
carrying on research in, or the dissemination of, scientific and 941
technological knowledge and information primarily for the 942
public. 943

Nothing in this division shall be deemed to exempt sales 944
to any organization for use in the operation or carrying on of a 945
trade or business, or sales to a home for the aged for use in 946
the operation of independent living facilities as defined in 947
division (A) of section 5709.12 of the Revised Code. 948

(13) Building and construction materials and services sold 949
to construction contractors for incorporation into a structure 950

or improvement to real property under a construction contract 951
with this state or a political subdivision of this state, or 952
with the United States government or any of its agencies; 953
building and construction materials and services sold to 954
construction contractors for incorporation into a structure or 955
improvement to real property that are accepted for ownership by 956
this state or any of its political subdivisions, or by the 957
United States government or any of its agencies at the time of 958
completion of the structures or improvements; building and 959
construction materials sold to construction contractors for 960
incorporation into a horticulture structure or livestock 961
structure for a person engaged in the business of horticulture 962
or producing livestock; building materials and services sold to 963
a construction contractor for incorporation into a house of 964
public worship or religious education, or a building used 965
exclusively for charitable purposes under a construction 966
contract with an organization whose purpose is as described in 967
division (B) (12) of this section; building materials and 968
services sold to a construction contractor for incorporation 969
into a building under a construction contract with an 970
organization exempt from taxation under section 501(c) (3) of the 971
Internal Revenue Code of 1986 when the building is to be used 972
exclusively for the organization's exempt purposes; building and 973
construction materials sold for incorporation into the original 974
construction of a sports facility under section 307.696 of the 975
Revised Code; building and construction materials and services 976
sold to a construction contractor for incorporation into real 977
property outside this state if such materials and services, when 978
sold to a construction contractor in the state in which the real 979
property is located for incorporation into real property in that 980
state, would be exempt from a tax on sales levied by that state; 981
building and construction materials for incorporation into a 982

transportation facility pursuant to a public-private agreement 983
entered into under sections 5501.70 to 5501.83 of the Revised 984
Code; and, until one calendar year after the construction of a 985
convention center that qualifies for property tax exemption 986
under section 5709.084 of the Revised Code is completed, 987
building and construction materials and services sold to a 988
construction contractor for incorporation into the real property 989
comprising that convention center; 990

(14) Sales of ships or vessels or rail rolling stock used 991
or to be used principally in interstate or foreign commerce, and 992
repairs, alterations, fuel, and lubricants for such ships or 993
vessels or rail rolling stock; 994

(15) Sales to persons primarily engaged in any of the 995
activities mentioned in division (B) (42) (a), (g), or (h) of this 996
section, to persons engaged in making retail sales, or to 997
persons who purchase for sale from a manufacturer tangible 998
personal property that was produced by the manufacturer in 999
accordance with specific designs provided by the purchaser, of 1000
packages, including material, labels, and parts for packages, 1001
and of machinery, equipment, and material for use primarily in 1002
packaging tangible personal property produced for sale, 1003
including any machinery, equipment, and supplies used to make 1004
labels or packages, to prepare packages or products for 1005
labeling, or to label packages or products, by or on the order 1006
of the person doing the packaging, or sold at retail. "Packages" 1007
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1008
bindings, wrappings, and other similar devices and containers, 1009
but does not include motor vehicles or bulk tanks, trailers, or 1010
similar devices attached to motor vehicles. "Packaging" means 1011
placing in a package. Division (B) (15) of this section does not 1012
apply to persons engaged in highway transportation for hire. 1013

(16) Sales of food to persons using supplemental nutrition assistance program benefits to purchase the food. As used in this division, "food" has the same meaning as in 7 U.S.C. 2012 and federal regulations adopted pursuant to the Food and Nutrition Act of 2008.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption primarily in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs for a human being that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased by hospitals, nursing homes, or other medical facilities;

(19) Sales of prosthetic devices, durable medical	1044
equipment for home use, or mobility enhancing equipment, when	1045
made pursuant to a prescription and when such devices or	1046
equipment are for use by a human being.	1047
(20) Sales of emergency and fire protection vehicles and	1048
equipment to nonprofit organizations for use solely in providing	1049
fire protection and emergency services, including trauma care	1050
and emergency medical services, for political subdivisions of	1051
the state;	1052
(21) Sales of tangible personal property manufactured in	1053
this state, if sold by the manufacturer in this state to a	1054
retailer for use in the retail business of the retailer outside	1055
of this state and if possession is taken from the manufacturer	1056
by the purchaser within this state for the sole purpose of	1057
immediately removing the same from this state in a vehicle owned	1058
by the purchaser;	1059
(22) Sales of services provided by the state or any of its	1060
political subdivisions, agencies, instrumentalities,	1061
institutions, or authorities, or by governmental entities of the	1062
state or any of its political subdivisions, agencies,	1063
instrumentalities, institutions, or authorities;	1064
(23) Sales of motor vehicles to nonresidents of this state	1065
under the circumstances described in division (B) of section	1066
5739.029 of the Revised Code;	1067
(24) Sales to persons engaged in the preparation of eggs	1068
for sale of tangible personal property used or consumed directly	1069
in such preparation, including such tangible personal property	1070
used for cleaning, sanitizing, preserving, grading, sorting, and	1071
classifying by size; packages, including material and parts for	1072

packages, and machinery, equipment, and material for use in	1073
packaging eggs for sale; and handling and transportation	1074
equipment and parts therefor, except motor vehicles licensed to	1075
operate on public highways, used in intraplant or interplant	1076
transfers or shipment of eggs in the process of preparation for	1077
sale, when the plant or plants within or between which such	1078
transfers or shipments occur are operated by the same person.	1079
"Packages" includes containers, cases, baskets, flats, fillers,	1080
filler flats, cartons, closure materials, labels, and labeling	1081
materials, and "packaging" means placing therein.	1082
(25) (a) Sales of water to a consumer for residential use;	1083
(b) Sales of water by a nonprofit corporation engaged	1084
exclusively in the treatment, distribution, and sale of water to	1085
consumers, if such water is delivered to consumers through pipes	1086
or tubing.	1087
(26) Fees charged for inspection or reinspection of motor	1088
vehicles under section 3704.14 of the Revised Code;	1089
(27) Sales to persons licensed to conduct a food service	1090
operation pursuant to section 3717.43 of the Revised Code, of	1091
tangible personal property primarily used directly for the	1092
following:	1093
(a) To prepare food for human consumption for sale;	1094
(b) To preserve food that has been or will be prepared for	1095
human consumption for sale by the food service operator, not	1096
including tangible personal property used to display food for	1097
selection by the consumer;	1098
(c) To clean tangible personal property used to prepare or	1099
serve food for human consumption for sale.	1100

(28) Sales of animals by nonprofit animal adoption	1101
services or county humane societies;	1102
(29) Sales of services to a corporation described in	1103
division (A) of section 5709.72 of the Revised Code, and sales	1104
of tangible personal property that qualifies for exemption from	1105
taxation under section 5709.72 of the Revised Code;	1106
(30) Sales and installation of agricultural land tile, as	1107
defined in division (B) (5) (a) of section 5739.01 of the Revised	1108
Code;	1109
(31) Sales and erection or installation of portable grain	1110
bins, as defined in division (B) (5) (b) of section 5739.01 of the	1111
Revised Code;	1112
(32) The sale, lease, repair, and maintenance of, parts	1113
for, or items attached to or incorporated in, motor vehicles	1114
that are primarily used for transporting tangible personal	1115
property belonging to others by a person engaged in highway	1116
transportation for hire, except for packages and packaging used	1117
for the transportation of tangible personal property;	1118
(33) Sales to the state headquarters of any veterans'	1119
organization in this state that is either incorporated and	1120
issued a charter by the congress of the United States or is	1121
recognized by the United States veterans administration, for use	1122
by the headquarters;	1123
(34) Sales to a telecommunications service vendor, mobile	1124
telecommunications service vendor, or satellite broadcasting	1125
service vendor of tangible personal property and services used	1126
directly and primarily in transmitting, receiving, switching, or	1127
recording any interactive, one- or two-way electromagnetic	1128
communications, including voice, image, data, and information,	1129

through the use of any medium, including, but not limited to, 1130
poles, wires, cables, switching equipment, computers, and record 1131
storage devices and media, and component parts for the tangible 1132
personal property. The exemption provided in this division shall 1133
be in lieu of all other exemptions under division (B) (42) (a) or 1134
(n) of this section to which the vendor may otherwise be 1135
entitled, based upon the use of the thing purchased in providing 1136
the telecommunications, mobile telecommunications, or satellite 1137
broadcasting service. 1138

(35) (a) Sales where the purpose of the consumer is to use 1139
or consume the things transferred in making retail sales and 1140
consisting of newspaper inserts, catalogues, coupons, flyers, 1141
gift certificates, or other advertising material that prices and 1142
describes tangible personal property offered for retail sale. 1143

(b) Sales to direct marketing vendors of preliminary 1144
materials such as photographs, artwork, and typesetting that 1145
will be used in printing advertising material; and of printed 1146
matter that offers free merchandise or chances to win sweepstake 1147
prizes and that is mailed to potential customers with 1148
advertising material described in division (B) (35) (a) of this 1149
section; 1150

(c) Sales of equipment such as telephones, computers, 1151
facsimile machines, and similar tangible personal property 1152
primarily used to accept orders for direct marketing retail 1153
sales. 1154

(d) Sales of automatic food vending machines that preserve 1155
food with a shelf life of forty-five days or less by 1156
refrigeration and dispense it to the consumer. 1157

For purposes of division (B) (35) of this section, "direct 1158

marketing" means the method of selling where consumers order 1159
tangible personal property by United States mail, delivery 1160
service, or telecommunication and the vendor delivers or ships 1161
the tangible personal property sold to the consumer from a 1162
warehouse, catalogue distribution center, or similar fulfillment 1163
facility by means of the United States mail, delivery service, 1164
or common carrier. 1165

(36) Sales to a person engaged in the business of 1166
horticulture or producing livestock of materials to be 1167
incorporated into a horticulture structure or livestock 1168
structure; 1169

(37) Sales of personal computers, computer monitors, 1170
computer keyboards, modems, and other peripheral computer 1171
equipment to an individual who is licensed or certified to teach 1172
in an elementary or a secondary school in this state for use by 1173
that individual in preparation for teaching elementary or 1174
secondary school students; 1175

(38) Sales to a professional racing team of any of the 1176
following: 1177

(a) Motor racing vehicles; 1178

(b) Repair services for motor racing vehicles; 1179

(c) Items of property that are attached to or incorporated 1180
in motor racing vehicles, including engines, chassis, and all 1181
other components of the vehicles, and all spare, replacement, 1182
and rebuilt parts or components of the vehicles; except not 1183
including tires, consumable fluids, paint, and accessories 1184
consisting of instrumentation sensors and related items added to 1185
the vehicle to collect and transmit data by means of telemetry 1186
and other forms of communication. 1187

(39) Sales of used manufactured homes and used mobile
homes, as defined in section 5739.0210 of the Revised Code, made
on or after January 1, 2000;

(40) Sales of tangible personal property and services to a
provider of electricity used or consumed directly and primarily
in generating, transmitting, or distributing electricity for use
by others, including property that is or is to be incorporated
into and will become a part of the consumer's production,
transmission, or distribution system and that retains its
classification as tangible personal property after
incorporation; fuel or power used in the production,
transmission, or distribution of electricity; energy conversion
equipment as defined in section 5727.01 of the Revised Code; and
tangible personal property and services used in the repair and
maintenance of the production, transmission, or distribution
system, including only those motor vehicles as are specially
designed and equipped for such use. The exemption provided in
this division shall be in lieu of all other exemptions in
division (B) (42) (a) or (n) of this section to which a provider
of electricity may otherwise be entitled based on the use of the
tangible personal property or service purchased in generating,
transmitting, or distributing electricity.

(41) Sales to a person providing services under division
(B) (3) (r) of section 5739.01 of the Revised Code of tangible
personal property and services used directly and primarily in
providing taxable services under that section.

(42) Sales where the purpose of the purchaser is to do any
of the following:

(a) To incorporate the thing transferred as a material or
a part into tangible personal property to be produced for sale

by manufacturing, assembling, processing, or refining; or to use 1218
or consume the thing transferred directly in producing tangible 1219
personal property for sale by mining, including, without 1220
limitation, the extraction from the earth of all substances that 1221
are classed geologically as minerals, production of crude oil 1222
and natural gas, or directly in the rendition of a public 1223
utility service, except that the sales tax levied by this 1224
section shall be collected upon all meals, drinks, and food for 1225
human consumption sold when transporting persons. Persons 1226
engaged in rendering services in the exploration for, and 1227
production of, crude oil and natural gas for others are deemed 1228
engaged directly in the exploration for, and production of, 1229
crude oil and natural gas. This paragraph does not exempt from 1230
"retail sale" or "sales at retail" the sale of tangible personal 1231
property that is to be incorporated into a structure or 1232
improvement to real property. 1233

(b) To hold the thing transferred as security for the 1234
performance of an obligation of the vendor; 1235

(c) To resell, hold, use, or consume the thing transferred 1236
as evidence of a contract of insurance; 1237

(d) To use or consume the thing directly in commercial 1238
fishing; 1239

(e) To incorporate the thing transferred as a material or 1240
a part into, or to use or consume the thing transferred directly 1241
in the production of, magazines distributed as controlled 1242
circulation publications; 1243

(f) To use or consume the thing transferred in the 1244
production and preparation in suitable condition for market and 1245
sale of printed, imprinted, overprinted, lithographic, 1246

multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	1247 1248
(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	1249 1250 1251
(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B) (7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;	1252 1253 1254 1255 1256 1257
(i) To use the thing transferred as qualified research and development equipment;	1258 1259
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section.	1260 1261 1262 1263 1264 1265 1266 1267 1268 1269 1270 1271 1272
(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible	1273 1274 1275

personal property sold or by a vendor of a warranty, maintenance 1276
or service contract, or similar agreement the provision of which 1277
is defined as a sale under division (B) (7) of section 5739.01 of 1278
the Revised Code; 1279

(l) To use or consume the thing transferred in the 1280
production of a newspaper for distribution to the public; 1281

(m) To use tangible personal property to perform a service 1282
listed in division (B) (3) of section 5739.01 of the Revised 1283
Code, if the property is or is to be permanently transferred to 1284
the consumer of the service as an integral part of the 1285
performance of the service; 1286

