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Representatives Vitale, Crawley

Cosponsors: Representatives Antani, Becker, Boggs, DeVitis, Hambley, Hicks-Hudson, Hood, Jones, Jordan, Keller, Lang, Manning, G., Miller, A., Miller, J., Perales, Riedel, Russo, Upchurch, Weinstein, Zeltwanger, Schaffer, Rogers, Sobecki, Arndt, Baldrige, Blessing, Boyd, Brent, Brown, Butler, Callender, Carfagna, Carruthers, Cera, Clites, Cross, Crossman, Cupp, Dean, Denson, Edwards, Galonski, Ghanbari, Ginter, Green, Greenspan, Hillyer, Holmes, A., Holmes, G., Hoops, Howse, Ingram, Kelly, Kent, Kick, Koehler, Lanese, Leland, Lepore-Hagan, Lightbody, Lipps, Liston, Manning, D., McClain, Merrin, Miranda, O'Brien, Oelslager, Patterson, Plummer, Powell, Reineke, Richardson, Robinson, Roemer, Romanchuk, Ryan, Scherer, Seitz, Sheehy, Skindell, Smith, K., Smith, R., Smith, T., Stein, Stoltzfus, Strahorn, Sweeney, Sykes, West, Wiggam, Wilkin

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A BILL

To amend sections 5747.01 and 5747.10 of the 1
Revised Code to exempt from the income tax 2
disability severance payments received by 3
honorably discharged veterans. 4

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

Section 1. That sections 5747.01 and 5747.10 of the 5
Revised Code be amended to read as follows: 6

Sec. 5747.01. Except as otherwise expressly provided or 7
clearly appearing from the context, any term used in this 8

chapter that is not otherwise defined in this section has the 9
same meaning as when used in a comparable context in the laws of 10
the United States relating to federal income taxes or if not 11
used in a comparable context in those laws, has the same meaning 12
as in section 5733.40 of the Revised Code. Any reference in this 13
chapter to the Internal Revenue Code includes other laws of the 14
United States relating to federal income taxes. 15

As used in this chapter: 16

(A) "Adjusted gross income" or "Ohio adjusted gross 17
income" means federal adjusted gross income, as defined and used 18
in the Internal Revenue Code, adjusted as provided in this 19
section: 20

(1) Add interest or dividends on obligations or securities 21
of any state or of any political subdivision or authority of any 22
state, other than this state and its subdivisions and 23
authorities. 24

(2) Add interest or dividends on obligations of any 25
authority, commission, instrumentality, territory, or possession 26
of the United States to the extent that the interest or 27
dividends are exempt from federal income taxes but not from 28
state income taxes. 29

(3) Deduct interest or dividends on obligations of the 30
United States and its territories and possessions or of any 31
authority, commission, or instrumentality of the United States 32
to the extent that the interest or dividends are included in 33
federal adjusted gross income but exempt from state income taxes 34
under the laws of the United States. 35

(4) Deduct disability and survivor's benefits to the 36
extent included in federal adjusted gross income. 37

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

(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter. "Undistributed net income of a trust" means the taxable income of the trust increased by (a) (i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b) (i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by reason of a prior accumulation distribution. Any undistributed net income included in the adjusted gross income of a beneficiary shall reduce the undistributed net income of the trust commencing with the earliest years of the accumulation period.

(7) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross income for the taxable year, had the targeted jobs credit

allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

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

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

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

(11) (a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division (A) (11) (a) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to, benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division (A) (11) (a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of the plan's cost. The deduction allowed under division (A) (11) (a)

of this section shall be the net of any related premium refunds, 99
related premium reimbursements, or related insurance premium 100
dividends received during the taxable year. 101

(b) Deduct, to the extent not otherwise deducted or 102
excluded in computing federal or Ohio adjusted gross income 103
during the taxable year, the amount the taxpayer paid during the 104
taxable year, not compensated for by any insurance or otherwise, 105
for medical care of the taxpayer, the taxpayer's spouse, and 106
dependents, to the extent the expenses exceed seven and one-half 107
per cent of the taxpayer's federal adjusted gross income. 108

(c) Deduct, to the extent not otherwise deducted or 109
excluded in computing federal or Ohio adjusted gross income, any 110
amount included in federal adjusted gross income under section 111
105 or not excluded under section 106 of the Internal Revenue 112
Code solely because it relates to an accident and health plan 113
for a person who otherwise would be a "qualifying relative" and 114
thus a "dependent" under section 152 of the Internal Revenue 115
Code but for the fact that the person fails to meet the income 116
and support limitations under section 152(d)(1)(B) and (C) of 117
the Internal Revenue Code. 118

(d) For purposes of division (A)(11) of this section, 119
"medical care" has the meaning given in section 213 of the 120
Internal Revenue Code, subject to the special rules, 121
limitations, and exclusions set forth therein, and "qualified 122
long-term care" has the same meaning given in section 7702B(c) 123
of the Internal Revenue Code. Solely for purposes of divisions 124
(A)(11)(a) and (c) of this section, "dependent" includes a 125
person who otherwise would be a "qualifying relative" and thus a 126
"dependent" under section 152 of the Internal Revenue Code but 127
for the fact that the person fails to meet the income and 128

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

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

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

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

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

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

(14) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the

taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division (A) (14) of this section does not apply to medical savings account deposits and earnings otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.

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

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

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

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

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

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

commissioner, the taxpayer shall provide any information that, 187
in the tax commissioner's opinion, is necessary to establish the 188
amount deducted under division (A) (17) of this section. 189

(18) Beginning in taxable year 2001 but not for any 190
taxable year beginning after December 31, 2005, if the taxpayer 191
is married and files a joint return and the combined federal 192
adjusted gross income of the taxpayer and the taxpayer's spouse 193
for the taxable year does not exceed one hundred thousand 194
dollars, or if the taxpayer is single and has a federal adjusted 195
gross income for the taxable year not exceeding fifty thousand 196
dollars, deduct amounts paid during the taxable year for 197
qualified tuition and fees paid to an eligible institution for 198
the taxpayer, the taxpayer's spouse, or any dependent of the 199
taxpayer, who is a resident of this state and is enrolled in or 200
attending a program that culminates in a degree or diploma at an 201
eligible institution. The deduction may be claimed only to the 202
extent that qualified tuition and fees are not otherwise 203
deducted or excluded for any taxable year from federal or Ohio 204
adjusted gross income. The deduction may not be claimed for 205
educational expenses for which the taxpayer claims a credit 206
under section 5747.27 of the Revised Code. 207

(19) Add any reimbursement received during the taxable 208
year of any amount the taxpayer deducted under division (A) (18) 209
of this section in any previous taxable year to the extent the 210
amount is not otherwise included in Ohio adjusted gross income. 211

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 212
(v) of this section, add five-sixths of the amount of 213
depreciation expense allowed by subsection (k) of section 168 of 214
the Internal Revenue Code, including the taxpayer's 215
proportionate or distributive share of the amount of 216

depreciation expense allowed by that subsection to a pass- 217
through entity in which the taxpayer has a direct or indirect 218
ownership interest. 219

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 220
of this section, add five-sixths of the amount of qualifying 221
section 179 depreciation expense, including the taxpayer's 222
proportionate or distributive share of the amount of qualifying 223
section 179 depreciation expense allowed to any pass-through 224
entity in which the taxpayer has a direct or indirect ownership 225
interest. 226

(iii) Subject to division (A) (20) (a) (v) of this section, 227
for taxable years beginning in 2012 or thereafter, if the 228
increase in income taxes withheld by the taxpayer is equal to or 229
greater than ten per cent of income taxes withheld by the 230
taxpayer during the taxpayer's immediately preceding taxable 231
year, "two-thirds" shall be substituted for "five-sixths" for 232
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 233

