

As Introduced

131st General Assembly

Regular Session

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H. B. No. 355

Representative Retherford

Cosponsors: Representatives Maag, Young, Blessing, Henne, Cera, O'Brien, S.

A BILL

To amend sections 1349.61, 4121.01, 4123.01, 1
4123.026, 4141.01, and 5747.01 and to enact 2
sections 4175.01, 4175.02, 4175.03, 4175.04, 3
4175.05, 4175.06, 4175.061, 4175.07, and 4175.99 4
of the Revised Code to create a generally 5
uniform definition of employee for specified 6
labor laws and to prohibit employee 7
misclassification under those laws. 8

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

Section 1. That sections 1349.61, 4121.01, 4123.01, 9
4123.026, 4141.01, and 5747.01 be amended and sections 4175.01, 10
4175.02, 4175.03, 4175.04, 4175.05, 4175.06, 4175.061, 4175.07, 11
and 4175.99 of the Revised Code be enacted to read as follows: 12

Sec. 1349.61. (A) (1) Subject to division (C) of this 13
section, no person or entity shall sell a gift card to a 14
purchaser containing an expiration date that is less than two 15
years after the date the gift card is issued. 16

(2) No person or entity, within two years after a gift 17
card is issued, shall charge service charges or fees relative to 18

that gift card, including dormancy fees, latency fees, or 19
administrative fees, that have the effect of reducing the total 20
amount for which the holder of the gift card may redeem the gift 21
card. 22

(B) A gift card sold without an expiration date is valid 23
until redeemed or replaced with a new gift card. 24

(C) Division (A) of this section does not apply to any of 25
the following gift cards: 26

(1) A gift card that is distributed by the issuer to a 27
consumer pursuant to an awards, loyalty, or promotional program 28
without any money or anything of value being given in exchange 29
for the gift card by the consumer; 30

(2) A gift card that is sold below face value at a volume 31
discount to employers or to nonprofit and charitable 32
organizations for fundraising purposes, if the expiration date 33
on that gift card is not more than thirty days after the date of 34
sale; 35

(3) A gift card that is sold by a nonprofit or charitable 36
organization for fundraising purposes; 37

(4) A gift card that an employer gives to an employee if 38
use of the gift card is limited to the employer's business 39
establishment, which may include a group of merchants that are 40
affiliated with that business establishment; 41

(5) A gift certificate issued in accordance with section 42
1533.131 of the Revised Code that may be used to obtain hunting 43
and fishing licenses, fur taker, special deer, and special wild 44
turkey permits, and wetlands habitat stamps; 45

(6) A gift card that is usable with multiple, unaffiliated 46

sellers of goods or services; 47

(7) A gift card that an employer issues to an employee in 48
recognition of services performed by the employee. 49

(D) Whoever violates division (A) (2) of this section is 50
liable to the holder for any amount that the redemption value of 51
the gift card was reduced, any court costs incurred, and 52
reasonable attorney's fees. 53

(E) As used in this section: 54

(1) "Gift card" means a certificate, electronic card, or 55
other medium issued by a merchant that evidences the giving of 56
consideration in exchange for the right to redeem the 57
certificate, electronic card, or other medium for goods, food, 58
services, credit, or money of at least an equal value, including 59
any electronic card issued by a merchant with a monetary value 60
where the issuer has received payment for the full monetary 61
value for the future purchase or delivery of goods or services 62
and any certificate issued by a merchant where the issuer has 63
received payment for the full monetary face value of the 64
certificate for the future purchase or delivery of goods and 65
services. "Gift card" does not include a prepaid calling card 66
used to make telephone calls. 67

(2) "Employee" means every person who may be required or 68
directed by any employer, in consideration of direct or indirect 69
gain or profit, to engage in any employment, or to go, or work, 70
or be at any time in any place of employment. 71

(3) "Employer" and "employee" have has the same meanings— 72
meaning as in section 4121.01 of the Revised Code. 73

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 74
of the Revised Code: 75

(1) "Place of employment" means every place, whether 76
indoors or out, or underground, and the premises appurtenant 77
thereto, where either temporarily or permanently any industry, 78
trade, or business is carried on, or where any process or 79
operation, directly or indirectly related to any industry, 80
trade, or business, is carried on and where any person is 81
directly or indirectly employed by another for direct or 82
indirect gain or profit, but does not include any place where 83
persons are employed in private domestic service or agricultural 84
pursuits which do not involve the use of mechanical power. 85

(2) "Employment" means any trade, occupation, or process 86
of manufacture or any method of carrying on such trade, 87
occupation, or process of manufacture in which any person may be 88
engaged, except in such private domestic service or agricultural 89
pursuits as do not involve the use of mechanical power. 90