(n) To use or consume the thing transferred primarily in 1287
producing tangible personal property for sale by farming, 1288
agriculture, horticulture, or floriculture. Persons engaged in 1289
rendering farming, agriculture, horticulture, or floriculture 1290
services for others are deemed engaged primarily in farming, 1291
agriculture, horticulture, or floriculture. This paragraph does 1292
not exempt from "retail sale" or "sales at retail" the sale of 1293
tangible personal property that is to be incorporated into a 1294
structure or improvement to real property. 1295

(o) To use or consume the thing transferred in acquiring, 1296
formatting, editing, storing, and disseminating data or 1297
information by electronic publishing. 1298

As used in division (B) (42) of this section, "thing" 1299
includes all transactions included in divisions (B) (3) (a), (b), 1300
and (e) of section 5739.01 of the Revised Code. 1301

(43) Sales conducted through a coin operated device that 1302
activates vacuum equipment or equipment that dispenses water, 1303
whether or not in combination with soap or other cleaning agents 1304

or wax, to the consumer for the consumer's use on the premises 1305
in washing, cleaning, or waxing a motor vehicle, provided no 1306
other personal property or personal service is provided as part 1307
of the transaction. 1308

(44) Sales of replacement and modification parts for 1309
engines, airframes, instruments, and interiors in, and paint 1310
for, aircraft used primarily in a fractional aircraft ownership 1311
program, and sales of services for the repair, modification, and 1312
maintenance of such aircraft, and machinery, equipment, and 1313
supplies primarily used to provide those services. 1314

(45) Sales of telecommunications service that is used 1315
directly and primarily to perform the functions of a call 1316
center. As used in this division, "call center" means any 1317
physical location where telephone calls are placed or received 1318
in high volume for the purpose of making sales, marketing, 1319
customer service, technical support, or other specialized 1320
business activity, and that employs at least fifty individuals 1321
that engage in call center activities on a full-time basis, or 1322
sufficient individuals to fill fifty full-time equivalent 1323
positions. 1324

(46) Sales by a telecommunications service vendor of 900 1325
service to a subscriber. This division does not apply to 1326
information services, as defined in division (FF) of section 1327
5739.01 of the Revised Code. 1328

(47) Sales of value-added non-voice data service. This 1329
division does not apply to any similar service that is not 1330
otherwise a telecommunications service. 1331

(48) (a) Sales of machinery, equipment, and software to a 1332
qualified direct selling entity for use in a warehouse or 1333

distribution center primarily for storing, transporting, or 1334
otherwise handling inventory that is held for sale to 1335
independent salespersons who operate as direct sellers and that 1336
is held primarily for distribution outside this state; 1337

(b) As used in division (B) (48) (a) of this section: 1338

(i) "Direct seller" means a person selling consumer 1339
products to individuals for personal or household use and not 1340
from a fixed retail location, including selling such product at 1341
in-home product demonstrations, parties, and other one-on-one 1342
selling. 1343

(ii) "Qualified direct selling entity" means an entity 1344
selling to direct sellers at the time the entity enters into a 1345
tax credit agreement with the tax credit authority pursuant to 1346
section 122.17 of the Revised Code, provided that the agreement 1347
was entered into on or after January 1, 2007. Neither 1348
contingencies relevant to the granting of, nor later 1349
developments with respect to, the tax credit shall impair the 1350
status of the qualified direct selling entity under division (B) 1351
(48) of this section after execution of the tax credit agreement 1352
by the tax credit authority. 1353

(c) Division (B) (48) of this section is limited to 1354
machinery, equipment, and software first stored, used, or 1355
consumed in this state within the period commencing June 24, 1356
2008, and ending on the date that is five years after that date. 1357

(49) Sales of materials, parts, equipment, or engines used 1358
in the repair or maintenance of aircraft or avionics systems of 1359
such aircraft, and sales of repair, remodeling, replacement, or 1360
maintenance services in this state performed on aircraft or on 1361
an aircraft's avionics, engine, or component materials or parts. 1362

As used in division (B) (49) of this section, "aircraft" means 1363
aircraft of more than six thousand pounds maximum certified 1364
takeoff weight or used exclusively in general aviation. 1365

(50) Sales of full flight simulators that are used for 1366
pilot or flight-crew training, sales of repair or replacement 1367
parts or components, and sales of repair or maintenance services 1368
for such full flight simulators. "Full flight simulator" means a 1369
replica of a specific type, or make, model, and series of 1370
aircraft cockpit. It includes the assemblage of equipment and 1371
computer programs necessary to represent aircraft operations in 1372
ground and flight conditions, a visual system providing an out- 1373
of-the-cockpit view, and a system that provides cues at least 1374
equivalent to those of a three-degree-of-freedom motion system, 1375
and has the full range of capabilities of the systems installed 1376
in the device as described in appendices A and B of part 60 of 1377
chapter 1 of title 14 of the Code of Federal Regulations. 1378

(51) Any transfer or lease of tangible personal property 1379
between the state and JobsOhio in accordance with section 1380
4313.02 of the Revised Code. 1381

(52) (a) Sales to a qualifying corporation. 1382

(b) As used in division (B) (52) of this section: 1383

(i) "Qualifying corporation" means a nonprofit corporation 1384
organized in this state that leases from an eligible county 1385
land, buildings, structures, fixtures, and improvements to the 1386
land that are part of or used in a public recreational facility 1387
used by a major league professional athletic team or a class A 1388
to class AAA minor league affiliate of a major league 1389
professional athletic team for a significant portion of the 1390
team's home schedule, provided the following apply: 1391

(I) The facility is leased from the eligible county 1392
pursuant to a lease that requires substantially all of the 1393
revenue from the operation of the business or activity conducted 1394
by the nonprofit corporation at the facility in excess of 1395
operating costs, capital expenditures, and reserves to be paid 1396
to the eligible county at least once per calendar year. 1397

(II) Upon dissolution and liquidation of the nonprofit 1398
corporation, all of its net assets are distributable to the 1399
board of commissioners of the eligible county from which the 1400
corporation leases the facility. 1401

(ii) "Eligible county" has the same meaning as in section 1402
307.695 of the Revised Code. 1403

(53) Sales to or by a cable service provider, video 1404
service provider, or radio or television broadcast station 1405
regulated by the federal government of cable service or 1406
programming, video service or programming, audio service or 1407
programming, or electronically transferred digital audiovisual 1408
or audio work. As used in division (B) (53) of this section, 1409
"cable service" and "cable service provider" have the same 1410
meanings as in section 1332.01 of the Revised Code, and "video 1411
service," "video service provider," and "video programming" have 1412
the same meanings as in section 1332.21 of the Revised Code. 1413

(54) Sales to a partnering business holding a valid 1414
startup zone certificate of tangible personal property or 1415
services used or consumed for business operations in a startup 1416
zone. The exemption under division (B) (54) of this section 1417
applies only to sales occurring on or after the date the 1418
consumer's startup zone certificate takes effect and before the 1419
certificate expires. As used in this division, "startup zone 1420
certificate," "partnering business," and "startup zone" have the 1421

same meanings as in section 195.01 of the Revised Code. 1422

(C) For the purpose of the proper administration of this 1423
chapter, and to prevent the evasion of the tax, it is presumed 1424
that all sales made in this state are subject to the tax until 1425
the contrary is established. 1426

(D) The levy of this tax on retail sales of recreation and 1427
sports club service shall not prevent a municipal corporation 1428
from levying any tax on recreation and sports club dues or on 1429
any income generated by recreation and sports club dues. 1430

(E) The tax collected by the vendor from the consumer 1431
under this chapter is not part of the price, but is a tax 1432
collection for the benefit of the state, and of counties levying 1433
an additional sales tax pursuant to section 5739.021 or 5739.026 1434
of the Revised Code and of transit authorities levying an 1435
additional sales tax pursuant to section 5739.023 of the Revised 1436
Code. Except for the discount authorized under section 5739.12 1437
of the Revised Code and the effects of any rounding pursuant to 1438
section 5703.055 of the Revised Code, no person other than the 1439
state or such a county or transit authority shall derive any 1440
benefit from the collection or payment of the tax levied by this 1441
section or section 5739.021, 5739.023, or 5739.026 of the 1442
Revised Code. 1443

Sec. 5739.03. (A) Except as provided in section 5739.05 or 1444
section 5739.051 of the Revised Code, the tax imposed by or 1445
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 1446
the Revised Code shall be paid by the consumer to the vendor, 1447
and each vendor shall collect from the consumer, as a trustee 1448
for the state of Ohio, the full and exact amount of the tax 1449
payable on each taxable sale, in the manner and at the times 1450
provided as follows: 1451

(1) If the price is, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, paid in currency passed from hand to hand by the consumer or the consumer's agent to the vendor or the vendor's agent, the vendor or the vendor's agent shall collect the tax with and at the same time as the price;

(2) If the price is otherwise paid or to be paid, the vendor or the vendor's agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price. Such sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

(B) (1) (a) If any sale is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B) (1) to (11) or (28) of section 5739.02 of the Revised Code, the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax. The certificate shall be in such form, and shall be provided either in a hard copy form or electronic form, as the tax commissioner prescribes. If the sale is claimed to be exempt under division (B) (54) of section 5739.02 of the Revised Code, a copy of the startup zone certificate, as defined in section 195.01 of the Revised Code, shall function as the exemption certificate

<u>required under this division.</u>	1483
(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or Chapter 5741. of the Revised Code. Relief under this division from liability does not apply to any of the following:	1484 1485 1486 1487 1488 1489 1490 1491
(i) A vendor that fraudulently fails to collect tax;	1492
(ii) A vendor that solicits consumers to participate in the unlawful claim of an exemption;	1493 1494
(iii) A vendor that accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service, when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the vendor in this state, and this state has posted to its web site an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available in this state;	1495 1496 1497 1498 1499 1500 1501 1502 1503
(iv) A vendor that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (D) of section 5739.033 of the Revised Code, if the item purchased is tangible personal property, other than prewritten computer software.	1504 1505 1506 1507 1508
(2) The vendor shall maintain records, including exemption certificates, of all sales on which a consumer has claimed an exemption, and provide them to the tax commissioner on request.	1509 1510 1511

(3) The tax commissioner may establish an identification system whereby the commissioner issues an identification number to a consumer that is exempt from payment of the tax. The consumer must present the number to the vendor, if any sale is claimed to be exempt as provided in this section.

(4) If no certificate is provided or obtained within ninety days after the date on which such sale is consummated, it shall be presumed that the tax applies. Failure to have so provided or obtained a certificate shall not preclude a vendor, within one hundred twenty days after the tax commissioner gives written notice of intent to levy an assessment, from either establishing that the sale is not subject to the tax, or obtaining, in good faith, a fully completed exemption certificate.

(5) Certificates need not be obtained nor provided where the identity of the consumer is such that the transaction is never subject to the tax imposed or where the item of tangible personal property sold or the service provided is never subject to the tax imposed, regardless of use, or when the sale is in interstate commerce.

(6) If a transaction is claimed to be exempt under division (B) (13) of section 5739.02 of the Revised Code, the contractor shall obtain certification of the claimed exemption from the contractee. This certification shall be in addition to an exemption certificate provided by the contractor to the vendor. A contractee that provides a certification under this division shall be deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certification shall be in such form as the tax

commissioner prescribes. 1542

(C) As used in this division, "contractee" means a person 1543
who seeks to enter or enters into a contract or agreement with a 1544
contractor or vendor for the construction of real property or 1545
for the sale and installation onto real property of tangible 1546
personal property. 1547

Any contractor or vendor may request from any contractee a 1548
certification of what portion of the property to be transferred 1549
under such contract or agreement is to be incorporated into the 1550
realty and what portion will retain its status as tangible 1551
personal property after installation is completed. The 1552
contractor or vendor shall request the certification by 1553
certified mail delivered to the contractee, return receipt 1554
requested. Upon receipt of such request and prior to entering 1555
into the contract or agreement, the contractee shall provide to 1556
the contractor or vendor a certification sufficiently detailed 1557
to enable the contractor or vendor to ascertain the resulting 1558
classification of all materials purchased or fabricated by the 1559
contractor or vendor and transferred to the contractee. This 1560
requirement applies to a contractee regardless of whether the 1561
contractee holds a direct payment permit under section 5739.031 1562
of the Revised Code or provides to the contractor or vendor an 1563
exemption certificate as provided under this section. 1564

For the purposes of the taxes levied by this chapter and 1565
Chapter 5741. of the Revised Code, the contractor or vendor may 1566
in good faith rely on the contractee's certification. 1567
Notwithstanding division (B) of section 5739.01 of the Revised 1568
Code, if the tax commissioner determines that certain property 1569
certified by the contractee as tangible personal property 1570
pursuant to this division is, in fact, real property, the 1571

contractee shall be considered to be the consumer of all 1572
materials so incorporated into that real property and shall be 1573
liable for the applicable tax, and the contractor or vendor 1574
shall be excused from any liability on those materials. 1575

If a contractee fails to provide such certification upon 1576
the request of the contractor or vendor, the contractor or 1577
vendor shall comply with the provisions of this chapter and 1578
Chapter 5741. of the Revised Code without the certification. If 1579
the tax commissioner determines that such compliance has been 1580
performed in good faith and that certain property treated as 1581
tangible personal property by the contractor or vendor is, in 1582
fact, real property, the contractee shall be considered to be 1583
the consumer of all materials so incorporated into that real 1584
property and shall be liable for the applicable tax, and the 1585
construction contractor or vendor shall be excused from any 1586
liability on those materials. 1587

This division does not apply to any contract or agreement 1588
where the tax commissioner determines as a fact that a 1589
certification under this division was made solely on the 1590
decision or advice of the contractor or vendor. 1591

(D) Notwithstanding division (B) of section 5739.01 of the 1592
Revised Code, whenever the total rate of tax imposed under this 1593
chapter is increased after the date after a construction 1594
contract is entered into, the contractee shall reimburse the 1595
construction contractor for any additional tax paid on tangible 1596
property consumed or services received pursuant to the contract. 1597