(iv) Subject to division (A) (20) (a) (v) of this section, 234
for taxable years beginning in 2012 or thereafter, a taxpayer is 235
not required to add an amount under division (A) (20) of this 236
section if the increase in income taxes withheld by the taxpayer 237
and by any pass-through entity in which the taxpayer has a 238
direct or indirect ownership interest is equal to or greater 239
than the sum of (I) the amount of qualifying section 179 240
depreciation expense and (II) the amount of depreciation expense 241
allowed to the taxpayer by subsection (k) of section 168 of the 242
Internal Revenue Code, and including the taxpayer's 243
proportionate or distributive shares of such amounts allowed to 244
any such pass-through entities. 245

(v) If a taxpayer directly or indirectly incurs a net 246

operating loss for the taxable year for federal income tax 247
purposes, to the extent such loss resulted from depreciation 248
expense allowed by subsection (k) of section 168 of the Internal 249
Revenue Code and by qualifying section 179 depreciation expense, 250
"the entire" shall be substituted for "five-sixths of the" for 251
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 252

The tax commissioner, under procedures established by the 253
commissioner, may waive the add-backs related to a pass-through 254
entity if the taxpayer owns, directly or indirectly, less than 255
five per cent of the pass-through entity. 256

(b) Nothing in division (A) (20) of this section shall be 257
construed to adjust or modify the adjusted basis of any asset. 258

(c) To the extent the add-back required under division (A) 259
(20) (a) of this section is attributable to property generating 260
nonbusiness income or loss allocated under section 5747.20 of 261
the Revised Code, the add-back shall be situated to the same 262
location as the nonbusiness income or loss generated by the 263
property for the purpose of determining the credit under 264
division (A) of section 5747.05 of the Revised Code. Otherwise, 265
the add-back shall be apportioned, subject to one or more of the 266
four alternative methods of apportionment enumerated in section 267
5747.21 of the Revised Code. 268

(d) For the purposes of division (A) (20) (a) (v) of this 269
section, net operating loss carryback and carryforward shall not 270
include the allowance of any net operating loss deduction 271
carryback or carryforward to the taxable year to the extent such 272
loss resulted from depreciation allowed by section 168(k) of the 273
Internal Revenue Code and by the qualifying section 179 274
depreciation expense amount. 275

(e) For the purposes of divisions (A) (20) and (21) of this section:	276 277
(i) "Income taxes withheld" means the total amount withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year.	278 279 280
(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year.	281 282 283 284 285
(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to a taxpayer under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.	286 287 288 289 290 291 292
(21) (a) If the taxpayer was required to add an amount under division (A) (20) (a) of this section for a taxable year, deduct one of the following:	293 294 295
(i) One-fifth of the amount so added for each of the five succeeding taxable years if the amount so added was five-sixths of qualifying section 179 depreciation expense or depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code;	296 297 298 299 300
(ii) One-half of the amount so added for each of the two succeeding taxable years if the amount so added was two-thirds of such depreciation expense;	301 302 303
(iii) One-sixth of the amount so added for each of the six	304

succeeding taxable years if the entire amount of such 305
depreciation expense was so added. 306

(b) If the amount deducted under division (A) (21) (a) of 307
this section is attributable to an add-back allocated under 308
division (A) (20) (c) of this section, the amount deducted shall 309
be situated to the same location. Otherwise, the add-back shall 310
be apportioned using the apportionment factors for the taxable 311
year in which the deduction is taken, subject to one or more of 312
the four alternative methods of apportionment enumerated in 313
section 5747.21 of the Revised Code. 314

(c) No deduction is available under division (A) (21) (a) of 315
this section with regard to any depreciation allowed by section 316
168(k) of the Internal Revenue Code and by the qualifying 317
section 179 depreciation expense amount to the extent that such 318
depreciation results in or increases a federal net operating 319
loss carryback or carryforward. If no such deduction is 320
available for a taxable year, the taxpayer may carry forward the 321
amount not deducted in such taxable year to the next taxable 322
year and add that amount to any deduction otherwise available 323
under division (A) (21) (a) of this section for that next taxable 324
year. The carryforward of amounts not so deducted shall continue 325
until the entire addition required by division (A) (20) (a) of 326
this section has been deducted. 327

(d) No refund shall be allowed as a result of adjustments 328
made by division (A) (21) of this section. 329

(22) Deduct, to the extent not otherwise deducted or 330
excluded in computing federal or Ohio adjusted gross income for 331
the taxable year, the amount the taxpayer received during the 332
taxable year as reimbursement for life insurance premiums under 333
section 5919.31 of the Revised Code. 334

(23) Deduct, to the extent not otherwise deducted or 335
excluded in computing federal or Ohio adjusted gross income for 336
the taxable year, the amount the taxpayer received during the 337
taxable year as a death benefit paid by the adjutant general 338
under section 5919.33 of the Revised Code. 339

(24) Deduct, to the extent included in federal adjusted 340
gross income and not otherwise allowable as a deduction or 341
exclusion in computing federal or Ohio adjusted gross income for 342
the taxable year, military pay and allowances received by the 343
taxpayer during the taxable year for active duty service in the 344
United States army, air force, navy, marine corps, or coast 345
guard or reserve components thereof or the national guard. The 346
deduction may not be claimed for military pay and allowances 347
received by the taxpayer while the taxpayer is stationed in this 348
state. 349

(25) Deduct, to the extent not otherwise allowable as a 350
deduction or exclusion in computing federal or Ohio adjusted 351
gross income for the taxable year and not otherwise compensated 352
for by any other source, the amount of qualified organ donation 353
expenses incurred by the taxpayer during the taxable year, not 354
to exceed ten thousand dollars. A taxpayer may deduct qualified 355
organ donation expenses only once for all taxable years 356
beginning with taxable years beginning in 2007. 357

For the purposes of division (A) (25) of this section: 358

(a) "Human organ" means all or any portion of a human 359
liver, pancreas, kidney, intestine, or lung, and any portion of 360
human bone marrow. 361

(b) "Qualified organ donation expenses" means travel 362
expenses, lodging expenses, and wages and salary forgone by a 363

taxpayer in connection with the taxpayer's donation, while 364
living, of one or more of the taxpayer's human organs to another 365
human being. 366

(26) Deduct, to the extent not otherwise deducted or 367
excluded in computing federal or Ohio adjusted gross income for 368
the taxable year, amounts received by the taxpayer as retired 369
personnel pay for service in the uniformed services or reserve 370
components thereof, or the national guard, or received by the 371
surviving spouse or former spouse of such a taxpayer under the 372
survivor benefit plan on account of such a taxpayer's death. If 373
the taxpayer receives income on account of retirement paid under 374
the federal civil service retirement system or federal employees 375
retirement system, or under any successor retirement program 376
enacted by the congress of the United States that is established 377
and maintained for retired employees of the United States 378
government, and such retirement income is based, in whole or in 379
part, on credit for the taxpayer's uniformed service, the 380
deduction allowed under this division shall include only that 381
portion of such retirement income that is attributable to the 382
taxpayer's uniformed service, to the extent that portion of such 383
retirement income is otherwise included in federal adjusted 384
gross income and is not otherwise deducted under this section. 385
Any amount deducted under division (A) (26) of this section is 386
not included in a taxpayer's adjusted gross income for the 387
purposes of section 5747.055 of the Revised Code. No amount may 388
be deducted under division (A) (26) of this section on the basis 389
of which a credit was claimed under section 5747.055 of the 390
Revised Code. 391

(27) Deduct, to the extent not otherwise deducted or 392
excluded in computing federal or Ohio adjusted gross income for 393
the taxable year, the amount the taxpayer received during the 394

taxable year from the military injury relief fund created in 395
section 5902.05 of the Revised Code. 396

(28) Deduct, to the extent not otherwise deducted or 397
excluded in computing federal or Ohio adjusted gross income for 398
the taxable year, the amount the taxpayer received as a veterans 399
bonus during the taxable year from the Ohio department of 400
veterans services as authorized by Section 2r of Article VIII, 401
Ohio Constitution. 402