(E) A vendor who files a petition for reassessment 1598
contesting the assessment of tax on sales for which the vendor 1599
obtained no valid exemption certificates and for which the 1600
vendor failed to establish that the sales were properly not 1601

subject to the tax during the one-hundred-twenty-day period 1602
allowed under division (B) of this section, may present to the 1603
tax commissioner additional evidence to prove that the sales 1604
were properly subject to a claim of exception or exemption. The 1605
vendor shall file such evidence within ninety days of the 1606
receipt by the vendor of the notice of assessment, except that, 1607
upon application and for reasonable cause, the period for 1608
submitting such evidence shall be extended thirty days. 1609

The commissioner shall consider such additional evidence 1610
in reaching the final determination on the assessment and 1611
petition for reassessment. 1612

(F) Whenever a vendor refunds the price, minus any 1613
separately stated delivery charge, of an item of tangible 1614
personal property on which the tax imposed under this chapter 1615
has been paid, the vendor shall also refund the amount of tax 1616
paid, minus the amount of tax attributable to the delivery 1617
charge. 1618

Sec. 5747.01. Except as otherwise expressly provided or 1619
clearly appearing from the context, any term used in this 1620
chapter that is not otherwise defined in this section has the 1621
same meaning as when used in a comparable context in the laws of 1622
the United States relating to federal income taxes or if not 1623
used in a comparable context in those laws, has the same meaning 1624
as in section 5733.40 of the Revised Code. Any reference in this 1625
chapter to the Internal Revenue Code includes other laws of the 1626
United States relating to federal income taxes. 1627

As used in this chapter: 1628

(A) "Adjusted gross income" or "Ohio adjusted gross 1629
income" means federal adjusted gross income, as defined and used 1630

in the Internal Revenue Code, adjusted as provided in this 1631
section: 1632

(1) Add interest or dividends on obligations or securities 1633
of any state or of any political subdivision or authority of any 1634
state, other than this state and its subdivisions and 1635
authorities. 1636

(2) Add interest or dividends on obligations of any 1637
authority, commission, instrumentality, territory, or possession 1638
of the United States to the extent that the interest or 1639
dividends are exempt from federal income taxes but not from 1640
state income taxes. 1641

(3) Deduct interest or dividends on obligations of the 1642
United States and its territories and possessions or of any 1643
authority, commission, or instrumentality of the United States 1644
to the extent that the interest or dividends are included in 1645
federal adjusted gross income but exempt from state income taxes 1646
under the laws of the United States. 1647

(4) Deduct disability and survivor's benefits to the 1648
extent included in federal adjusted gross income. 1649

(5) Deduct benefits under Title II of the Social Security 1650
Act and tier 1 railroad retirement benefits to the extent 1651
included in federal adjusted gross income under section 86 of 1652
the Internal Revenue Code. 1653

(6) In the case of a taxpayer who is a beneficiary of a 1654
trust that makes an accumulation distribution as defined in 1655
section 665 of the Internal Revenue Code, add, for the 1656
beneficiary's taxable years beginning before 2002, the portion, 1657
if any, of such distribution that does not exceed the 1658
undistributed net income of the trust for the three taxable 1659

years preceding the taxable year in which the distribution is 1660
made to the extent that the portion was not included in the 1661
trust's taxable income for any of the trust's taxable years 1662
beginning in 2002 or thereafter. "Undistributed net income of a 1663
trust" means the taxable income of the trust increased by (a) (i) 1664
the additions to adjusted gross income required under division 1665
(A) of this section and (ii) the personal exemptions allowed to 1666
the trust pursuant to section 642(b) of the Internal Revenue 1667
Code, and decreased by (b) (i) the deductions to adjusted gross 1668
income required under division (A) of this section, (ii) the 1669
amount of federal income taxes attributable to such income, and 1670
(iii) the amount of taxable income that has been included in the 1671
adjusted gross income of a beneficiary by reason of a prior 1672
accumulation distribution. Any undistributed net income included 1673
in the adjusted gross income of a beneficiary shall reduce the 1674
undistributed net income of the trust commencing with the 1675
earliest years of the accumulation period. 1676

(7) Deduct the amount of wages and salaries, if any, not 1677
otherwise allowable as a deduction but that would have been 1678
allowable as a deduction in computing federal adjusted gross 1679
income for the taxable year, had the targeted jobs credit 1680
allowed and determined under sections 38, 51, and 52 of the 1681
Internal Revenue Code not been in effect. 1682

(8) Deduct any interest or interest equivalent on public 1683
obligations and purchase obligations to the extent that the 1684
interest or interest equivalent is included in federal adjusted 1685
gross income. 1686

(9) Add any loss or deduct any gain resulting from the 1687
sale, exchange, or other disposition of public obligations to 1688
the extent that the loss has been deducted or the gain has been 1689

included in computing federal adjusted gross income. 1690

(10) Deduct or add amounts, as provided under section 1691
5747.70 of the Revised Code, related to contributions to 1692
variable college savings program accounts made or tuition units 1693
purchased pursuant to Chapter 3334. of the Revised Code. 1694

(11) (a) Deduct, to the extent not otherwise allowable as a 1695
deduction or exclusion in computing federal or Ohio adjusted 1696
gross income for the taxable year, the amount the taxpayer paid 1697
during the taxable year for medical care insurance and qualified 1698
long-term care insurance for the taxpayer, the taxpayer's 1699
spouse, and dependents. No deduction for medical care insurance 1700
under division (A) (11) of this section shall be allowed either 1701
to any taxpayer who is eligible to participate in any subsidized 1702
health plan maintained by any employer of the taxpayer or of the 1703
taxpayer's spouse, or to any taxpayer who is entitled to, or on 1704
application would be entitled to, benefits under part A of Title 1705
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 1706
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 1707
of this section, "subsidized health plan" means a health plan 1708
for which the employer pays any portion of the plan's cost. The 1709
deduction allowed under division (A) (11) (a) of this section 1710
shall be the net of any related premium refunds, related premium 1711
reimbursements, or related insurance premium dividends received 1712
during the taxable year. 1713

(b) Deduct, to the extent not otherwise deducted or 1714
excluded in computing federal or Ohio adjusted gross income 1715
during the taxable year, the amount the taxpayer paid during the 1716
taxable year, not compensated for by any insurance or otherwise, 1717
for medical care of the taxpayer, the taxpayer's spouse, and 1718
dependents, to the extent the expenses exceed seven and one-half 1719

per cent of the taxpayer's federal adjusted gross income. 1720

(c) Deduct, to the extent not otherwise deducted or 1721
excluded in computing federal or Ohio adjusted gross income, any 1722
amount included in federal adjusted gross income under section 1723
105 or not excluded under section 106 of the Internal Revenue 1724
Code solely because it relates to an accident and health plan 1725
for a person who otherwise would be a "qualifying relative" and 1726
thus a "dependent" under section 152 of the Internal Revenue 1727
Code but for the fact that the person fails to meet the income 1728
and support limitations under section 152(d)(1)(B) and (C) of 1729
the Internal Revenue Code. 1730

(d) For purposes of division (A)(11) of this section, 1731
"medical care" has the meaning given in section 213 of the 1732
Internal Revenue Code, subject to the special rules, 1733
limitations, and exclusions set forth therein, and "qualified 1734
long-term care" has the same meaning given in section 7702B(c) 1735
of the Internal Revenue Code. Solely for purposes of divisions 1736
(A)(11)(a) and (c) of this section, "dependent" includes a 1737
person who otherwise would be a "qualifying relative" and thus a 1738
"dependent" under section 152 of the Internal Revenue Code but 1739
for the fact that the person fails to meet the income and 1740
support limitations under section 152(d)(1)(B) and (C) of the 1741
Internal Revenue Code. 1742

(12)(a) Deduct any amount included in federal adjusted 1743
gross income solely because the amount represents a 1744
reimbursement or refund of expenses that in any year the 1745
taxpayer had deducted as an itemized deduction pursuant to 1746
section 63 of the Internal Revenue Code and applicable United 1747
States department of the treasury regulations. The deduction 1748
otherwise allowed under division (A)(12)(a) of this section 1749

shall be reduced to the extent the reimbursement is attributable 1750
to an amount the taxpayer deducted under this section in any 1751
taxable year. 1752

(b) Add any amount not otherwise included in Ohio adjusted 1753
gross income for any taxable year to the extent that the amount 1754
is attributable to the recovery during the taxable year of any 1755
amount deducted or excluded in computing federal or Ohio 1756
adjusted gross income in any taxable year. 1757

(13) Deduct any portion of the deduction described in 1758
section 1341(a) (2) of the Internal Revenue Code, for repaying 1759
previously reported income received under a claim of right, that 1760
meets both of the following requirements: 1761

(a) It is allowable for repayment of an item that was 1762
included in the taxpayer's adjusted gross income for a prior 1763
taxable year and did not qualify for a credit under division (A) 1764
or (B) of section 5747.05 of the Revised Code for that year; 1765

(b) It does not otherwise reduce the taxpayer's adjusted 1766
gross income for the current or any other taxable year. 1767

(14) Deduct an amount equal to the deposits made to, and 1768
net investment earnings of, a medical savings account during the 1769
taxable year, in accordance with section 3924.66 of the Revised 1770
Code. The deduction allowed by division (A) (14) of this section 1771
does not apply to medical savings account deposits and earnings 1772
otherwise deducted or excluded for the current or any other 1773
taxable year from the taxpayer's federal adjusted gross income. 1774

(15) (a) Add an amount equal to the funds withdrawn from a 1775
medical savings account during the taxable year, and the net 1776
investment earnings on those funds, when the funds withdrawn 1777
were used for any purpose other than to reimburse an account 1778

holder for, or to pay, eligible medical expenses, in accordance 1779
with section 3924.66 of the Revised Code; 1780

(b) Add the amounts distributed from a medical savings 1781
account under division (A) (2) of section 3924.68 of the Revised 1782
Code during the taxable year. 1783

(16) Add any amount claimed as a credit under section 1784
5747.059 or 5747.65 of the Revised Code to the extent that such 1785
amount satisfies either of the following: 1786

(a) The amount was deducted or excluded from the 1787
computation of the taxpayer's federal adjusted gross income as 1788
required to be reported for the taxpayer's taxable year under 1789
the Internal Revenue Code; 1790

(b) The amount resulted in a reduction of the taxpayer's 1791
federal adjusted gross income as required to be reported for any 1792
of the taxpayer's taxable years under the Internal Revenue Code. 1793

(17) Deduct the amount contributed by the taxpayer to an 1794
individual development account program established by a county 1795
department of job and family services pursuant to sections 1796
329.11 to 329.14 of the Revised Code for the purpose of matching 1797
funds deposited by program participants. On request of the tax 1798
commissioner, the taxpayer shall provide any information that, 1799
in the tax commissioner's opinion, is necessary to establish the 1800
amount deducted under division (A) (17) of this section. 1801

(18) Beginning in taxable year 2001 but not for any 1802
taxable year beginning after December 31, 2005, if the taxpayer 1803
is married and files a joint return and the combined federal 1804
adjusted gross income of the taxpayer and the taxpayer's spouse 1805
for the taxable year does not exceed one hundred thousand 1806
dollars, or if the taxpayer is single and has a federal adjusted 1807

gross income for the taxable year not exceeding fifty thousand 1808
dollars, deduct amounts paid during the taxable year for 1809
qualified tuition and fees paid to an eligible institution for 1810
the taxpayer, the taxpayer's spouse, or any dependent of the 1811
taxpayer, who is a resident of this state and is enrolled in or 1812
attending a program that culminates in a degree or diploma at an 1813
eligible institution. The deduction may be claimed only to the 1814
extent that qualified tuition and fees are not otherwise 1815
deducted or excluded for any taxable year from federal or Ohio 1816
adjusted gross income. The deduction may not be claimed for 1817
educational expenses for which the taxpayer claims a credit 1818
under section 5747.27 of the Revised Code. 1819

(19) Add any reimbursement received during the taxable 1820
year of any amount the taxpayer deducted under division (A) (18) 1821
of this section in any previous taxable year to the extent the 1822
amount is not otherwise included in Ohio adjusted gross income. 1823

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 1824
(v) of this section, add five-sixths of the amount of 1825
depreciation expense allowed by subsection (k) of section 168 of 1826
the Internal Revenue Code, including the taxpayer's 1827
proportionate or distributive share of the amount of 1828
depreciation expense allowed by that subsection to a pass- 1829
through entity in which the taxpayer has a direct or indirect 1830
ownership interest. 1831

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 1832
of this section, add five-sixths of the amount of qualifying 1833
section 179 depreciation expense, including the taxpayer's 1834
proportionate or distributive share of the amount of qualifying 1835
section 179 depreciation expense allowed to any pass-through 1836
entity in which the taxpayer has a direct or indirect ownership 1837

interest. 1838

(iii) Subject to division (A) (20) (a) (v) of this section, 1839
for taxable years beginning in 2012 or thereafter, if the 1840
increase in income taxes withheld by the taxpayer is equal to or 1841
greater than ten per cent of income taxes withheld by the 1842
taxpayer during the taxpayer's immediately preceding taxable 1843
year, "two-thirds" shall be substituted for "five-sixths" for 1844
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 1845

(iv) Subject to division (A) (20) (a) (v) of this section, 1846
for taxable years beginning in 2012 or thereafter, a taxpayer is 1847
not required to add an amount under division (A) (20) of this 1848
section if the increase in income taxes withheld by the taxpayer 1849
and by any pass-through entity in which the taxpayer has a 1850
direct or indirect ownership interest is equal to or greater 1851
than the sum of (I) the amount of qualifying section 179 1852
depreciation expense and (II) the amount of depreciation expense 1853
allowed to the taxpayer by subsection (k) of section 168 of the 1854
Internal Revenue Code, and including the taxpayer's 1855
proportionate or distributive shares of such amounts allowed to 1856
any such pass-through entities. 1857

(v) If a taxpayer directly or indirectly incurs a net 1858
operating loss for the taxable year for federal income tax 1859
purposes, to the extent such loss resulted from depreciation 1860
expense allowed by subsection (k) of section 168 of the Internal 1861
Revenue Code and by qualifying section 179 depreciation expense, 1862
"the entire" shall be substituted for "five-sixths of the" for 1863
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 1864

The tax commissioner, under procedures established by the 1865
commissioner, may waive the add-backs related to a pass-through 1866
entity if the taxpayer owns, directly or indirectly, less than 1867

five per cent of the pass-through entity. 1868

(b) Nothing in division (A) (20) of this section shall be 1869
construed to adjust or modify the adjusted basis of any asset. 1870

(c) To the extent the add-back required under division (A) 1871
(20) (a) of this section is attributable to property generating 1872
nonbusiness income or loss allocated under section 5747.20 of 1873
the Revised Code, the add-back shall be situated to the same 1874
location as the nonbusiness income or loss generated by the 1875
property for the purpose of determining the credit under 1876
division (A) of section 5747.05 of the Revised Code. Otherwise, 1877
the add-back shall be apportioned, subject to one or more of the 1878
four alternative methods of apportionment enumerated in section 1879
5747.21 of the Revised Code. 1880

(d) For the purposes of division (A) (20) (a) (v) of this 1881
section, net operating loss carryback and carryforward shall not 1882
include the allowance of any net operating loss deduction 1883
carryback or carryforward to the taxable year to the extent such 1884
loss resulted from depreciation allowed by section 168(k) of the 1885
Internal Revenue Code and by the qualifying section 179 1886
depreciation expense amount. 1887

(e) For the purposes of divisions (A) (20) and (21) of this 1888
section: 1889

(i) "Income taxes withheld" means the total amount 1890
withheld and remitted under sections 5747.06 and 5747.07 of the 1891
Revised Code by an employer during the employer's taxable year. 1892

(ii) "Increase in income taxes withheld" means the amount 1893
by which the amount of income taxes withheld by an employer 1894
during the employer's current taxable year exceeds the amount of 1895
income taxes withheld by that employer during the employer's 1896

immediately preceding taxable year. 1897

(iii) "Qualifying section 179 depreciation expense" means 1898
the difference between (I) the amount of depreciation expense 1899
directly or indirectly allowed to a taxpayer under section 179 1900
of the Internal Revised Code, and (II) the amount of 1901
depreciation expense directly or indirectly allowed to the 1902
taxpayer under section 179 of the Internal Revenue Code as that 1903
section existed on December 31, 2002. 1904

(21) (a) If the taxpayer was required to add an amount 1905
under division (A) (20) (a) of this section for a taxable year, 1906
deduct one of the following: 1907

(i) One-fifth of the amount so added for each of the five 1908
succeeding taxable years if the amount so added was five-sixths 1909
of qualifying section 179 depreciation expense or depreciation 1910
expense allowed by subsection (k) of section 168 of the Internal 1911
Revenue Code; 1912

(ii) One-half of the amount so added for each of the two 1913
succeeding taxable years if the amount so added was two-thirds 1914
of such depreciation expense; 1915

(iii) One-sixth of the amount so added for each of the six 1916
succeeding taxable years if the entire amount of such 1917
depreciation expense was so added. 1918

(b) If the amount deducted under division (A) (21) (a) of 1919
this section is attributable to an add-back allocated under 1920
division (A) (20) (c) of this section, the amount deducted shall 1921
be situated to the same location. Otherwise, the add-back shall 1922
be apportioned using the apportionment factors for the taxable 1923
year in which the deduction is taken, subject to one or more of 1924
the four alternative methods of apportionment enumerated in 1925

section 5747.21 of the Revised Code. 1926

(c) No deduction is available under division (A) (21) (a) of 1927
this section with regard to any depreciation allowed by section 1928
168(k) of the Internal Revenue Code and by the qualifying 1929
section 179 depreciation expense amount to the extent that such 1930
depreciation results in or increases a federal net operating 1931
loss carryback or carryforward. If no such deduction is 1932
available for a taxable year, the taxpayer may carry forward the 1933
amount not deducted in such taxable year to the next taxable 1934
year and add that amount to any deduction otherwise available 1935
under division (A) (21) (a) of this section for that next taxable 1936
year. The carryforward of amounts not so deducted shall continue 1937
until the entire addition required by division (A) (20) (a) of 1938
this section has been deducted. 1939

(d) No refund shall be allowed as a result of adjustments 1940
made by division (A) (21) of this section. 1941

(22) Deduct, to the extent not otherwise deducted or 1942
excluded in computing federal or Ohio adjusted gross income for 1943
the taxable year, the amount the taxpayer received during the 1944
taxable year as reimbursement for life insurance premiums under 1945
section 5919.31 of the Revised Code. 1946

(23) Deduct, to the extent not otherwise deducted or 1947
excluded in computing federal or Ohio adjusted gross income for 1948
the taxable year, the amount the taxpayer received during the 1949
taxable year as a death benefit paid by the adjutant general 1950
under section 5919.33 of the Revised Code. 1951

(24) Deduct, to the extent included in federal adjusted 1952
gross income and not otherwise allowable as a deduction or 1953
exclusion in computing federal or Ohio adjusted gross income for 1954

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.

(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 organ donation expenses only once for all taxable years beginning with taxable years beginning in 2007.

For the purposes of division (A) (25) 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.

(26) 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 1984
survivor benefit plan on account of such a taxpayer's death. If 1985
the taxpayer receives income on account of retirement paid under 1986
the federal civil service retirement system or federal employees 1987
retirement system, or under any successor retirement program 1988
enacted by the congress of the United States that is established 1989
and maintained for retired employees of the United States 1990
government, and such retirement income is based, in whole or in 1991
part, on credit for the taxpayer's uniformed service, the 1992
deduction allowed under this division shall include only that 1993
portion of such retirement income that is attributable to the 1994
taxpayer's uniformed service, to the extent that portion of such 1995
retirement income is otherwise included in federal adjusted 1996
gross income and is not otherwise deducted under this section. 1997
Any amount deducted under division (A) (26) of this section is 1998
not included in a taxpayer's adjusted gross income for the 1999
purposes of section 5747.055 of the Revised Code. No amount may 2000
be deducted under division (A) (26) of this section on the basis 2001
of which a credit was claimed under section 5747.055 of the 2002
Revised Code. 2003

(27) Deduct, to the extent not otherwise deducted or 2004
excluded in computing federal or Ohio adjusted gross income for 2005
the taxable year, the amount the taxpayer received during the 2006
taxable year from the military injury relief fund created in 2007
section 5101.98 of the Revised Code. 2008

(28) Deduct, to the extent not otherwise deducted or 2009
excluded in computing federal or Ohio adjusted gross income for 2010
the taxable year, the amount the taxpayer received as a veterans 2011
bonus during the taxable year from the Ohio department of 2012
veterans services as authorized by Section 2r of Article VIII, 2013
Ohio Constitution. 2014

(29) Deduct, to the extent not otherwise deducted or 2015
excluded in computing federal or Ohio adjusted gross income for 2016
the taxable year, any income derived from a transfer agreement 2017
or from the enterprise transferred under that agreement under 2018
section 4313.02 of the Revised Code. 2019

(30) Deduct, to the extent not otherwise deducted or 2020
excluded in computing federal or Ohio adjusted gross income for 2021
the taxable year, Ohio college opportunity or federal Pell grant 2022
amounts received by the taxpayer or the taxpayer's spouse or 2023
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 2025
by the educational institution for which the grant was awarded 2026
at the institution's facilities, including meal plans 2027
administered by the institution. For the purposes of this 2028
division, receipt of a grant includes the distribution of a 2029
grant directly to an educational institution and the crediting 2030
of the grant to the enrollee's account with the institution. 2031

(31) Deduct one-half of the taxpayer's Ohio small business 2032
investor income, the deduction not to exceed sixty-two thousand 2033
five hundred dollars for each spouse if spouses file separate 2034
returns under section 5747.08 of the Revised Code or one hundred 2035
twenty-five thousand dollars for all other taxpayers. No pass- 2036
through entity may claim a deduction under this division. 2037

For the purposes of this division, "Ohio small business 2038
investor income" means the portion of a taxpayer's adjusted 2039
gross income that is business income reduced by deductions from 2040
business income and apportioned or allocated to this state under 2041
sections 5747.21 and 5747.22 of the Revised Code, to the extent 2042
not otherwise deducted or excluded in computing federal or Ohio 2043
adjusted gross income for the taxable year. 2044

(32) (a) Deduct, to the extent not otherwise deducted or 2045
excluded in computing federal or Ohio adjusted gross income for 2046
the taxable year, business income derived from a partnering 2047
business's operation in a startup zone pursuant to a partnership 2048
contract with a university under Chapter 195. of the Revised 2049
Code. Business income may not be deducted under this division 2050
for any taxable year ending before the startup zone certificate 2051
takes effect or beginning after the expiration or termination of 2052
the certificate. Business income derived from a partnering 2053
business's operations outside the startup zone or beyond the 2054
scope of the partnership contract may not be deducted under this 2055
division. 2056

For the purpose of computing the business income derived 2057
from a partnering business's operation in a startup zone, 2058
business income apportioned or allocated to this state under 2059
sections 5747.21 and 5747.22 of the Revised Code shall be 2060
multiplied by fifty per cent of the sum of the following 2061
fractions: 2062

(i) A fraction computed in the same manner as the property 2063
factor computed under division (B) (2) (a) of section 5733.05 of 2064
the Revised Code except the numerator shall be the average value 2065
of real and tangible personal property used in business in the 2066
startup zone and the denominator shall be the average value of 2067
such property used in business in this state, and except there 2068
shall be no exclusions as otherwise provided under that 2069
division; 2070

(ii) A fraction computed in the same manner as the payroll 2071
factor computed under division (B) (2) (b) of section 5733.05 of 2072
the Revised Code except the numerator shall be the compensation 2073
paid for services performed solely in the startup zone and the 2074

denominator shall be the compensation paid in this state as 2075
computed under that division, and except there shall be no 2076
exclusion for employees engaged in qualified research. 2077

(b) Any person claiming a deduction under this division 2078
shall retain a copy of the startup zone certificate for four 2079
years following the end of the taxable year for which the 2080
deduction is claimed, and shall make it available for inspection 2081
by the tax commissioner or an agent thereof upon request. 2082

(c) As used in divisions (A) (32) and (33) of this section, 2083
"startup zone," "partnership contract," "partnering business," 2084
"startup zone certificate," and "university" have the same 2085
meanings as in section 195.01 of the Revised Code. 2086

(33) Deduct, to the extent not otherwise deducted or 2087
excluded in computing federal or Ohio adjusted gross income for 2088
the taxable year, compensation received from a partnering 2089
business for services performed in a startup zone by the holder 2090
of a new employee certificate awarded by such partnering 2091
business under section 195.09 of the Revised Code. This 2092
deduction applies only to compensation received after the 2093
individual was awarded the new employee certificate and before 2094
the expiration of the partnership contract, the termination of 2095
the partnership contract under section 195.10 of the Revised 2096
Code, or the revocation of the new employee certificate under 2097
division (C) of section 195.09 of the Revised Code, whichever 2098
comes first. Compensation received for services performed 2099
outside the startup zone shall not be deducted under this 2100
division. The deduction claimed under this division shall not 2101
exceed two hundred fifty thousand dollars for any taxable year. 2102
An individual claiming a deduction under this division shall 2103
retain the new employee certificate for four years following the 2104

end of the taxable year for which the deduction is claimed, and 2105
shall make it available for inspection by the tax commissioner 2106
or an agent thereof upon request. 2107

As used in this section, "new employee certificate" has 2108
the same meaning as in section 195.01 of the Revised Code. 2109

(B) "Business income" means income, including gain or 2110
loss, arising from transactions, activities, and sources in the 2111
regular course of a trade or business and includes income, gain, 2112
or loss from real property, tangible property, and intangible 2113
property if the acquisition, rental, management, and disposition 2114
of the property constitute integral parts of the regular course 2115
of a trade or business operation. "Business income" includes 2116
income, including gain or loss, from a partial or complete 2117
liquidation of a business, including, but not limited to, gain 2118
or loss from the sale or other disposition of goodwill. 2119

(C) "Nonbusiness income" means all income other than 2120
business income and may include, but is not limited to, 2121
compensation, rents and royalties from real or tangible personal 2122
property, capital gains, interest, dividends and distributions, 2123
patent or copyright royalties, or lottery winnings, prizes, and 2124
awards. 2125

(D) "Compensation" means any form of remuneration paid to 2126
an employee for personal services. 2127

(E) "Fiduciary" means a guardian, trustee, executor, 2128
administrator, receiver, conservator, or any other person acting 2129
in any fiduciary capacity for any individual, trust, or estate. 2130

(F) "Fiscal year" means an accounting period of twelve 2131
months ending on the last day of any month other than December. 2132

(G) "Individual" means any natural person. 2133

(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	2134 2135
(I) "Resident" means any of the following, provided that division (I) (3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:	2136 2137 2138
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	2139 2140
(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.	2141 2142 2143 2144
(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.	2145 2146 2147
For the purposes of division (I) (3) of this section:	2148
(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:	2149 2150 2151 2152 2153 2154
(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;	2155 2156 2157 2158
(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	2159 2160 2161

one of the trust's qualifying beneficiaries is domiciled in this 2162
state for the purposes of this chapter during all or some 2163
portion of the trust's current taxable year; 2164

(iii) A person who was domiciled in this state for the 2165
purposes of this chapter when the trust document or instrument 2166
or part of the trust document or instrument became irrevocable, 2167
but only if at least one of the trust's qualifying beneficiaries 2168
is a resident domiciled in this state for the purposes of this 2169
chapter during all or some portion of the trust's current 2170
taxable year. If a trust document or instrument became 2171
irrevocable upon the death of a person who at the time of death 2172
was domiciled in this state for purposes of this chapter, that 2173
person is a person described in division (I) (3) (a) (iii) of this 2174
section. 2175

(b) A trust is irrevocable to the extent that the 2176
transferor is not considered to be the owner of the net assets 2177
of the trust under sections 671 to 678 of the Internal Revenue 2178
Code. 2179

(c) With respect to a trust other than a charitable lead 2180
trust, "qualifying beneficiary" has the same meaning as 2181
"potential current beneficiary" as defined in section 1361(e) (2) 2182
of the Internal Revenue Code, and with respect to a charitable 2183
lead trust "qualifying beneficiary" is any current, future, or 2184
contingent beneficiary, but with respect to any trust 2185
"qualifying beneficiary" excludes a person or a governmental 2186
entity or instrumentality to any of which a contribution would 2187
qualify for the charitable deduction under section 170 of the 2188
Internal Revenue Code. 2189

(d) For the purposes of division (I) (3) (a) of this 2190
section, the extent to which a trust consists directly or 2191

indirectly, in whole or in part, of assets, net of any related 2192
liabilities, that were transferred directly or indirectly, in 2193
whole or part, to the trust by any of the sources enumerated in 2194
that division shall be ascertained by multiplying the fair 2195
market value of the trust's assets, net of related liabilities, 2196
by the qualifying ratio, which shall be computed as follows: 2197