(29) Deduct, to the extent not otherwise deducted or 403
excluded in computing federal or Ohio adjusted gross income for 404
the taxable year, any income derived from a transfer agreement 405
or from the enterprise transferred under that agreement under 406
section 4313.02 of the Revised Code. 407

(30) Deduct, to the extent not otherwise deducted or 408
excluded in computing federal or Ohio adjusted gross income for 409
the taxable year, Ohio college opportunity or federal Pell grant 410
amounts received by the taxpayer or the taxpayer's spouse or 411
dependent pursuant to section 3333.122 of the Revised Code or 20 412
U.S.C. 1070a, et seq., and used to pay room or board furnished 413
by the educational institution for which the grant was awarded 414
at the institution's facilities, including meal plans 415
administered by the institution. For the purposes of this 416
division, receipt of a grant includes the distribution of a 417
grant directly to an educational institution and the crediting 418
of the grant to the enrollee's account with the institution. 419

(31) Deduct from the portion of an individual's federal 420
adjusted gross income that is eligible business income, to the 421
extent not otherwise deducted or excluded in computing federal 422
adjusted gross income for the taxable year, one hundred twenty- 423
five thousand dollars for each spouse if spouses file separate 424

returns under section 5747.08 of the Revised Code or two hundred 425
fifty thousand dollars for all other individuals. 426

(32) Deduct, as provided under section 5747.78 of the 427
Revised Code, contributions to ABLE savings accounts made in 428
accordance with sections 113.50 to 113.56 of the Revised Code. 429

(33) (a) Deduct, to the extent not otherwise deducted or 430
excluded in computing federal or Ohio adjusted gross income 431
during the taxable year, all of the following: 432

(i) Compensation paid to a qualifying employee described 433
in division (A) (14) (a) of section 5703.94 of the Revised Code to 434
the extent such compensation is for disaster work conducted in 435
this state during a disaster response period pursuant to a 436
qualifying solicitation received by the employee's employer; 437

(ii) Compensation paid to a qualifying employee described 438
in division (A) (14) (b) of section 5703.94 of the Revised Code to 439
the extent such compensation is for disaster work conducted in 440
this state by the employee during the disaster response period 441
on critical infrastructure owned or used by the employee's 442
employer; 443

(iii) Income received by an out-of-state disaster business 444
for disaster work conducted in this state during a disaster 445
response period, or, if the out-of-state disaster business is a 446
pass-through entity, a taxpayer's distributive share of the 447
pass-through entity's income from the business conducting 448
disaster work in this state during a disaster response period, 449
if, in either case, the disaster work is conducted pursuant to a 450
qualifying solicitation received by the business. 451

(b) All terms used in division (A) (33) of this section 452
have the same meanings as in section 5703.94 of the Revised 453

Code.	454
<u>(34) Deduct, to the extent not otherwise deducted or</u>	455
<u>excluded in computing federal or Ohio adjusted gross income for</u>	456
<u>the taxable year, amounts received by the taxpayer as a</u>	457
<u>disability severance payment, computed under 10 U.S.C. 1212,</u>	458
<u>following discharge or release under honorable conditions from</u>	459
<u>the armed forces, as defined by 10 U.S.C. 101.</u>	460
(B)(1) "Business income" means income, including gain or	461
loss, arising from transactions, activities, and sources in the	462
regular course of a trade or business and includes income, gain,	463
or loss from real property, tangible property, and intangible	464
property if the acquisition, rental, management, and disposition	465
of the property constitute integral parts of the regular course	466
of a trade or business operation. "Business income" includes	467
income, including gain or loss, from a partial or complete	468
liquidation of a business, including, but not limited to, gain	469
or loss from the sale or other disposition of goodwill.	470
(2) "Eligible business income" means business income	471
excluding income from a trade or business that performs either	472
or both of the following:	473
(a) Legal services provided by an active attorney admitted	474
to the practice of law in this state or by an attorney	475
registered for corporate counsel status under section 6 of rule	476
VI of the Ohio supreme court rules for the government of the bar	477
of Ohio;	478
(b) Executive agency lobbying activity, retirement system	479
lobbying activity, or actively advocating by a person required	480
to register with the joint legislative ethics committee under	481
section 101.78, 101.92, or 121.62 of the Revised Code. Terms	482

used in division (B) (2) of this section have the same meaning as 483
in section 101.70, 101.92, or 121.60 of the Revised Code. 484

(C) "Nonbusiness income" means all income other than 485
business income and may include, but is not limited to, 486
compensation, rents and royalties from real or tangible personal 487
property, capital gains, interest, dividends and distributions, 488
patent or copyright royalties, or lottery winnings, prizes, and 489
awards. 490

(D) "Compensation" means any form of remuneration paid to 491
an employee for personal services. 492

(E) "Fiduciary" means a guardian, trustee, executor, 493
administrator, receiver, conservator, or any other person acting 494
in any fiduciary capacity for any individual, trust, or estate. 495

(F) "Fiscal year" means an accounting period of twelve 496
months ending on the last day of any month other than December. 497

(G) "Individual" means any natural person. 498

(H) "Internal Revenue Code" means the "Internal Revenue 499
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 500

(I) "Resident" means any of the following, provided that 501
division (I) (3) of this section applies only to taxable years of 502
a trust beginning in 2002 or thereafter: 503

(1) An individual who is domiciled in this state, subject 504
to section 5747.24 of the Revised Code; 505

(2) The estate of a decedent who at the time of death was 506
domiciled in this state. The domicile tests of section 5747.24 507
of the Revised Code are not controlling for purposes of division 508
(I) (2) of this section. 509

(3) A trust that, in whole or part, resides in this state. 510
If only part of a trust resides in this state, the trust is a 511
resident only with respect to that part. 512

For the purposes of division (I)(3) of this section: 513

(a) A trust resides in this state for the trust's current 514
taxable year to the extent, as described in division (I)(3)(d) 515
of this section, that the trust consists directly or indirectly, 516
in whole or in part, of assets, net of any related liabilities, 517
that were transferred, or caused to be transferred, directly or 518
indirectly, to the trust by any of the following: 519

(i) A person, a court, or a governmental entity or 520
instrumentality on account of the death of a decedent, but only 521
if the trust is described in division (I)(3)(e)(i) or (ii) of 522
this section; 523

(ii) A person who was domiciled in this state for the 524
purposes of this chapter when the person directly or indirectly 525
transferred assets to an irrevocable trust, but only if at least 526
one of the trust's qualifying beneficiaries is domiciled in this 527
state for the purposes of this chapter during all or some 528
portion of the trust's current taxable year; 529

(iii) A person who was domiciled in this state for the 530
purposes of this chapter when the trust document or instrument 531
or part of the trust document or instrument became irrevocable, 532
but only if at least one of the trust's qualifying beneficiaries 533
is a resident domiciled in this state for the purposes of this 534
chapter during all or some portion of the trust's current 535
taxable year. If a trust document or instrument became 536
irrevocable upon the death of a person who at the time of death 537
was domiciled in this state for purposes of this chapter, that 538

person is a person described in division (I) (3) (a) (iii) of this section. 539
540

(b) A trust is irrevocable to the extent that the 541
transferor is not considered to be the owner of the net assets 542
of the trust under sections 671 to 678 of the Internal Revenue 543
Code. 544

(c) With respect to a trust other than a charitable lead 545
trust, "qualifying beneficiary" has the same meaning as 546
"potential current beneficiary" as defined in section 1361(e) (2) 547
of the Internal Revenue Code, and with respect to a charitable 548
lead trust "qualifying beneficiary" is any current, future, or 549
contingent beneficiary, but with respect to any trust 550
"qualifying beneficiary" excludes a person or a governmental 551
entity or instrumentality to any of which a contribution would 552
qualify for the charitable deduction under section 170 of the 553
Internal Revenue Code. 554

(d) For the purposes of division (I) (3) (a) of this 555
section, the extent to which a trust consists directly or 556
indirectly, in whole or in part, of assets, net of any related 557
liabilities, that were transferred directly or indirectly, in 558
whole or part, to the trust by any of the sources enumerated in 559
that division shall be ascertained by multiplying the fair 560
market value of the trust's assets, net of related liabilities, 561
by the qualifying ratio, which shall be computed as follows: 562

(i) The first time the trust receives assets, the 563
numerator of the qualifying ratio is the fair market value of 564
those assets at that time, net of any related liabilities, from 565
sources enumerated in division (I) (3) (a) of this section. The 566
denominator of the qualifying ratio is the fair market value of 567
all the trust's assets at that time, net of any related 568

liabilities.	569
(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the qualifying ratio last computed without regard to the subsequent transfer, and (2) the fair market value of the subsequently transferred assets at the time transferred, net of any related liabilities, from sources enumerated in division (I) (3) (a) of this section. The denominator of the revised qualifying ratio is the fair market value of all the trust's assets immediately after the subsequent transfer, net of any related liabilities.	570 571 572 573 574 575 576 577 578 579 580 581
(iii) Whether a transfer to the trust is by or from any of the sources enumerated in division (I) (3) (a) of this section shall be ascertained without regard to the domicile of the trust's beneficiaries.	582 583 584 585
(e) For the purposes of division (I) (3) (a) (i) of this section:	586 587
(i) A trust is described in division (I) (3) (e) (i) of this section if the trust is a testamentary trust and the testator of that testamentary trust was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.	588 589 590 591 592
(ii) A trust is described in division (I) (3) (e) (ii) of this section if the transfer is a qualifying transfer described in any of divisions (I) (3) (f) (i) to (vi) of this section, the trust is an irrevocable inter vivos trust, and at least one of the trust's qualifying beneficiaries is domiciled in this state	593 594 595 596 597

for purposes of this chapter during all or some portion of the 598
trust's current taxable year. 599

(f) For the purposes of division (I) (3) (e) (ii) of this 600
section, a "qualifying transfer" is a transfer of assets, net of 601
any related liabilities, directly or indirectly to a trust, if 602
the transfer is described in any of the following: 603

(i) The transfer is made to a trust, created by the 604
decedent before the decedent's death and while the decedent was 605
domiciled in this state for the purposes of this chapter, and, 606
prior to the death of the decedent, the trust became irrevocable 607
while the decedent was domiciled in this state for the purposes 608
of this chapter. 609

(ii) The transfer is made to a trust to which the 610
decedent, prior to the decedent's death, had directly or 611
indirectly transferred assets, net of any related liabilities, 612
while the decedent was domiciled in this state for the purposes 613
of this chapter, and prior to the death of the decedent the 614
trust became irrevocable while the decedent was domiciled in 615
this state for the purposes of this chapter. 616

(iii) The transfer is made on account of a contractual 617
relationship existing directly or indirectly between the 618
transferor and either the decedent or the estate of the decedent 619
at any time prior to the date of the decedent's death, and the 620
decedent was domiciled in this state at the time of death for 621
purposes of the taxes levied under Chapter 5731. of the Revised 622
Code. 623

(iv) The transfer is made to a trust on account of a 624
contractual relationship existing directly or indirectly between 625
the transferor and another person who at the time of the 626

decedent's death was domiciled in this state for purposes of 627
this chapter. 628

(v) The transfer is made to a trust on account of the will 629
of a testator who was domiciled in this state at the time of the 630
testator's death for purposes of the taxes levied under Chapter 631
5731. of the Revised Code. 632

(vi) The transfer is made to a trust created by or caused 633
to be created by a court, and the trust was directly or 634
indirectly created in connection with or as a result of the 635
death of an individual who, for purposes of the taxes levied 636
under Chapter 5731. of the Revised Code, was domiciled in this 637
state at the time of the individual's death. 638

(g) The tax commissioner may adopt rules to ascertain the 639
part of a trust residing in this state. 640

(J) "Nonresident" means an individual or estate that is 641
not a resident. An individual who is a resident for only part of 642
a taxable year is a nonresident for the remainder of that 643
taxable year. 644

(K) "Pass-through entity" has the same meaning as in 645
section 5733.04 of the Revised Code. 646

(L) "Return" means the notifications and reports required 647
to be filed pursuant to this chapter for the purpose of 648
reporting the tax due and includes declarations of estimated tax 649
when so required. 650

(M) "Taxable year" means the calendar year or the 651
taxpayer's fiscal year ending during the calendar year, or 652
fractional part thereof, upon which the adjusted gross income is 653
calculated pursuant to this chapter. 654

(N) "Taxpayer" means any person subject to the tax imposed 655
by section 5747.02 of the Revised Code or any pass-through 656
entity that makes the election under division (D) of section 657
5747.08 of the Revised Code. 658

(O) "Dependents" means one of the following: 659

(1) For taxable years beginning on or after January 1, 660
2018, and before January 1, 2026, dependents as defined in the 661
Internal Revenue Code; 662

(2) For all other taxable years, dependents as defined in 663
the Internal Revenue Code and as claimed in the taxpayer's 664
federal income tax return for the taxable year or which the 665
taxpayer would have been permitted to claim had the taxpayer 666
filed a federal income tax return. 667

(P) "Principal county of employment" means, in the case of 668
a nonresident, the county within the state in which a taxpayer 669
performs services for an employer or, if those services are 670
performed in more than one county, the county in which the major 671
portion of the services are performed. 672

(Q) As used in sections 5747.50 to 5747.55 of the Revised 673
Code: 674

(1) "Subdivision" means any county, municipal corporation, 675
park district, or township. 676

(2) "Essential local government purposes" includes all 677
functions that any subdivision is required by general law to 678
exercise, including like functions that are exercised under a 679
charter adopted pursuant to the Ohio Constitution. 680

(R) "Overpayment" means any amount already paid that 681
exceeds the figure determined to be the correct amount of the 682

tax. 683

(S) "Taxable income" or "Ohio taxable income" applies only 684
to estates and trusts, and means federal taxable income, as 685
defined and used in the Internal Revenue Code, adjusted as 686
follows: 687

(1) Add interest or dividends, net of ordinary, necessary, 688
and reasonable expenses not deducted in computing federal 689
taxable income, on obligations or securities of any state or of 690
any political subdivision or authority of any state, other than 691
this state and its subdivisions and authorities, but only to the 692
extent that such net amount is not otherwise includible in Ohio 693
taxable income and is described in either division (S) (1) (a) or 694
(b) of this section: 695

(a) The net amount is not attributable to the S portion of 696
an electing small business trust and has not been distributed to 697
beneficiaries for the taxable year; 698

(b) The net amount is attributable to the S portion of an 699
electing small business trust for the taxable year. 700

(2) Add interest or dividends, net of ordinary, necessary, 701
and reasonable expenses not deducted in computing federal 702
taxable income, on obligations of any authority, commission, 703
instrumentality, territory, or possession of the United States 704
to the extent that the interest or dividends are exempt from 705
federal income taxes but not from state income taxes, but only 706
to the extent that such net amount is not otherwise includible 707
in Ohio taxable income and is described in either division (S) 708
(1) (a) or (b) of this section; 709

(3) Add the amount of personal exemption allowed to the 710
estate pursuant to section 642(b) of the Internal Revenue Code; 711

(4) Deduct interest or dividends, net of related expenses 712
deducted in computing federal taxable income, on obligations of 713
the United States and its territories and possessions or of any 714
authority, commission, or instrumentality of the United States 715
to the extent that the interest or dividends are exempt from 716
state taxes under the laws of the United States, but only to the 717
extent that such amount is included in federal taxable income 718
and is described in either division (S) (1) (a) or (b) of this 719
section; 720