(i) The first time the trust receives assets, the 2198
numerator of the qualifying ratio is the fair market value of 2199
those assets at that time, net of any related liabilities, from 2200
sources enumerated in division (I) (3) (a) of this section. The 2201
denominator of the qualifying ratio is the fair market value of 2202
all the trust's assets at that time, net of any related 2203
liabilities. 2204

(ii) Each subsequent time the trust receives assets, a 2205
revised qualifying ratio shall be computed. The numerator of the 2206
revised qualifying ratio is the sum of (1) the fair market value 2207
of the trust's assets immediately prior to the subsequent 2208
transfer, net of any related liabilities, multiplied by the 2209
qualifying ratio last computed without regard to the subsequent 2210
transfer, and (2) the fair market value of the subsequently 2211
transferred assets at the time transferred, net of any related 2212
liabilities, from sources enumerated in division (I) (3) (a) of 2213
this section. The denominator of the revised qualifying ratio is 2214
the fair market value of all the trust's assets immediately 2215
after the subsequent transfer, net of any related liabilities. 2216

(iii) Whether a transfer to the trust is by or from any of 2217
the sources enumerated in division (I) (3) (a) of this section 2218
shall be ascertained without regard to the domicile of the 2219
trust's beneficiaries. 2220

(e) For the purposes of division (I) (3) (a) (i) of this 2221

section: 2222

(i) A trust is described in division (I) (3) (e) (i) of this 2223
section if the trust is a testamentary trust and the testator of 2224
that testamentary trust was domiciled in this state at the time 2225
of the testator's death for purposes of the taxes levied under 2226
Chapter 5731. of the Revised Code. 2227

(ii) A trust is described in division (I) (3) (e) (ii) of 2228
this section if the transfer is a qualifying transfer described 2229
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 2230
trust is an irrevocable inter vivos trust, and at least one of 2231
the trust's qualifying beneficiaries is domiciled in this state 2232
for purposes of this chapter during all or some portion of the 2233
trust's current taxable year. 2234

(f) For the purposes of division (I) (3) (e) (ii) of this 2235
section, a "qualifying transfer" is a transfer of assets, net of 2236
any related liabilities, directly or indirectly to a trust, if 2237
the transfer is described in any of the following: 2238

(i) The transfer is made to a trust, created by the 2239
decedent before the decedent's death and while the decedent was 2240
domiciled in this state for the purposes of this chapter, and, 2241
prior to the death of the decedent, the trust became irrevocable 2242
while the decedent was domiciled in this state for the purposes 2243
of this chapter. 2244

(ii) The transfer is made to a trust to which the 2245
decedent, prior to the decedent's death, had directly or 2246
indirectly transferred assets, net of any related liabilities, 2247
while the decedent was domiciled in this state for the purposes 2248
of this chapter, and prior to the death of the decedent the 2249
trust became irrevocable while the decedent was domiciled in 2250

this state for the purposes of this chapter. 2251

(iii) The transfer is made on account of a contractual 2252
relationship existing directly or indirectly between the 2253
transferor and either the decedent or the estate of the decedent 2254
at any time prior to the date of the decedent's death, and the 2255
decedent was domiciled in this state at the time of death for 2256
purposes of the taxes levied under Chapter 5731. of the Revised 2257
Code. 2258

(iv) The transfer is made to a trust on account of a 2259
contractual relationship existing directly or indirectly between 2260
the transferor and another person who at the time of the 2261
decedent's death was domiciled in this state for purposes of 2262
this chapter. 2263

(v) The transfer is made to a trust on account of the will 2264
of a testator who was domiciled in this state at the time of the 2265
testator's death for purposes of the taxes levied under Chapter 2266
5731. of the Revised Code. 2267

(vi) The transfer is made to a trust created by or caused 2268
to be created by a court, and the trust was directly or 2269
indirectly created in connection with or as a result of the 2270
death of an individual who, for purposes of the taxes levied 2271
under Chapter 5731. of the Revised Code, was domiciled in this 2272
state at the time of the individual's death. 2273

(g) The tax commissioner may adopt rules to ascertain the 2274
part of a trust residing in this state. 2275

(J) "Nonresident" means an individual or estate that is 2276
not a resident. An individual who is a resident for only part of 2277
a taxable year is a nonresident for the remainder of that 2278
taxable year. 2279

(K) "Pass-through entity" has the same meaning as in	2280
section 5733.04 of the Revised Code.	2281
(L) "Return" means the notifications and reports required	2282
to be filed pursuant to this chapter for the purpose of	2283
reporting the tax due and includes declarations of estimated tax	2284
when so required.	2285
(M) "Taxable year" means the calendar year or the	2286
taxpayer's fiscal year ending during the calendar year, or	2287
fractional part thereof, upon which the adjusted gross income is	2288
calculated pursuant to this chapter.	2289
(N) "Taxpayer" means any person subject to the tax imposed	2290
by section 5747.02 of the Revised Code or any pass-through	2291
entity that makes the election under division (D) of section	2292
5747.08 of the Revised Code.	2293
(O) "Dependents" means dependents as defined in the	2294
Internal Revenue Code and as claimed in the taxpayer's federal	2295
income tax return for the taxable year or which the taxpayer	2296
would have been permitted to claim had the taxpayer filed a	2297
federal income tax return.	2298
(P) "Principal county of employment" means, in the case of	2299
a nonresident, the county within the state in which a taxpayer	2300
performs services for an employer or, if those services are	2301
performed in more than one county, the county in which the major	2302
portion of the services are performed.	2303
(Q) As used in sections 5747.50 to 5747.55 of the Revised	2304
Code:	2305
(1) "Subdivision" means any county, municipal corporation,	2306
park district, or township.	2307

(2) "Essential local government purposes" includes all 2308
functions that any subdivision is required by general law to 2309
exercise, including like functions that are exercised under a 2310
charter adopted pursuant to the Ohio Constitution. 2311

(R) "Overpayment" means any amount already paid that 2312
exceeds the figure determined to be the correct amount of the 2313
tax. 2314

(S) "Taxable income" or "Ohio taxable income" applies only 2315
to estates and trusts, and means federal taxable income, as 2316
defined and used in the Internal Revenue Code, adjusted as 2317
follows: 2318

(1) Add interest or dividends, net of ordinary, necessary, 2319
and reasonable expenses not deducted in computing federal 2320
taxable income, on obligations or securities of any state or of 2321
any political subdivision or authority of any state, other than 2322
this state and its subdivisions and authorities, but only to the 2323
extent that such net amount is not otherwise includible in Ohio 2324
taxable income and is described in either division (S) (1) (a) or 2325
(b) of this section: 2326

(a) The net amount is not attributable to the S portion of 2327
an electing small business trust and has not been distributed to 2328
beneficiaries for the taxable year; 2329

(b) The net amount is attributable to the S portion of an 2330
electing small business trust for the taxable year. 2331

(2) Add interest or dividends, net of ordinary, necessary, 2332
and reasonable expenses not deducted in computing federal 2333
taxable income, on obligations of any authority, commission, 2334
instrumentality, territory, or possession of the United States 2335
to the extent that the interest or dividends are exempt from 2336

federal income taxes but not from state income taxes, but only 2337
to the extent that such net amount is not otherwise includible 2338
in Ohio taxable income and is described in either division (S) 2339
(1) (a) or (b) of this section; 2340

(3) Add the amount of personal exemption allowed to the 2341
estate pursuant to section 642(b) of the Internal Revenue Code; 2342

(4) Deduct interest or dividends, net of related expenses 2343
deducted in computing federal taxable income, on obligations of 2344
the United States and its territories and possessions or of any 2345
authority, commission, or instrumentality of the United States 2346
to the extent that the interest or dividends are exempt from 2347
state taxes under the laws of the United States, but only to the 2348
extent that such amount is included in federal taxable income 2349
and is described in either division (S) (1) (a) or (b) of this 2350
section; 2351

(5) Deduct the amount of wages and salaries, if any, not 2352
otherwise allowable as a deduction but that would have been 2353
allowable as a deduction in computing federal taxable income for 2354
the taxable year, had the targeted jobs credit allowed under 2355
sections 38, 51, and 52 of the Internal Revenue Code not been in 2356
effect, but only to the extent such amount relates either to 2357
income included in federal taxable income for the taxable year 2358
or to income of the S portion of an electing small business 2359
trust for the taxable year; 2360

(6) Deduct any interest or interest equivalent, net of 2361
related expenses deducted in computing federal taxable income, 2362
on public obligations and purchase obligations, but only to the 2363
extent that such net amount relates either to income included in 2364
federal taxable income for the taxable year or to income of the 2365
S portion of an electing small business trust for the taxable 2366

year; 2367

(7) Add any loss or deduct any gain resulting from sale, 2368
exchange, or other disposition of public obligations to the 2369
extent that such loss has been deducted or such gain has been 2370
included in computing either federal taxable income or income of 2371
the S portion of an electing small business trust for the 2372
taxable year; 2373

(8) Except in the case of the final return of an estate, 2374
add any amount deducted by the taxpayer on both its Ohio estate 2375
tax return pursuant to section 5731.14 of the Revised Code, and 2376
on its federal income tax return in determining federal taxable 2377
income; 2378

(9) (a) Deduct any amount included in federal taxable 2379
income solely because the amount represents a reimbursement or 2380
refund of expenses that in a previous year the decedent had 2381
deducted as an itemized deduction pursuant to section 63 of the 2382
Internal Revenue Code and applicable treasury regulations. The 2383
deduction otherwise allowed under division (S) (9) (a) of this 2384
section shall be reduced to the extent the reimbursement is 2385
attributable to an amount the taxpayer or decedent deducted 2386
under this section in any taxable year. 2387

(b) Add any amount not otherwise included in Ohio taxable 2388
income for any taxable year to the extent that the amount is 2389
attributable to the recovery during the taxable year of any 2390
amount deducted or excluded in computing federal or Ohio taxable 2391
income in any taxable year, but only to the extent such amount 2392
has not been distributed to beneficiaries for the taxable year. 2393

(10) Deduct any portion of the deduction described in 2394
section 1341(a) (2) of the Internal Revenue Code, for repaying 2395

previously reported income received under a claim of right, that 2396
meets both of the following requirements: 2397

(a) It is allowable for repayment of an item that was 2398
included in the taxpayer's taxable income or the decedent's 2399
adjusted gross income for a prior taxable year and did not 2400
qualify for a credit under division (A) or (B) of section 2401
5747.05 of the Revised Code for that year. 2402

(b) It does not otherwise reduce the taxpayer's taxable 2403
income or the decedent's adjusted gross income for the current 2404
or any other taxable year. 2405

(11) Add any amount claimed as a credit under section 2406
5747.059 or 5747.65 of the Revised Code to the extent that the 2407
amount satisfies either of the following: 2408

(a) The amount was deducted or excluded from the 2409
computation of the taxpayer's federal taxable income as required 2410
to be reported for the taxpayer's taxable year under the 2411
Internal Revenue Code; 2412

(b) The amount resulted in a reduction in the taxpayer's 2413
federal taxable income as required to be reported for any of the 2414
taxpayer's taxable years under the Internal Revenue Code. 2415

(12) Deduct any amount, net of related expenses deducted 2416
in computing federal taxable income, that a trust is required to 2417
report as farm income on its federal income tax return, but only 2418
if the assets of the trust include at least ten acres of land 2419
satisfying the definition of "land devoted exclusively to 2420
agricultural use" under section 5713.30 of the Revised Code, 2421
regardless of whether the land is valued for tax purposes as 2422
such land under sections 5713.30 to 5713.38 of the Revised Code. 2423
If the trust is a pass-through entity investor, section 5747.231 2424

of the Revised Code applies in ascertaining if the trust is 2425
eligible to claim the deduction provided by division (S) (12) of 2426
this section in connection with the pass-through entity's farm 2427
income. 2428

Except for farm income attributable to the S portion of an 2429
electing small business trust, the deduction provided by 2430
division (S) (12) of this section is allowed only to the extent 2431
that the trust has not distributed such farm income. Division 2432
(S) (12) of this section applies only to taxable years of a trust 2433
beginning in 2002 or thereafter. 2434

(13) Add the net amount of income described in section 2435
641(c) of the Internal Revenue Code to the extent that amount is 2436
not included in federal taxable income. 2437

(14) Add or deduct the amount the taxpayer would be 2438
required to add or deduct under division (A) (20) or (21) of this 2439
section if the taxpayer's Ohio taxable income were computed in 2440
the same manner as an individual's Ohio adjusted gross income is 2441
computed under this section. In the case of a trust, division 2442
(S) (14) of this section applies only to any of the trust's 2443
taxable years beginning in 2002 or thereafter. 2444

(T) "School district income" and "school district income 2445
tax" have the same meanings as in section 5748.01 of the Revised 2446
Code. 2447

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 2448
(7) of this section, "public obligations," "purchase 2449
obligations," and "interest or interest equivalent" have the 2450
same meanings as in section 5709.76 of the Revised Code. 2451

(V) "Limited liability company" means any limited 2452
liability company formed under Chapter 1705. of the Revised Code 2453

or under the laws of any other state. 2454

(W) "Pass-through entity investor" means any person who, 2455
during any portion of a taxable year of a pass-through entity, 2456
is a partner, member, shareholder, or equity investor in that 2457
pass-through entity. 2458

(X) "Banking day" has the same meaning as in section 2459
1304.01 of the Revised Code. 2460

(Y) "Month" means a calendar month. 2461

(Z) "Quarter" means the first three months, the second 2462
three months, the third three months, or the last three months 2463
of the taxpayer's taxable year. 2464

(AA) (1) "Eligible institution" means a state university or 2465
state institution of higher education as defined in section 2466
3345.011 of the Revised Code, or a private, nonprofit college, 2467
university, or other post-secondary institution located in this 2468
state that possesses a certificate of authorization issued by 2469
the Ohio board of regents pursuant to Chapter 1713. of the 2470
Revised Code or a certificate of registration issued by the 2471
state board of career colleges and schools under Chapter 3332. 2472
of the Revised Code. 2473