(5) Deduct the amount of wages and salaries, if any, not 721
otherwise allowable as a deduction but that would have been 722
allowable as a deduction in computing federal taxable income for 723
the taxable year, had the targeted jobs credit allowed under 724
sections 38, 51, and 52 of the Internal Revenue Code not been in 725
effect, but only to the extent such amount relates either to 726
income included in federal taxable income for the taxable year 727
or to income of the S portion of an electing small business 728
trust for the taxable year; 729

(6) Deduct any interest or interest equivalent, net of 730
related expenses deducted in computing federal taxable income, 731
on public obligations and purchase obligations, but only to the 732
extent that such net amount relates either to income included in 733
federal taxable income for the taxable year or to income of the 734
S portion of an electing small business trust for the taxable 735
year; 736

(7) Add any loss or deduct any gain resulting from sale, 737
exchange, or other disposition of public obligations to the 738
extent that such loss has been deducted or such gain has been 739
included in computing either federal taxable income or income of 740
the S portion of an electing small business trust for the 741

taxable year;	742
(8) Except in the case of the final return of an estate,	743
add any amount deducted by the taxpayer on both its Ohio estate	744
tax return pursuant to section 5731.14 of the Revised Code, and	745
on its federal income tax return in determining federal taxable	746
income;	747
(9) (a) Deduct any amount included in federal taxable	748
income solely because the amount represents a reimbursement or	749
refund of expenses that in a previous year the decedent had	750
deducted as an itemized deduction pursuant to section 63 of the	751
Internal Revenue Code and applicable treasury regulations. The	752
deduction otherwise allowed under division (S) (9) (a) of this	753
section shall be reduced to the extent the reimbursement is	754
attributable to an amount the taxpayer or decedent deducted	755
under this section in any taxable year.	756
(b) Add any amount not otherwise included in Ohio taxable	757
income for any taxable year to the extent that the amount is	758
attributable to the recovery during the taxable year of any	759
amount deducted or excluded in computing federal or Ohio taxable	760
income in any taxable year, but only to the extent such amount	761
has not been distributed to beneficiaries for the taxable year.	762
(10) Deduct any portion of the deduction described in	763
section 1341(a) (2) of the Internal Revenue Code, for repaying	764
previously reported income received under a claim of right, that	765
meets both of the following requirements:	766
(a) It is allowable for repayment of an item that was	767
included in the taxpayer's taxable income or the decedent's	768
adjusted gross income for a prior taxable year and did not	769
qualify for a credit under division (A) or (B) of section	770

5747.05 of the Revised Code for that year. 771

(b) It does not otherwise reduce the taxpayer's taxable 772
income or the decedent's adjusted gross income for the current 773
or any other taxable year. 774

(11) Add any amount claimed as a credit under section 775
5747.059 of the Revised Code to the extent that the amount 776
satisfies either of the following: 777

(a) The amount was deducted or excluded from the 778
computation of the taxpayer's federal taxable income as required 779
to be reported for the taxpayer's taxable year under the 780
Internal Revenue Code; 781

(b) The amount resulted in a reduction in the taxpayer's 782
federal taxable income as required to be reported for any of the 783
taxpayer's taxable years under the Internal Revenue Code. 784

(12) Deduct any amount, net of related expenses deducted 785
in computing federal taxable income, that a trust is required to 786
report as farm income on its federal income tax return, but only 787
if the assets of the trust include at least ten acres of land 788
satisfying the definition of "land devoted exclusively to 789
agricultural use" under section 5713.30 of the Revised Code, 790
regardless of whether the land is valued for tax purposes as 791
such land under sections 5713.30 to 5713.38 of the Revised Code. 792
If the trust is a pass-through entity investor, section 5747.231 793
of the Revised Code applies in ascertaining if the trust is 794
eligible to claim the deduction provided by division (S)(12) of 795
this section in connection with the pass-through entity's farm 796
income. 797

Except for farm income attributable to the S portion of an 798
electing small business trust, the deduction provided by 799

division (S) (12) of this section is allowed only to the extent 800
that the trust has not distributed such farm income. Division 801
(S) (12) of this section applies only to taxable years of a trust 802
beginning in 2002 or thereafter. 803

(13) Add the net amount of income described in section 804
641(c) of the Internal Revenue Code to the extent that amount is 805
not included in federal taxable income. 806

(14) Add or deduct the amount the taxpayer would be 807
required to add or deduct under division (A) (20) or (21) of this 808
section if the taxpayer's Ohio taxable income were computed in 809
the same manner as an individual's Ohio adjusted gross income is 810
computed under this section. In the case of a trust, division 811
(S) (14) of this section applies only to any of the trust's 812
taxable years beginning in 2002 or thereafter. 813

(T) "School district income" and "school district income 814
tax" have the same meanings as in section 5748.01 of the Revised 815
Code. 816

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 817
(7) of this section, "public obligations," "purchase 818
obligations," and "interest or interest equivalent" have the 819
same meanings as in section 5709.76 of the Revised Code. 820

(V) "Limited liability company" means any limited 821
liability company formed under Chapter 1705. of the Revised Code 822
or under the laws of any other state. 823

(W) "Pass-through entity investor" means any person who, 824
during any portion of a taxable year of a pass-through entity, 825
is a partner, member, shareholder, or equity investor in that 826
pass-through entity. 827

(X) "Banking day" has the same meaning as in section 828

1304.01 of the Revised Code.	829
(Y) "Month" means a calendar month.	830
(Z) "Quarter" means the first three months, the second	831
three months, the third three months, or the last three months	832
of the taxpayer's taxable year.	833
(AA) (1) "Eligible institution" means a state university or	834
state institution of higher education as defined in section	835
3345.011 of the Revised Code, or a private, nonprofit college,	836
university, or other post-secondary institution located in this	837
state that possesses a certificate of authorization issued by	838
the chancellor of higher education pursuant to Chapter 1713. of	839
the Revised Code or a certificate of registration issued by the	840
state board of career colleges and schools under Chapter 3332.	841
of the Revised Code.	842
(2) "Qualified tuition and fees" means tuition and fees	843
imposed by an eligible institution as a condition of enrollment	844
or attendance, not exceeding two thousand five hundred dollars	845
in each of the individual's first two years of post-secondary	846
education. If the individual is a part-time student, "qualified	847
tuition and fees" includes tuition and fees paid for the	848
academic equivalent of the first two years of post-secondary	849
education during a maximum of five taxable years, not exceeding	850
a total of five thousand dollars. "Qualified tuition and fees"	851
does not include:	852
(a) Expenses for any course or activity involving sports,	853
games, or hobbies unless the course or activity is part of the	854
individual's degree or diploma program;	855
(b) The cost of books, room and board, student activity	856
fees, athletic fees, insurance expenses, or other expenses	857

unrelated to the individual's academic course of instruction; 858

(c) Tuition, fees, or other expenses paid or reimbursed 859
through an employer, scholarship, grant in aid, or other 860
educational benefit program. 861

(BB) (1) "Modified business income" means the business 862
income included in a trust's Ohio taxable income after such 863
taxable income is first reduced by the qualifying trust amount, 864
if any. 865

(2) "Qualifying trust amount" of a trust means capital 866
gains and losses from the sale, exchange, or other disposition 867
of equity or ownership interests in, or debt obligations of, a 868
qualifying investee to the extent included in the trust's Ohio 869
taxable income, but only if the following requirements are 870
satisfied: 871

(a) The book value of the qualifying investee's physical 872
assets in this state and everywhere, as of the last day of the 873
qualifying investee's fiscal or calendar year ending immediately 874
prior to the date on which the trust recognizes the gain or 875
loss, is available to the trust. 876

(b) The requirements of section 5747.011 of the Revised 877
Code are satisfied for the trust's taxable year in which the 878
trust recognizes the gain or loss. 879

Any gain or loss that is not a qualifying trust amount is 880
modified business income, qualifying investment income, or 881
modified nonbusiness income, as the case may be. 882

(3) "Modified nonbusiness income" means a trust's Ohio 883
taxable income other than modified business income, other than 884
the qualifying trust amount, and other than qualifying 885
investment income, as defined in section 5747.012 of the Revised 886

Code, to the extent such qualifying investment income is not 887
otherwise part of modified business income. 888

(4) "Modified Ohio taxable income" applies only to trusts, 889
and means the sum of the amounts described in divisions (BB) (4) 890
(a) to (c) of this section: 891

(a) The fraction, calculated under section 5747.013, and 892
applying section 5747.231 of the Revised Code, multiplied by the 893
sum of the following amounts: 894

(i) The trust's modified business income; 895

(ii) The trust's qualifying investment income, as defined 896
in section 5747.012 of the Revised Code, but only to the extent 897
the qualifying investment income does not otherwise constitute 898
modified business income and does not otherwise constitute a 899
qualifying trust amount. 900

(b) The qualifying trust amount multiplied by a fraction, 901
the numerator of which is the sum of the book value of the 902
qualifying investee's physical assets in this state on the last 903
day of the qualifying investee's fiscal or calendar year ending 904
immediately prior to the day on which the trust recognizes the 905
qualifying trust amount, and the denominator of which is the sum 906
of the book value of the qualifying investee's total physical 907
assets everywhere on the last day of the qualifying investee's 908
fiscal or calendar year ending immediately prior to the day on 909
which the trust recognizes the qualifying trust amount. If, for 910
a taxable year, the trust recognizes a qualifying trust amount 911
with respect to more than one qualifying investee, the amount 912
described in division (BB) (4) (b) of this section shall equal the 913
sum of the products so computed for each such qualifying 914
investee. 915

(c) (i) With respect to a trust or portion of a trust that 916
is a resident as ascertained in accordance with division (I) (3) 917
(d) of this section, its modified nonbusiness income. 918

(ii) With respect to a trust or portion of a trust that is 919
not a resident as ascertained in accordance with division (I) (3) 920
(d) of this section, the amount of its modified nonbusiness 921
income satisfying the descriptions in divisions (B) (2) to (5) of 922
section 5747.20 of the Revised Code, except as otherwise 923
provided in division (BB) (4) (c) (ii) of this section. With 924
respect to a trust or portion of a trust that is not a resident 925
as ascertained in accordance with division (I) (3) (d) of this 926
section, the trust's portion of modified nonbusiness income 927
recognized from the sale, exchange, or other disposition of a 928
debt interest in or equity interest in a section 5747.212 929
entity, as defined in section 5747.212 of the Revised Code, 930
without regard to division (A) of that section, shall not be 931
allocated to this state in accordance with section 5747.20 of 932
the Revised Code but shall be apportioned to this state in 933
accordance with division (B) of section 5747.212 of the Revised 934
Code without regard to division (A) of that section. 935

If the allocation and apportionment of a trust's income 936
under divisions (BB) (4) (a) and (c) of this section do not fairly 937
represent the modified Ohio taxable income of the trust in this 938
state, the alternative methods described in division (C) of 939
section 5747.21 of the Revised Code may be applied in the manner 940
and to the same extent provided in that section. 941

(5) (a) Except as set forth in division (BB) (5) (b) of this 942
section, "qualifying investee" means a person in which a trust 943
has an equity or ownership interest, or a person or unit of 944
government the debt obligations of either of which are owned by 945

a trust. For the purposes of division (BB) (2) (a) of this section 946
and for the purpose of computing the fraction described in 947
division (BB) (4) (b) of this section, all of the following apply: 948

(i) If the qualifying investee is a member of a qualifying 949
controlled group on the last day of the qualifying investee's 950
fiscal or calendar year ending immediately prior to the date on 951
which the trust recognizes the gain or loss, then "qualifying 952
investee" includes all persons in the qualifying controlled 953
group on such last day. 954

(ii) If the qualifying investee, or if the qualifying 955
investee and any members of the qualifying controlled group of 956
which the qualifying investee is a member on the last day of the 957
qualifying investee's fiscal or calendar year ending immediately 958
prior to the date on which the trust recognizes the gain or 959
loss, separately or cumulatively own, directly or indirectly, on 960
the last day of the qualifying investee's fiscal or calendar 961
year ending immediately prior to the date on which the trust 962
recognizes the qualifying trust amount, more than fifty per cent 963
of the equity of a pass-through entity, then the qualifying 964
investee and the other members are deemed to own the 965
proportionate share of the pass-through entity's physical assets 966
which the pass-through entity directly or indirectly owns on the 967
last day of the pass-through entity's calendar or fiscal year 968
ending within or with the last day of the qualifying investee's 969
fiscal or calendar year ending immediately prior to the date on 970
which the trust recognizes the qualifying trust amount. 971

(iii) For the purposes of division (BB) (5) (a) (iii) of this 972
section, "upper level pass-through entity" means a pass-through 973
entity directly or indirectly owning any equity of another pass- 974
through entity, and "lower level pass-through entity" means that 975

other pass-through entity. 976

An upper level pass-through entity, whether or not it is 977
also a qualifying investee, is deemed to own, on the last day of 978
the upper level pass-through entity's calendar or fiscal year, 979
the proportionate share of the lower level pass-through entity's 980
physical assets that the lower level pass-through entity 981
directly or indirectly owns on the last day of the lower level 982
pass-through entity's calendar or fiscal year ending within or 983
with the last day of the upper level pass-through entity's 984
fiscal or calendar year. If the upper level pass-through entity 985
directly and indirectly owns less than fifty per cent of the 986
equity of the lower level pass-through entity on each day of the 987
upper level pass-through entity's calendar or fiscal year in 988
which or with which ends the calendar or fiscal year of the 989
lower level pass-through entity and if, based upon clear and 990
convincing evidence, complete information about the location and 991
cost of the physical assets of the lower pass-through entity is 992
not available to the upper level pass-through entity, then 993
solely for purposes of ascertaining if a gain or loss 994
constitutes a qualifying trust amount, the upper level pass- 995
through entity shall be deemed as owning no equity of the lower 996
level pass-through entity for each day during the upper level 997
pass-through entity's calendar or fiscal year in which or with 998
which ends the lower level pass-through entity's calendar or 999
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 1000
shall be construed to provide for any deduction or exclusion in 1001
computing any trust's Ohio taxable income. 1002

(b) With respect to a trust that is not a resident for the 1003
taxable year and with respect to a part of a trust that is not a 1004
resident for the taxable year, "qualifying investee" for that 1005
taxable year does not include a C corporation if both of the 1006

following apply: 1007

(i) During the taxable year the trust or part of the trust 1008
recognizes a gain or loss from the sale, exchange, or other 1009
disposition of equity or ownership interests in, or debt 1010
obligations of, the C corporation. 1011

(ii) Such gain or loss constitutes nonbusiness income. 1012

(6) "Available" means information is such that a person is 1013
able to learn of the information by the due date plus 1014
extensions, if any, for filing the return for the taxable year 1015
in which the trust recognizes the gain or loss. 1016

(CC) "Qualifying controlled group" has the same meaning as 1017
in section 5733.04 of the Revised Code. 1018

(DD) "Related member" has the same meaning as in section 1019
5733.042 of the Revised Code. 1020

(EE) (1) For the purposes of division (EE) of this section: 1021

(a) "Qualifying person" means any person other than a 1022
qualifying corporation. 1023

(b) "Qualifying corporation" means any person classified 1024
for federal income tax purposes as an association taxable as a 1025
corporation, except either of the following: 1026

(i) A corporation that has made an election under 1027
subchapter S, chapter one, subtitle A, of the Internal Revenue 1028
Code for its taxable year ending within, or on the last day of, 1029
the investor's taxable year; 1030