(2) "Qualified tuition and fees" means tuition and fees 2474
imposed by an eligible institution as a condition of enrollment 2475
or attendance, not exceeding two thousand five hundred dollars 2476
in each of the individual's first two years of post-secondary 2477
education. If the individual is a part-time student, "qualified 2478
tuition and fees" includes tuition and fees paid for the 2479
academic equivalent of the first two years of post-secondary 2480
education during a maximum of five taxable years, not exceeding 2481
a total of five thousand dollars. "Qualified tuition and fees" 2482

does not include:	2483
(a) Expenses for any course or activity involving sports, games, or hobbies unless the course or activity is part of the individual's degree or diploma program;	2484 2485 2486
(b) The cost of books, room and board, student activity fees, athletic fees, insurance expenses, or other expenses unrelated to the individual's academic course of instruction;	2487 2488 2489
(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program.	2490 2491 2492
(BB) (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.	2493 2494 2495 2496
(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:	2497 2498 2499 2500 2501 2502
(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.	2503 2504 2505 2506 2507
(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.	2508 2509 2510

Any gain or loss that is not a qualifying trust amount is 2511
modified business income, qualifying investment income, or 2512
modified nonbusiness income, as the case may be. 2513

(3) "Modified nonbusiness income" means a trust's Ohio 2514
taxable income other than modified business income, other than 2515
the qualifying trust amount, and other than qualifying 2516
investment income, as defined in section 5747.012 of the Revised 2517
Code, to the extent such qualifying investment income is not 2518
otherwise part of modified business income. 2519

(4) "Modified Ohio taxable income" applies only to trusts, 2520
and means the sum of the amounts described in divisions (BB) (4) 2521
(a) to (c) of this section: 2522

(a) The fraction, calculated under section 5747.013, and 2523
applying section 5747.231 of the Revised Code, multiplied by the 2524
sum of the following amounts: 2525

(i) The trust's modified business income; 2526

(ii) The trust's qualifying investment income, as defined 2527
in section 5747.012 of the Revised Code, but only to the extent 2528
the qualifying investment income does not otherwise constitute 2529
modified business income and does not otherwise constitute a 2530
qualifying trust amount. 2531

(b) The qualifying trust amount multiplied by a fraction, 2532
the numerator of which is the sum of the book value of the 2533
qualifying investee's physical assets in this state on the last 2534
day of the qualifying investee's fiscal or calendar year ending 2535
immediately prior to the day on which the trust recognizes the 2536
qualifying trust amount, and the denominator of which is the sum 2537
of the book value of the qualifying investee's total physical 2538
assets everywhere on the last day of the qualifying investee's 2539

fiscal or calendar year ending immediately prior to the day on 2540
which the trust recognizes the qualifying trust amount. If, for 2541
a taxable year, the trust recognizes a qualifying trust amount 2542
with respect to more than one qualifying investee, the amount 2543
described in division (BB) (4) (b) of this section shall equal the 2544
sum of the products so computed for each such qualifying 2545
investee. 2546

(c) (i) With respect to a trust or portion of a trust that 2547
is a resident as ascertained in accordance with division (I) (3) 2548
(d) of this section, its modified nonbusiness income. 2549

(ii) With respect to a trust or portion of a trust that is 2550
not a resident as ascertained in accordance with division (I) (3) 2551
(d) of this section, the amount of its modified nonbusiness 2552
income satisfying the descriptions in divisions (B) (2) to (5) of 2553
section 5747.20 of the Revised Code, except as otherwise 2554
provided in division (BB) (4) (c) (ii) of this section. With 2555
respect to a trust or portion of a trust that is not a resident 2556
as ascertained in accordance with division (I) (3) (d) of this 2557
section, the trust's portion of modified nonbusiness income 2558
recognized from the sale, exchange, or other disposition of a 2559
debt interest in or equity interest in a section 5747.212 2560
entity, as defined in section 5747.212 of the Revised Code, 2561
without regard to division (A) of that section, shall not be 2562
allocated to this state in accordance with section 5747.20 of 2563
the Revised Code but shall be apportioned to this state in 2564
accordance with division (B) of section 5747.212 of the Revised 2565
Code without regard to division (A) of that section. 2566

If the allocation and apportionment of a trust's income 2567
under divisions (BB) (4) (a) and (c) of this section do not fairly 2568
represent the modified Ohio taxable income of the trust in this 2569

state, the alternative methods described in division (C) of 2570
section 5747.21 of the Revised Code may be applied in the manner 2571
and to the same extent provided in that section. 2572

(5) (a) Except as set forth in division (BB) (5) (b) of this 2573
section, "qualifying investee" means a person in which a trust 2574
has an equity or ownership interest, or a person or unit of 2575
government the debt obligations of either of which are owned by 2576
a trust. For the purposes of division (BB) (2) (a) of this section 2577
and for the purpose of computing the fraction described in 2578
division (BB) (4) (b) of this section, all of the following apply: 2579

(i) If the qualifying investee is a member of a qualifying 2580
controlled group on the last day of the qualifying investee's 2581
fiscal or calendar year ending immediately prior to the date on 2582
which the trust recognizes the gain or loss, then "qualifying 2583
investee" includes all persons in the qualifying controlled 2584
group on such last day. 2585

(ii) If the qualifying investee, or if the qualifying 2586
investee and any members of the qualifying controlled group of 2587
which the qualifying investee is a member on the last day of the 2588
qualifying investee's fiscal or calendar year ending immediately 2589
prior to the date on which the trust recognizes the gain or 2590
loss, separately or cumulatively own, directly or indirectly, on 2591
the last day of the qualifying investee's fiscal or calendar 2592
year ending immediately prior to the date on which the trust 2593
recognizes the qualifying trust amount, more than fifty per cent 2594
of the equity of a pass-through entity, then the qualifying 2595
investee and the other members are deemed to own the 2596
proportionate share of the pass-through entity's physical assets 2597
which the pass-through entity directly or indirectly owns on the 2598
last day of the pass-through entity's calendar or fiscal year 2599

ending within or with the last day of the qualifying investee's 2600
fiscal or calendar year ending immediately prior to the date on 2601
which the trust recognizes the qualifying trust amount. 2602

(iii) For the purposes of division (BB) (5) (a) (iii) of this 2603
section, "upper level pass-through entity" means a pass-through 2604
entity directly or indirectly owning any equity of another pass- 2605
through entity, and "lower level pass-through entity" means that 2606
other pass-through entity. 2607

An upper level pass-through entity, whether or not it is 2608
also a qualifying investee, is deemed to own, on the last day of 2609
the upper level pass-through entity's calendar or fiscal year, 2610
the proportionate share of the lower level pass-through entity's 2611
physical assets that the lower level pass-through entity 2612
directly or indirectly owns on the last day of the lower level 2613
pass-through entity's calendar or fiscal year ending within or 2614
with the last day of the upper level pass-through entity's 2615
fiscal or calendar year. If the upper level pass-through entity 2616
directly and indirectly owns less than fifty per cent of the 2617
equity of the lower level pass-through entity on each day of the 2618
upper level pass-through entity's calendar or fiscal year in 2619
which or with which ends the calendar or fiscal year of the 2620
lower level pass-through entity and if, based upon clear and 2621
convincing evidence, complete information about the location and 2622
cost of the physical assets of the lower pass-through entity is 2623
not available to the upper level pass-through entity, then 2624
solely for purposes of ascertaining if a gain or loss 2625
constitutes a qualifying trust amount, the upper level pass- 2626
through entity shall be deemed as owning no equity of the lower 2627
level pass-through entity for each day during the upper level 2628
pass-through entity's calendar or fiscal year in which or with 2629
which ends the lower level pass-through entity's calendar or 2630

fiscal year. Nothing in division (BB) (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.

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

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

(EE) (1) For the purposes of division (EE) 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 2658
subchapter S, chapter one, subtitle A, of the Internal Revenue 2659
Code for its taxable year ending within, or on the last day of, 2660
the investor's taxable year; 2661

(ii) A subsidiary that is wholly owned by any corporation 2662
that has made an election under subchapter S, chapter one, 2663
subtitle A of the Internal Revenue Code for its taxable year 2664
ending within, or on the last day of, the investor's taxable 2665
year. 2666

(2) For the purposes of this chapter, unless expressly 2667
stated otherwise, no qualifying person indirectly owns any asset 2668
directly or indirectly owned by any qualifying corporation. 2669

(FF) For purposes of this chapter and Chapter 5751. of the 2670
Revised Code: 2671

(1) "Trust" does not include a qualified pre-income tax 2672
trust. 2673

(2) A "qualified pre-income tax trust" is any pre-income 2674
tax trust that makes a qualifying pre-income tax trust election 2675
as described in division (FF)(3) of this section. 2676

(3) A "qualifying pre-income tax trust election" is an 2677
election by a pre-income tax trust to subject to the tax imposed 2678
by section 5751.02 of the Revised Code the pre-income tax trust 2679
and all pass-through entities of which the trust owns or 2680
controls, directly, indirectly, or constructively through 2681
related interests, five per cent or more of the ownership or 2682
equity interests. The trustee shall notify the tax commissioner 2683
in writing of the election on or before April 15, 2006. The 2684
election, if timely made, shall be effective on and after 2685
January 1, 2006, and shall apply for all tax periods and tax 2686

years until revoked by the trustee of the trust. 2687

(4) A "pre-income tax trust" is a trust that satisfies all 2688
of the following requirements: 2689

(a) The document or instrument creating the trust was 2690
executed by the grantor before January 1, 1972; 2691

(b) The trust became irrevocable upon the creation of the 2692
trust; and 2693

(c) The grantor was domiciled in this state at the time 2694
the trust was created. 2695

(GG) "Uniformed services" has the same meaning as in 10 2696
U.S.C. 101. 2697

Sec. 5751.01. As used in this chapter: 2698

(A) "Person" means, but is not limited to, individuals, 2699
combinations of individuals of any form, receivers, assignees, 2700
trustees in bankruptcy, firms, companies, joint-stock companies, 2701
business trusts, estates, partnerships, limited liability 2702
partnerships, limited liability companies, associations, joint 2703
ventures, clubs, societies, for-profit corporations, S 2704
corporations, qualified subchapter S subsidiaries, qualified 2705
subchapter S trusts, trusts, entities that are disregarded for 2706
federal income tax purposes, and any other entities. 2707

(B) "Consolidated elected taxpayer" means a group of two 2708
or more persons treated as a single taxpayer for purposes of 2709
this chapter as the result of an election made under section 2710
5751.011 of the Revised Code. 2711

(C) "Combined taxpayer" means a group of two or more 2712
persons treated as a single taxpayer for purposes of this 2713
chapter under section 5751.012 of the Revised Code. 2714

(D) "Taxpayer" means any person, or any group of persons 2715
in the case of a consolidated elected taxpayer or combined 2716
taxpayer treated as one taxpayer, required to register or pay 2717
tax under this chapter. "Taxpayer" does not include excluded 2718
persons. 2719

(E) "Excluded person" means any of the following: 2720

(1) Any person with not more than one hundred fifty 2721
thousand dollars of taxable gross receipts during the calendar 2722
year. Division (E) (1) of this section does not apply to a person 2723
that is a member of a consolidated elected taxpayer; 2724

(2) A public utility that paid the excise tax imposed by 2725
section 5727.24 or 5727.30 of the Revised Code based on one or 2726
more measurement periods that include the entire tax period 2727
under this chapter, except that a public utility that is a 2728
combined company is a taxpayer with regard to the following 2729
gross receipts: 2730

(a) Taxable gross receipts directly attributed to a public 2731
utility activity, but not directly attributed to an activity 2732
that is subject to the excise tax imposed by section 5727.24 or 2733
5727.30 of the Revised Code; 2734

(b) Taxable gross receipts that cannot be directly 2735
attributed to any activity, multiplied by a fraction whose 2736
numerator is the taxable gross receipts described in division 2737
(E) (2) (a) of this section and whose denominator is the total 2738
taxable gross receipts that can be directly attributed to any 2739
activity; 2740

(c) Except for any differences resulting from the use of 2741
an accrual basis method of accounting for purposes of 2742
determining gross receipts under this chapter and the use of the 2743

cash basis method of accounting for purposes of determining 2744
gross receipts under section 5727.24 of the Revised Code, the 2745
gross receipts directly attributed to the activity of a natural 2746
gas company shall be determined in a manner consistent with 2747
division (D) of section 5727.03 of the Revised Code. 2748

As used in division (E) (2) of this section, "combined 2749
company" and "public utility" have the same meanings as in 2750
section 5727.01 of the Revised Code. 2751

(3) A financial institution, as defined in section 5726.01 2752
of the Revised Code, that paid the tax imposed by section 2753
5726.02 of the Revised Code based on one or more taxable years 2754
that include the entire tax period under this chapter; 2755

(4) A person directly or indirectly owned by one or more 2756
financial institutions, as defined in section 5726.01 of the 2757
Revised Code, that paid the tax imposed by section 5726.02 of 2758
the Revised Code based on one or more taxable years that include 2759
the entire tax period under this chapter. 2760

For the purposes of division (E) (4) of this section, a 2761
person owns another person under the following circumstances: 2762

(a) In the case of corporations issuing capital stock, one 2763
corporation owns another corporation if it owns fifty per cent 2764
or more of the other corporation's capital stock with current 2765
voting rights; 2766

(b) In the case of a limited liability company, one person 2767
owns the company if that person's membership interest, as 2768
defined in section 1705.01 of the Revised Code, is fifty per 2769
cent or more of the combined membership interests of all persons 2770
owning such interests in the company; 2771

(c) In the case of a partnership, trust, or other 2772

unincorporated business organization other than a limited liability company, one person owns the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses, or distributions of fifty per cent or more of the combined beneficial interests of all persons having such an interest in the organization.

(5) A domestic insurance company or foreign insurance company, as defined in section 5725.01 of the Revised Code, that paid the insurance company premiums tax imposed by section 5725.18 or Chapter 5729. of the Revised Code, or an unauthorized insurance company whose gross premiums are subject to tax under section 3905.36 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter;

(6) A person that solely facilitates or services one or more securitizations of phase-in-recovery property pursuant to a final financing order as those terms are defined in section 4928.23 of the Revised Code. For purposes of this division, "securitization" means transferring one or more assets to one or more persons and then issuing securities backed by the right to receive payment from the asset or assets so transferred.

(7) Except as otherwise provided in this division, a pre-income tax trust as defined in division (FF) (4) of section 5747.01 of the Revised Code and any pass-through entity of which such pre-income tax trust owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests. If the pre-income tax trust has made a qualifying pre-income tax trust

election under division (FF) (3) of section 5747.01 of the Revised Code, then the trust and the pass-through entities of which it owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests, shall not be excluded persons for purposes of the tax imposed under section 5751.02 of the Revised Code.