(ii) A subsidiary that is wholly owned by any corporation 1031
that has made an election under subchapter S, chapter one, 1032
subtitle A of the Internal Revenue Code for its taxable year 1033

ending within, or on the last day of, the investor's taxable 1034
year. 1035

(2) For the purposes of this chapter, unless expressly 1036
stated otherwise, no qualifying person indirectly owns any asset 1037
directly or indirectly owned by any qualifying corporation. 1038

(FF) For purposes of this chapter and Chapter 5751. of the 1039
Revised Code: 1040

(1) "Trust" does not include a qualified pre-income tax 1041
trust. 1042

(2) A "qualified pre-income tax trust" is any pre-income 1043
tax trust that makes a qualifying pre-income tax trust election 1044
as described in division (FF)(3) of this section. 1045

(3) A "qualifying pre-income tax trust election" is an 1046
election by a pre-income tax trust to subject to the tax imposed 1047
by section 5751.02 of the Revised Code the pre-income tax trust 1048
and all pass-through entities of which the trust owns or 1049
controls, directly, indirectly, or constructively through 1050
related interests, five per cent or more of the ownership or 1051
equity interests. The trustee shall notify the tax commissioner 1052
in writing of the election on or before April 15, 2006. The 1053
election, if timely made, shall be effective on and after 1054
January 1, 2006, and shall apply for all tax periods and tax 1055
years until revoked by the trustee of the trust. 1056

(4) A "pre-income tax trust" is a trust that satisfies all 1057
of the following requirements: 1058

(a) The document or instrument creating the trust was 1059
executed by the grantor before January 1, 1972; 1060

(b) The trust became irrevocable upon the creation of the 1061

trust; and 1062

(c) The grantor was domiciled in this state at the time 1063
the trust was created. 1064

(GG) "Uniformed services" has the same meaning as in 10 1065
U.S.C. 101. 1066

(HH) "Taxable business income" means the amount by which 1067
an individual's eligible business income that is included in 1068
federal adjusted gross income exceeds the amount of eligible 1069
business income the individual is authorized to deduct under 1070
division (A) (31) of this section for the taxable year. 1071

(II) "Employer" does not include a franchisor with respect 1072
to the franchisor's relationship with a franchisee or an 1073
employee of a franchisee, unless the franchisor agrees to assume 1074
that role in writing or a court of competent jurisdiction 1075
determines that the franchisor exercises a type or degree of 1076
control over the franchisee or the franchisee's employees that 1077
is not customarily exercised by a franchisor for the purpose of 1078
protecting the franchisor's trademark, brand, or both. For 1079
purposes of this division, "franchisor" and "franchisee" have 1080
the same meanings as in 16 C.F.R. 436.1. 1081

(JJ) "Modified adjusted gross income" means Ohio adjusted 1082
gross income plus any amount deducted under division (A) (31) of 1083
this section for the taxable year. 1084

Sec. 5747.10. (A) As used in this section: 1085

(1) "Audited partnership" means a partnership subject to 1086
an examination by the internal revenue service pursuant to 1087
subchapter C, chapter 63, subtitle F of the Internal Revenue 1088
Code resulting in a federal adjustment. 1089

- (2) (a) "Direct investor" means a partner or other investor that holds a direct interest in a pass-through entity. 1090
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- (b) "Indirect investor" means a partner or other investor that holds an interest in a pass-through entity that itself holds an interest, directly or through another indirect partner or other investor, in a pass-through entity. 1092
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- (3) "Exempt partner" means a partner that is neither a pass-through entity nor a person subject to the tax imposed by section 5747.02 of the Revised Code. 1096
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- (4) "Federal adjustment" means a change to an item or amount required to be determined under the Internal Revenue Code that directly or indirectly affects a taxpayer's aggregate tax liability under section 5747.02 or Chapter 5748. of the Revised Code and that results from an action or examination by the internal revenue service, or from the filing of an amended federal tax return, a claim for a federal tax refund, or an administrative adjustment request filed by a partnership under section 6227 of the Internal Revenue Code. 1099
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- (5) "Federal adjustments return" means the form or other document prescribed by the tax commissioner for use by a taxpayer in reporting final federal adjustments. 1108
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- (6) "State partnership representative" means either of the following: 1111
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- (a) The person who served as the partnership's representative for federal income tax purposes, pursuant to section 6223(a) of the Internal Revenue Code, during the corresponding federal partnership audit; 1113
1114
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- (b) The person designated, on a form prescribed by the tax commissioner, to serve as the partnership's representative 1117
1118

during the state partnership audit. The commissioner may 1119
establish reasonable qualifications and procedures for a person 1120
to be designated as a state partnership representative under 1121
this division. 1122

(7) A federal adjustment is "final" or "agreed to or 1123
finally determined for federal income tax purposes" on any of 1124
the following: 1125

(a) The day after which the period for appeal of a federal 1126
assessment has expired; 1127

(b) The date on a refund check issued by the internal 1128
revenue service; or 1129

(c) For agreements required to be signed by the internal 1130
revenue service and the taxpayer or audited partnership, the 1131
date on which the last party signed the agreement. 1132

(B) (1) If any of the facts, figures, computations, or 1133
attachments required in a taxpayer's annual return to determine 1134
the tax charged by this chapter or Chapter 5748. of the Revised 1135
Code must be altered as the result of a final federal 1136
adjustment, and the federal adjustment is not required to be 1137
reported under division (C) of this section, the taxpayer shall 1138
file an amended return with the tax commissioner in such form as 1139
the commissioner requires. The amended return shall be filed not 1140
later than ninety days after the federal adjustment has been 1141
agreed to or finally determined for federal income tax purposes. 1142

(2) "One hundred eighty" shall be substituted for "ninety" 1143
in divisions (B) (1) and (E) (1) of this section if, for any 1144
taxable year, the final federal adjustment results from taxes 1145
paid by the taxpayer on an amount described in division (A) (34) 1146
of section 5747.01 of the Revised Code. 1147

(C) Except for adjustments required to be reported for 1148
federal purposes pursuant to section 6225(a)(2) of the Internal 1149
Revenue Code and adjustments that are taken into account on a 1150
federal amended return or similar report filed pursuant to 1151
section 6225(c)(2) of the Internal Revenue Code, partnerships 1152
and partners shall report final federal adjustments and make 1153
payments as required under division (C) of this section. 1154

(1) With respect to an action required or permitted to be 1155
taken by a partnership under this section, and any petition for 1156
reassessment or appeal to the board of tax appeals or any court 1157
with respect to such an action, the state partnership 1158
representative shall have the sole authority to act on behalf of 1159
the audited partnership, and the partnership's direct and 1160
indirect investors shall be bound by those actions. 1161

(2) Unless an audited partnership makes the election under 1162
division (C)(3) of this section: 1163

(a) The audited partnership, through its state partnership 1164
representative, shall do all of the following within ninety days 1165
after the federal adjustment is final: 1166

(i) File a federal adjustments return with the tax 1167
commissioner, including a copy of the notifications provided 1168
under division (C)(2)(a)(ii) of this section; 1169

(ii) Notify each of its direct investors, on a form 1170
prescribed by the commissioner, of the investor's distributive 1171
share of the final federal adjustments; 1172

(iii) File an amended tax return on behalf of its 1173
nonresident direct investors and pay any additional tax that 1174
would have been due under sections 5733.41 and 5747.41, or 1175
division (D) of section 5747.08, of the Revised Code with 1176

respect to those direct investors had the final federal 1177
adjustments been reported properly on the original filing. 1178

(b) Each direct investor that is subject to the tax 1179
imposed by section 5747.02 of the Revised Code shall file an 1180
original or amended tax return to include the investor's 1181
distributive share of the adjustments reported to the direct 1182
investor under division (C) (2) (a) of this section, and pay any 1183
additional tax due, within ninety days after the audited 1184
partnership files its federal adjustments return with the 1185
commissioner. 1186

(c) (i) Each direct and indirect investor of an audited 1187
partnership that is a pass-through entity and all investors in 1188
such a pass-through entity that are subject to the filing and 1189
payment requirements of Chapters 5733. and 5747. of the Revised 1190
Code are subject to the reporting and payment requirements of 1191
division (C) (2) or, upon a timely election, division (C) (3) of 1192
this section. 1193

(ii) Such direct and indirect investors shall make the 1194
required returns and payments within ninety days after the 1195
deadline for filing and furnishing statements under section 1196
6226(b) (4) of the Internal Revenue Code and applicable treasury 1197
regulations. 1198

(3) If an audited partnership makes the election under 1199
this division, the audited partnership, through its state 1200
partnership representative, shall do all of the following within 1201
ninety days after all federal adjustments are final: 1202

(a) File a federal adjustments return with the tax 1203
commissioner indicating the partnership has made the election 1204
under division (C) (3) of this section; 1205

(b) Pay the amount of combined additional tax due under 1206
division (D) (2) of this section, calculated by multiplying the 1207
highest rate of tax set forth in section 5747.02 of the Revised 1208
Code by the sum of the following: 1209

(i) The distributive shares of the final federal 1210
adjustments that are allocable or apportionable to this state of 1211
each investor who is a nonresident taxpayer or pass-through 1212
entity; 1213

(ii) The distributive share of the final federal 1214
adjustments for each investor who is a resident taxpayer. 1215

(c) Notify each of its direct investors, on a form 1216
prescribed by the commissioner, of the investor's distributive 1217
share of the final federal adjustments and the amount paid on 1218
their behalf pursuant to division (C) (3) (b) of this section. 1219

(4) (a) A direct investor of an audited partnership is not 1220
required to file an amended return or pay tax otherwise due 1221
under section 5747.02 of the Revised Code if the audited 1222
partnership properly reports and pays the tax under division (C) 1223
(3) of this section. 1224

(b) (i) Nothing in division (C) of this section precludes a 1225
direct or indirect investor in the audited partnership from 1226
filing a return to report the investor's share of the final 1227
federal adjustments. Such an investor who files a return and 1228
reports the income related to the final federal adjustments is 1229
entitled to a refundable credit for taxes paid by the audited 1230
partnership under division (C) (3) (b) of this section. The credit 1231
shall be computed and claimed in the same manner as the credit 1232
allowed under division (I) of section 5747.08 of the Revised 1233
Code. 1234

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

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

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

(a) A resident taxpayer from filing a return to claim the credit under division (B) of section 5747.05 or division (D) (2) of section 5747.02 of the Revised Code based upon any amounts paid by the audited partnership on such investor's behalf to another state.

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

(D) In the case of an underpayment, and unless otherwise 1265
agreed to in writing by the tax commissioner: 1266

(1) The taxpayer's amended return shall be accompanied by 1267
payment of any combined additional tax due together with 1268
interest thereon. An amended return required by this section is 1269
a return subject to assessment under section 5747.13 of the 1270
Revised Code for the purpose of assessing any additional tax due 1271
under this section, together with any applicable penalty and 1272
interest. It shall not reopen those facts, figures, 1273
computations, or attachments from a previously filed return no 1274
longer subject to assessment that are not affected, either 1275
directly or indirectly, by the final federal adjustment to the 1276
taxpayer's federal income tax return. 1277

(2) The audited partnership's federal adjustments return 1278
shall be accompanied by payment of any combined additional tax 1279
due together with interest thereon. The federal adjustments 1280
return required by this section is a return subject to 1281
assessment under section 5747.13 of the Revised Code for the 1282
purpose of assessing any additional tax due under this section, 1283
together with any applicable penalty and interest. It shall not 1284
reopen those facts, figures, computations, or attachments from a 1285
previously filed return no longer subject to assessment that are 1286
not affected, either directly or indirectly, by the final 1287
federal adjustment. 1288

(3) The tax commissioner may accept estimated payments of 1289
the tax arising from pending federal adjustments before the date 1290
for filing a federal adjustments return. The commissioner may 1291
adopt rules for the payment of such estimated taxes. 1292

(E) In the case of an overpayment, and unless otherwise 1293
agreed to in writing by the tax commissioner: 1294

(1) A taxpayer may file an application for refund under 1295
this division within the ninety-day period prescribed for filing 1296
the amended return even if it is filed beyond the period 1297
prescribed in section 5747.11 of the Revised Code if it 1298
otherwise conforms to the requirements of such section. An 1299
application filed under this division shall claim refund of 1300
overpayments resulting from alterations to only those facts, 1301
figures, computations, or attachments required in the taxpayer's 1302
annual return that are affected, either directly or indirectly, 1303
by the final federal adjustment to the taxpayer's federal income 1304
tax return unless it is also filed within the time prescribed in 1305
section 5747.11 of the Revised Code. It shall not reopen those 1306
facts, figures, computations, or attachments that are not 1307
affected, either directly or indirectly, by the adjustment to 1308
the taxpayer's federal income tax return. 1309

(2) (a) Except as otherwise provided in division (E) (2) (b) 1310
of this section, an audited partnership may file an application 1311
for a refund under this division within the ninety-day period 1312
prescribed for filing the federal adjustments return, even if it 1313
is filed beyond the period prescribed by section 5747.11 of the 1314
Revised Code, if it otherwise conforms to the requirements of 1315
that section. An application filed under this division may claim 1316
a refund of overpayments resulting only from final federal 1317
adjustments unless it is also filed within the time prescribed 1318
by section 5747.11 of the Revised Code. It shall not reopen 1319
those facts, figures, computations, or attachments that are not 1320
affected, either directly or indirectly, by the federal 1321
adjustment. 1322

(b) An audited partnership may not file an application for 1323
refund under division (E) of this section based on final federal 1324
adjustments described in section 6225(a) (2) of the Internal 1325

Revenue Code. 1326

(3) Any refund granted to a pass-through entity filing an 1327
application for refund under division (E) of this section shall 1328
be reduced by amounts previously claimed as a credit under 1329
section 5747.059 or division (I) of section 5747.08 of the 1330
Revised Code by the pass-through entity's direct or indirect 1331
investors. 1332

(F) Excluding the deadline in division (C)(2)(c)(ii) of 1333
this section, an audited partnership, or a direct or indirect 1334
investor of an audited partnership that is a pass-through 1335
entity, may automatically extend the deadline for reporting, 1336
payments, and refunds under this section by sixty days if the 1337
entity has ten thousand or more direct investors and notifies 1338
the commissioner of such extension, in writing, before the 1339
unextended deadline. 1340

Section 2. That existing sections 5747.01 and 5747.10 of 1341
the Revised Code are hereby repealed. 1342

Section 3. The amendment by this act of sections 5747.01 1343
and 5747.10 of the Revised Code applies to taxable years 1344
beginning on or after January 1, 2019. 1345

Notwithstanding the time limit prescribed in section 1346
5747.11 of the Revised Code, any taxpayer whose federal income 1347
tax return or liability was altered for a taxable year beginning 1348
before January 1, 2019, because the taxpayer paid federal income 1349
tax on an amount described in division (A)(34) of section 1350
5747.01 of the Revised Code may file a refund application with 1351
the Tax Commissioner, pursuant to section 5747.11 of the Revised 1352
Code, on or before December 31, 2020. The application for refund 1353
shall not reopen those facts, figures, computations, or 1354

attachments that are not affected, either directly or 1355
indirectly, by the adjustment to the taxpayer's federal income 1356
tax return or liability. 1357

Section 4. Section 5747.01 of the Revised Code is 1358
presented in this act as a composite of the section as amended 1359
by H.B. 166 of the 133rd General Assembly and H.B. 24 and S.B. 1360
22 both of the 132nd General Assembly. The General Assembly, 1361
applying the principle stated in division (B) of section 1.52 of 1362
the Revised Code that amendments are to be harmonized if 1363
reasonably capable of simultaneous operation, finds that the 1364
composite is the resulting version of the section in effect 1365
prior to the effective date of the section as presented in this 1366
act. 1367