(8) Nonprofit organizations or the state and its agencies, instrumentalities, or political subdivisions.

(F) Except as otherwise provided in divisions (F) (2), (3), and (4) of this section, "gross receipts" means the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration.

(1) The following are examples of gross receipts:

(a) Amounts realized from the sale, exchange, or other disposition of the taxpayer's property to or with another;

(b) Amounts realized from the taxpayer's performance of services for another;

(c) Amounts realized from another's use or possession of the taxpayer's property or capital;

(d) Any combination of the foregoing amounts.

(2) "Gross receipts" excludes the following amounts:

(a) Interest income except interest on credit sales;

(b) Dividends and distributions from corporations, and

distributive or proportionate shares of receipts and income from 2830
a pass-through entity as defined under section 5733.04 of the 2831
Revised Code; 2832

(c) Receipts from the sale, exchange, or other disposition 2833
of an asset described in section 1221 or 1231 of the Internal 2834
Revenue Code, without regard to the length of time the person 2835
held the asset. Notwithstanding section 1221 of the Internal 2836
Revenue Code, receipts from hedging transactions also are 2837
excluded to the extent the transactions are entered into 2838
primarily to protect a financial position, such as managing the 2839
risk of exposure to (i) foreign currency fluctuations that 2840
affect assets, liabilities, profits, losses, equity, or 2841
investments in foreign operations; (ii) interest rate 2842
fluctuations; or (iii) commodity price fluctuations. As used in 2843
division (F) (2) (c) of this section, "hedging transaction" has 2844
the same meaning as used in section 1221 of the Internal Revenue 2845
Code and also includes transactions accorded hedge accounting 2846
treatment under statement of financial accounting standards 2847
number 133 of the financial accounting standards board. For the 2848
purposes of division (F) (2) (c) of this section, the actual 2849
transfer of title of real or tangible personal property to 2850
another entity is not a hedging transaction. 2851

(d) Proceeds received attributable to the repayment, 2852
maturity, or redemption of the principal of a loan, bond, mutual 2853
fund, certificate of deposit, or marketable instrument; 2854

(e) The principal amount received under a repurchase 2855
agreement or on account of any transaction properly 2856
characterized as a loan to the person; 2857

(f) Contributions received by a trust, plan, or other 2858
arrangement, any of which is described in section 501(a) of the 2859

Internal Revenue Code, or to which Title 26, Subtitle A, Chapter	2860
1, Subchapter (D) of the Internal Revenue Code applies;	2861
(g) Compensation, whether current or deferred, and whether	2862
in cash or in kind, received or to be received by an employee,	2863
former employee, or the employee's legal successor for services	2864
rendered to or for an employer, including reimbursements	2865
received by or for an individual for medical or education	2866
expenses, health insurance premiums, or employee expenses, or on	2867
account of a dependent care spending account, legal services	2868
plan, any cafeteria plan described in section 125 of the	2869
Internal Revenue Code, or any similar employee reimbursement;	2870
(h) Proceeds received from the issuance of the taxpayer's	2871
own stock, options, warrants, puts, or calls, or from the sale	2872
of the taxpayer's treasury stock;	2873
(i) Proceeds received on the account of payments from	2874
insurance policies, except those proceeds received for the loss	2875
of business revenue;	2876
(j) Gifts or charitable contributions received; membership	2877
dues received by trade, professional, homeowners', or	2878
condominium associations; and payments received for educational	2879
courses, meetings, meals, or similar payments to a trade,	2880
professional, or other similar association; and fundraising	2881
receipts received by any person when any excess receipts are	2882
donated or used exclusively for charitable purposes;	2883
(k) Damages received as the result of litigation in excess	2884
of amounts that, if received without litigation, would be gross	2885
receipts;	2886
(l) Property, money, and other amounts received or	2887
acquired by an agent on behalf of another in excess of the	2888

agent's commission, fee, or other remuneration;	2889
(m) Tax refunds, other tax benefit recoveries, and	2890
reimbursements for the tax imposed under this chapter made by	2891
entities that are part of the same combined taxpayer or	2892
consolidated elected taxpayer group, and reimbursements made by	2893
entities that are not members of a combined taxpayer or	2894
consolidated elected taxpayer group that are required to be made	2895
for economic parity among multiple owners of an entity whose tax	2896
obligation under this chapter is required to be reported and	2897
paid entirely by one owner, pursuant to the requirements of	2898
sections 5751.011 and 5751.012 of the Revised Code;	2899
(n) Pension reversions;	2900
(o) Contributions to capital;	2901
(p) Sales or use taxes collected as a vendor or an out-of-	2902
state seller on behalf of the taxing jurisdiction from a	2903
consumer or other taxes the taxpayer is required by law to	2904
collect directly from a purchaser and remit to a local, state,	2905
or federal tax authority;	2906
(q) In the case of receipts from the sale of cigarettes or	2907
tobacco products by a wholesale dealer, retail dealer,	2908
distributor, manufacturer, or seller, all as defined in section	2909
5743.01 of the Revised Code, an amount equal to the federal and	2910
state excise taxes paid by any person on or for such cigarettes	2911
or tobacco products under subtitle E of the Internal Revenue	2912
Code or Chapter 5743. of the Revised Code;	2913
(r) In the case of receipts from the sale, transfer,	2914
exchange, or other disposition of motor fuel as "motor fuel" is	2915
defined in section 5736.01 of the Revised Code, an amount equal	2916
to the value of the motor fuel, including federal and state	2917

motor fuel excise taxes and receipts from billing or invoicing 2918
the tax imposed under section 5736.02 of the Revised Code to 2919
another person; 2920

(s) In the case of receipts from the sale of beer or 2921
intoxicating liquor, as defined in section 4301.01 of the 2922
Revised Code, by a person holding a permit issued under Chapter 2923
4301. or 4303. of the Revised Code, an amount equal to federal 2924
and state excise taxes paid by any person on or for such beer or 2925
intoxicating liquor under subtitle E of the Internal Revenue 2926
Code or Chapter 4301. or 4305. of the Revised Code; 2927

(t) Receipts realized by a new motor vehicle dealer or 2928
used motor vehicle dealer, as defined in section 4517.01 of the 2929
Revised Code, from the sale or other transfer of a motor 2930
vehicle, as defined in that section, to another motor vehicle 2931
dealer for the purpose of resale by the transferee motor vehicle 2932
dealer, but only if the sale or other transfer was based upon 2933
the transferee's need to meet a specific customer's preference 2934
for a motor vehicle; 2935

(u) Receipts from a financial institution described in 2936
division (E)(3) of this section for services provided to the 2937
financial institution in connection with the issuance, 2938
processing, servicing, and management of loans or credit 2939
accounts, if such financial institution and the recipient of 2940
such receipts have at least fifty per cent of their ownership 2941
interests owned or controlled, directly or constructively 2942
through related interests, by common owners; 2943

(v) Receipts realized from administering anti-neoplastic 2944
drugs and other cancer chemotherapy, biologicals, therapeutic 2945
agents, and supportive drugs in a physician's office to patients 2946
with cancer; 2947

(w) Funds received or used by a mortgage broker that is	2948
not a dealer in intangibles, other than fees or other	2949
consideration, pursuant to a table-funding mortgage loan or	2950
warehouse-lending mortgage loan. Terms used in division (F) (2)	2951
(w) of this section have the same meanings as in section 1322.01	2952
of the Revised Code, except "mortgage broker" means a person	2953
assisting a buyer in obtaining a mortgage loan for a fee or	2954
other consideration paid by the buyer or a lender, or a person	2955
engaged in table-funding or warehouse-lending mortgage loans	2956
that are first lien mortgage loans.	2957
(x) Property, money, and other amounts received by a	2958
professional employer organization, as defined in section	2959
4125.01 of the Revised Code, from a client employer, as defined	2960
in that section, in excess of the administrative fee charged by	2961
the professional employer organization to the client employer;	2962
(y) In the case of amounts retained as commissions by a	2963
permit holder under Chapter 3769. of the Revised Code, an amount	2964
equal to the amounts specified under that chapter that must be	2965
paid to or collected by the tax commissioner as a tax and the	2966
amounts specified under that chapter to be used as purse money;	2967
(z) Qualifying distribution center receipts.	2968
(i) For purposes of division (F) (2) (z) of this section:	2969
(I) "Qualifying distribution center receipts" means	2970
receipts of a supplier from qualified property that is delivered	2971
to a qualified distribution center, multiplied by a quantity	2972
that equals one minus the Ohio delivery percentage. If the	2973
qualified distribution center is a refining facility, "supplier"	2974
includes all dealers, brokers, processors, sellers, vendors,	2975
cosigners, and distributors of qualified property.	2976

(II) "Qualified property" means tangible personal property 2977
delivered to a qualified distribution center that is shipped to 2978
that qualified distribution center solely for further shipping 2979
by the qualified distribution center to another location in this 2980
state or elsewhere or, in the case of gold, silver, platinum, or 2981
palladium delivered to a refining facility solely for refining 2982
to a grade and fineness acceptable for delivery to a registered 2983
commodities exchange. "Further shipping" includes storing and 2984
repackaging property into smaller or larger bundles, so long as 2985
the property is not subject to further manufacturing or 2986
processing. "Refining" is limited to extracting impurities from 2987
gold, silver, platinum, or palladium through smelting or some 2988
other process at a refining facility. 2989

(III) "Qualified distribution center" means a warehouse, a 2990
facility similar to a warehouse, or a refining facility in this 2991
state that, for the qualifying year, is operated by a person 2992
that is not part of a combined taxpayer group and that has a 2993
qualifying certificate. All warehouses or facilities similar to 2994
warehouses that are operated by persons in the same taxpayer 2995
group and that are located within one mile of each other shall 2996
be treated as one qualified distribution center. All refining 2997
facilities that are operated by persons in the same taxpayer 2998
group and that are located in the same or adjacent counties may 2999
be treated as one qualified distribution center. 3000

(IV) "Qualifying year" means the calendar year to which 3001
the qualifying certificate applies. 3002

(V) "Qualifying period" means the period of the first day 3003
of July of the second year preceding the qualifying year through 3004
the thirtieth day of June of the year preceding the qualifying 3005
year. 3006

(VI) "Qualifying certificate" means the certificate issued 3007
by the tax commissioner after the operator of a distribution 3008
center files an annual application with the commissioner. The 3009
application and annual fee shall be filed and paid for each 3010
qualified distribution center on or before the first day of 3011
September before the qualifying year or within forty-five days 3012
after the distribution center opens, whichever is later. 3013

The applicant must substantiate to the commissioner's 3014
satisfaction that, for the qualifying period, all persons 3015
operating the distribution center have more than fifty per cent 3016
of the cost of the qualified property shipped to a location such 3017
that it would be situated outside this state under the provisions 3018
of division (E) of section 5751.033 of the Revised Code. The 3019
applicant must also substantiate that the distribution center 3020
cumulatively had costs from its suppliers equal to or exceeding 3021
five hundred million dollars during the qualifying period. (For 3022
purposes of division (F) (2) (z) (i) (VI) of this section, 3023
"supplier" excludes any person that is part of the consolidated 3024
elected taxpayer group, if applicable, of the operator of the 3025
qualified distribution center.) The commissioner may require the 3026
applicant to have an independent certified public accountant 3027
certify that the calculation of the minimum thresholds required 3028
for a qualified distribution center by the operator of a 3029
distribution center has been made in accordance with generally 3030
accepted accounting principles. The commissioner shall issue or 3031
deny the issuance of a certificate within sixty days after the 3032
receipt of the application. A denial is subject to appeal under 3033
section 5717.02 of the Revised Code. If the operator files a 3034
timely appeal under section 5717.02 of the Revised Code, the 3035
operator shall be granted a qualifying certificate effective for 3036
the remainder of the qualifying year or until the appeal is 3037

finalized, whichever is earlier. If the operator does not 3038
prevail in the appeal, the operator shall pay the ineligible 3039
operator's supplier tax liability. 3040

(VII) "Ohio delivery percentage" means the proportion of 3041
the total property delivered to a destination inside Ohio from 3042
the qualified distribution center during the qualifying period 3043
compared with total deliveries from such distribution center 3044
everywhere during the qualifying period. 3045

(VIII) "Refining facility" means one or more buildings 3046
located in a county in the Appalachian region of this state as 3047
defined by section 107.21 of the Revised Code and utilized for 3048
refining or smelting gold, silver, platinum, or palladium to a 3049
grade and fineness acceptable for delivery to a registered 3050
commodities exchange. 3051

(IX) "Registered commodities exchange" means a board of 3052
trade, such as New York mercantile exchange, inc. or commodity 3053
exchange, inc., designated as a contract market by the commodity 3054
futures trading commission under the "Commodity Exchange Act," 7 3055
U.S.C. 1 et seq., as amended. 3056

(X) "Ineligible operator's supplier tax liability" means 3057
an amount equal to the tax liability of all suppliers of a 3058
distribution center had the distribution center not been issued 3059
a qualifying certificate for the qualifying year. Ineligible 3060
operator's supplier tax liability shall not include interest or 3061
penalties. The tax commissioner shall determine an ineligible 3062
operator's supplier tax liability based on information that the 3063
commissioner may request from the operator of the distribution 3064
center. An operator shall provide a list of all suppliers of the 3065
distribution center and the corresponding costs of qualified 3066
property for the qualifying year at issue within sixty days of a 3067

request by the commissioner under this division. 3068

(ii) (I) If the distribution center is new and was not open 3069
for the entire qualifying period, the operator of the 3070
distribution center may request that the commissioner grant a 3071
qualifying certificate. If the certificate is granted and it is 3072
later determined that more than fifty per cent of the qualified 3073
property during that year was not shipped to a location such 3074
that it would be situated outside of this state under the 3075
provisions of division (E) of section 5751.033 of the Revised 3076
Code or if it is later determined that the person that operates 3077
the distribution center had average monthly costs from its 3078
suppliers of less than forty million dollars during that year, 3079
then the operator of the distribution center shall pay the 3080
ineligible operator's supplier tax liability. (For purposes of 3081
division (F) (2) (z) (ii) of this section, "supplier" excludes any 3082
person that is part of the consolidated elected taxpayer group, 3083
if applicable, of the operator of the qualified distribution 3084
center.) 3085

(II) The commissioner may grant a qualifying certificate 3086
to a distribution center that does not qualify as a qualified 3087
distribution center for an entire qualifying period if the 3088
operator of the distribution center demonstrates that the 3089
business operations of the distribution center have changed or 3090
will change such that the distribution center will qualify as a 3091
qualified distribution center within thirty-six months after the 3092
date the operator first applies for a certificate. If, at the 3093
end of that thirty-six-month period, the business operations of 3094
the distribution center have not changed such that the 3095
distribution center qualifies as a qualified distribution 3096
center, the operator of the distribution center shall pay the 3097
ineligible operator's supplier tax liability for each year that 3098

the distribution center received a certificate but did not 3099
qualify as a qualified distribution center. For each year the 3100
distribution center receives a certificate under division (F) (2) 3101
(z) (ii) (II) of this section, the distribution center shall pay 3102
all applicable fees required under division (F) (2) (z) of this 3103
section and shall submit an updated business plan showing the 3104
progress the distribution center made toward qualifying as a 3105
qualified distribution center during the preceding year. 3106

(III) An operator may appeal a determination under 3107
division (F) (2) (z) (ii) (I) or (II) of this section that the 3108
ineligible operator is liable for the operator's supplier tax 3109
liability as a result of not qualifying as a qualified 3110
distribution center, as provided in section 5717.02 of the 3111
Revised Code. 3112

(iii) When filing an application for a qualifying 3113
certificate under division (F) (2) (z) (i) (VI) of this section, the 3114
operator of a qualified distribution center also shall provide 3115
documentation, as the commissioner requires, for the 3116
commissioner to ascertain the Ohio delivery percentage. The 3117
commissioner, upon issuing the qualifying certificate, also 3118
shall certify the Ohio delivery percentage. The operator of the 3119
qualified distribution center may appeal the commissioner's 3120
certification of the Ohio delivery percentage in the same manner 3121
as an appeal is taken from the denial of a qualifying 3122
certificate under division (F) (2) (z) (i) (VI) of this section. 3123

(iv) (I) In the case where the distribution center is new 3124
and not open for the entire qualifying period, the operator 3125
shall make a good faith estimate of an Ohio delivery percentage 3126
for use by suppliers in their reports of taxable gross receipts 3127
for the remainder of the qualifying period. The operator of the 3128

facility shall disclose to the suppliers that such Ohio delivery 3129
percentage is an estimate and is subject to recalculation. By 3130
the due date of the next application for a qualifying 3131
certificate, the operator shall determine the actual Ohio 3132
delivery percentage for the estimated qualifying period and 3133
proceed as provided in division (F) (2) (z) (iii) of this section 3134
with respect to the calculation and recalculation of the Ohio 3135
delivery percentage. The supplier is required to file, within 3136
sixty days after receiving notice from the operator of the 3137
qualified distribution center, amended reports for the impacted 3138
calendar quarter or quarters or calendar year, whichever the 3139
case may be. Any additional tax liability or tax overpayment 3140
shall be subject to interest but shall not be subject to the 3141
imposition of any penalty so long as the amended returns are 3142
timely filed. 3143

(II) The operator of a distribution center that receives a 3144
qualifying certificate under division (F) (2) (z) (ii) (II) of this 3145
section shall make a good faith estimate of the Ohio delivery 3146
percentage that the operator estimates will apply to the 3147
distribution center at the end of the thirty-six-month period 3148
after the operator first applied for a qualifying certificate 3149
under that division. The result of the estimate shall be 3150
multiplied by a factor of one and seventy-five one-hundredths. 3151
The product of that calculation shall be the Ohio delivery 3152
percentage used by suppliers in their reports of taxable gross 3153
receipts for each qualifying year that the distribution center 3154
receives a qualifying certificate under division (F) (2) (z) (ii) 3155
(II) of this section, except that, if the product is less than 3156
five per cent, the Ohio delivery percentage used shall be five 3157
per cent and that, if the product exceeds forty-nine per cent, 3158
the Ohio delivery percentage used shall be forty-nine per cent. 3159

(v) Qualifying certificates and Ohio delivery percentages 3160
issued by the commissioner shall be open to public inspection 3161
and shall be timely published by the commissioner. A supplier 3162
relying in good faith on a certificate issued under this 3163
division shall not be subject to tax on the qualifying 3164
distribution center receipts under division (F)(2)(z) of this 3165
section. An operator receiving a qualifying certificate is 3166
liable for the ineligible operator's supplier tax liability for 3167
each year the operator received a certificate but did not 3168
qualify as a qualified distribution center. 3169

(vi) The annual fee for a qualifying certificate shall be 3170
one hundred thousand dollars for each qualified distribution 3171
center. If a qualifying certificate is not issued, the annual 3172
fee is subject to refund after the exhaustion of all appeals 3173
provided for in division (F)(2)(z)(i)(VI) of this section. The 3174
first one hundred thousand dollars of the annual application 3175
fees collected each calendar year shall be credited to the 3176
revenue enhancement fund. The remainder of the annual 3177
application fees collected shall be distributed in the same 3178
manner required under section 5751.20 of the Revised Code. 3179

(vii) The tax commissioner may require that adequate 3180
security be posted by the operator of the distribution center on 3181
appeal when the commissioner disagrees that the applicant has 3182
met the minimum thresholds for a qualified distribution center 3183
as set forth in division (F)(2)(z) of this section. 3184

(aa) Receipts of an employer from payroll deductions 3185
relating to the reimbursement of the employer for advancing 3186
moneys to an unrelated third party on an employee's behalf; 3187

(bb) Cash discounts allowed and taken; 3188

(cc) Returns and allowances;	3189
(dd) Bad debts from receipts on the basis of which the tax imposed by this chapter was paid in a prior quarterly tax payment period. For the purpose of this division, "bad debts" means any debts that have become worthless or uncollectible between the preceding and current quarterly tax payment periods, have been uncollected for at least six months, and that may be claimed as a deduction under section 166 of the Internal Revenue Code and the regulations adopted under that section, or that could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" does not include repossessed property, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered;	3190 3191 3192 3193 3194 3195 3196 3197 3198 3199 3200 3201 3202 3203
(ee) Any amount realized from the sale of an account receivable to the extent the receipts from the underlying transaction giving rise to the account receivable were included in the gross receipts of the taxpayer;	3204 3205 3206 3207
(ff) Any receipts directly attributed to a transfer agreement or to the enterprise transferred under that agreement under section 4313.02 of the Revised Code.	3208 3209 3210
(gg) (i) As used in this division:	3211
(I) "Qualified uranium receipts" means receipts from the sale, exchange, lease, loan, production, processing, or other disposition of uranium within a uranium enrichment zone certified by the tax commissioner under division (F) (2) (gg) (ii) of this section. "Qualified uranium receipts" does not include any receipts with a situs in this state outside a uranium	3212 3213 3214 3215 3216 3217

enrichment zone certified by the tax commissioner under division 3218
(F) (2) (gg) (ii) of this section. 3219

(II) "Uranium enrichment zone" means all real property 3220
that is part of a uranium enrichment facility licensed by the 3221
United States nuclear regulatory commission and that was or is 3222
owned or controlled by the United States department of energy or 3223
its successor. 3224

(ii) Any person that owns, leases, or operates real or 3225
tangible personal property constituting or located within a 3226
uranium enrichment zone may apply to the tax commissioner to 3227
have the uranium enrichment zone certified for the purpose of 3228
excluding qualified uranium receipts under division (F) (2) (gg) 3229
of this section. The application shall include such information 3230
that the tax commissioner prescribes. Within sixty days after 3231
receiving the application, the tax commissioner shall certify 3232
the zone for that purpose if the commissioner determines that 3233
the property qualifies as a uranium enrichment zone as defined 3234
in division (F) (2) (gg) of this section, or, if the tax 3235
commissioner determines that the property does not qualify, the 3236
commissioner shall deny the application or request additional 3237
information from the applicant. If the tax commissioner denies 3238
an application, the commissioner shall state the reasons for the 3239
denial. The applicant may appeal the denial of an application to 3240
the board of tax appeals pursuant to section 5717.02 of the 3241
Revised Code. If the applicant files a timely appeal, the tax 3242
commissioner shall conditionally certify the applicant's 3243
property. The conditional certification shall expire when all of 3244
the applicant's appeals are exhausted. Until final resolution of 3245
the appeal, the applicant shall retain the applicant's records 3246
in accordance with section 5751.12 of the Revised Code, 3247
notwithstanding any time limit on the preservation of records 3248

under that section. 3249

(hh) In the case of amounts collected by a licensed casino operator from casino gaming, amounts in excess of the casino operator's gross casino revenue. In this division, "casino operator" and "casino gaming" have the meanings defined in section 3772.01 of the Revised Code, and "gross casino revenue" has the meaning defined in section 5753.01 of the Revised Code. 3250
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(ii) Receipts realized from the sale of agricultural commodities by an agricultural commodity handler, both as defined in section 926.01 of the Revised Code, that is licensed by the director of agriculture to handle agricultural commodities in this state. 3256
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(jj) Receipts realized by a partnering business from business conducted in a startup zone pursuant to a partnership contract with a university under Chapter 195. of the Revised Code. Receipts may be excluded under this division only for tax periods ending on or before the expiration or termination of the partnership contract. Receipts realized from business conducted outside the startup zone or beyond the scope of the partnership contract shall not be excluded under this division. As used in this division, "startup zone," "partnering business," "partnership contract," and "university" have the same meanings as in section 195.01 of the Revised Code. 3261
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(kk) Any receipts for which the tax imposed by this chapter is prohibited by the constitution or laws of the United States or the constitution of this state. 3272
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(3) In the case of a taxpayer when acting as a real estate broker, "gross receipts" includes only the portion of any fee for the service of a real estate broker, or service of a real 3275
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estate salesperson associated with that broker, that is retained 3278
by the broker and not paid to an associated real estate 3279
salesperson or another real estate broker. For the purposes of 3280
this division, "real estate broker" and "real estate 3281
salesperson" have the same meanings as in section 4735.01 of the 3282
Revised Code. 3283

(4) A taxpayer's method of accounting for gross receipts 3284
for a tax period shall be the same as the taxpayer's method of 3285
accounting for federal income tax purposes for the taxpayer's 3286
federal taxable year that includes the tax period. If a 3287
taxpayer's method of accounting for federal income tax purposes 3288
changes, its method of accounting for gross receipts under this 3289
chapter shall be changed accordingly. 3290

(G) "Taxable gross receipts" means gross receipts situated 3291
to this state under section 5751.033 of the Revised Code. 3292

(H) A person has "substantial nexus with this state" if 3293
any of the following applies. The person: 3294

(1) Owns or uses a part or all of its capital in this 3295
state; 3296

(2) Holds a certificate of compliance with the laws of 3297
this state authorizing the person to do business in this state; 3298

(3) Has bright-line presence in this state; 3299

(4) Otherwise has nexus with this state to an extent that 3300
the person can be required to remit the tax imposed under this 3301
chapter under the Constitution of the United States. 3302

(I) A person has "bright-line presence" in this state for 3303
a reporting period and for the remaining portion of the calendar 3304
year if any of the following applies. The person: 3305

(1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars. For the purpose of division (I) (1) of this section, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(2) Has during the calendar year payroll in this state of at least fifty thousand dollars. Payroll in this state includes all of the following:

(a) Any amount subject to withholding by the person under section 5747.06 of the Revised Code;

(b) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and

(c) Any amount the person pays for services performed in this state on its behalf by another.

(3) Has during the calendar year taxable gross receipts of at least five hundred thousand dollars.

(4) Has at any time during the calendar year within this state at least twenty-five per cent of the person's total property, total payroll, or total gross receipts.

(5) Is domiciled in this state as an individual or for corporate, commercial, or other business purposes.

(J) "Tangible personal property" has the same meaning as in section 5739.01 of the Revised Code.

(K) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in this chapter that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the

United States relating to federal income taxes unless a 3334
different meaning is clearly required. Any reference in this 3335
chapter to the Internal Revenue Code includes other laws of the 3336
United States relating to federal income taxes. 3337

(L) "Calendar quarter" means a three-month period ending 3338
on the thirty-first day of March, the thirtieth day of June, the 3339
thirtieth day of September, or the thirty-first day of December. 3340

(M) "Tax period" means the calendar quarter or calendar 3341
year on the basis of which a taxpayer is required to pay the tax 3342
imposed under this chapter. 3343

(N) "Calendar year taxpayer" means a taxpayer for which 3344
the tax period is a calendar year. 3345

(O) "Calendar quarter taxpayer" means a taxpayer for which 3346
the tax period is a calendar quarter. 3347

(P) "Agent" means a person authorized by another person to 3348
act on its behalf to undertake a transaction for the other, 3349
including any of the following: 3350

(1) A person receiving a fee to sell financial 3351
instruments; 3352

(2) A person retaining only a commission from a 3353
transaction with the other proceeds from the transaction being 3354
remitted to another person; 3355

(3) A person issuing licenses and permits under section 3356
1533.13 of the Revised Code; 3357

(4) A lottery sales agent holding a valid license issued 3358
under section 3770.05 of the Revised Code; 3359

(5) A person acting as an agent of the division of liquor 3360

control under section 4301.17 of the Revised Code. 3361

(Q) "Received" includes amounts accrued under the accrual 3362
method of accounting. 3363

(R) "Reporting person" means a person in a consolidated 3364
elected taxpayer or combined taxpayer group that is designated 3365
by that group to legally bind the group for all filings and tax 3366
liabilities and to receive all legal notices with respect to 3367
matters under this chapter, or, for the purposes of section 3368
5751.04 of the Revised Code, a separate taxpayer that is not a 3369
member of such a group. 3370

Section 2. That existing sections 150.03, 322.02, 5739.02, 3371
5739.03, 5747.01, and 5751.01 of the Revised Code are hereby 3372
repealed. 3373

Section 3. By June 30, 2016, the Director of Budget and 3374
Management shall transfer \$100,000,000 cash from the General 3375
Revenue Fund to the Program Fund created under section 150.03 of 3376
the Revised Code. The transferred amount shall be used in the 3377
same manner as Program Fund revenue received under Chapter 150. 3378
of the Revised Code, for the purposes described in division (B) 3379
of section 150.01 of the Revised Code, and is hereby 3380
appropriated by the General Assembly. 3381