(3) "Employer" means every person, firm, corporation, 91
agent, manager, representative, or other person having control 92
or custody of any employment, place of employment, or employee. 93

(4) "Employee" means every person who ~~may be required or~~ 94
~~directed by any employer, in consideration of direct or indirect~~ 95
~~gain or profit, to engage in any employment, or to go, or work,~~ 96
~~or be at any time in any place of employment~~ is an employee 97
under the rules adopted by the administrator of workers' 98
compensation pursuant to section 4175.01 of the Revised Code. 99

(5) "Frequenter" means every person, other than an 100
employee, who may go in or be in a place of employment under 101
circumstances which render the person other than a trespasser. 102

(6) "Deputy" means any person employed by the industrial 103
commission or the bureau of workers' compensation, designated as 104

a deputy by the commission or the administrator of workers' 105
compensation, who possesses special, technical, scientific, 106
managerial, professional, or personal abilities or qualities in 107
matters within the jurisdiction of the commission or the bureau, 108
and who may be engaged in the performance of duties under the 109
direction of the commission or the bureau calling for the 110
exercise of such abilities or qualities. 111

(7) "Order" means any decision, rule, regulation, 112
direction, requirement, or standard, or any other determination 113
or decision that the bureau is empowered to and does make. 114

(8) "General order" means an order that applies generally 115
throughout the state to all persons, employments, or places of 116
employment, or all persons, employments, or places of employment 117
of a class under the jurisdiction of the bureau. All other 118
orders shall be considered special orders. 119

(9) "Local order" means any ordinance, order, rule, or 120
determination of the legislative authority of any municipal 121
corporation, or any trustees, or board or officers of any 122
municipal corporation upon any matter over which the bureau has 123
jurisdiction. 124

(10) "Welfare" means comfort, decency, and moral well- 125
being. 126

(11) "Safe" or "safety," as applied to any employment or a 127
place of employment, means such freedom from danger to the life, 128
health, safety, or welfare of employees or frequenters as the 129
nature of the employment will reasonably permit, including 130
requirements as to the hours of labor with relation to the 131
health and welfare of employees. 132

(12) "Employee organization" means any labor or bona fide 133

organization in which employees participate and that exists for 134
the purpose, in whole or in part, of dealing with employers 135
concerning grievances, labor disputes, wages, hours, terms, and 136
other conditions of employment. 137

(B) As used in the Revised Code: 138

(1) "Industrial commission" means the chairperson of the 139
three-member industrial commission created pursuant to section 140
4121.02 of the Revised Code when the context refers to the 141
authority vested in the chairperson as the chief executive 142
officer of the three-member industrial commission pursuant to 143
divisions (A), (B), (C), and (D) of section 4121.03 of the 144
Revised Code. 145

(2) "Industrial commission" means the three-member 146
industrial commission created pursuant to section 4121.02 of the 147
Revised Code when the context refers to the authority vested in 148
the three-member industrial commission pursuant to division (E) 149
of section 4121.03 of the Revised Code. 150

(3) "Industrial commission" means the industrial 151
commission as a state agency when the context refers to the 152
authority vested in the industrial commission as a state agency. 153

Sec. 4123.01. As used in this chapter: 154

(A) (1) "Employee" means: 155

~~(a) Every person in the service of the state, or of any 156
county, municipal corporation, township, or school district 157
therein, including regular members of lawfully constituted 158
police and fire departments of municipal corporations and 159
townships, whether paid or volunteer, and wherever serving 160
within the state or on temporary assignment outside thereof, and 161
executive officers of boards of education, under any appointment 162~~

~~or contract of hire, express or implied, oral or written,~~ 163
~~including any elected official of the state, or of any county,~~ 164
~~municipal corporation, or township, or members of boards of~~ 165
~~education.~~ 166

~~As used in division (A) (1) (a) of this section, the term~~ 167
~~"employee" every person who is an employee under the rules~~ 168
~~adopted by the administrator of workers' compensation pursuant~~ 169
~~to section 4175.01 of the Revised Code, except that "employee"~~ 170
~~also includes the following persons when responding to an~~ 171
~~inherently dangerous situation that calls for an immediate~~ 172
~~response on the part of the person, regardless of whether the~~ 173
~~person is within the limits of the jurisdiction of the person's~~ 174
~~regular employment or voluntary service when responding, on the~~ 175
~~condition that the person responds to the situation as the~~ 176
~~person otherwise would if the person were on duty in the~~ 177
~~person's jurisdiction:~~ 178

~~(i) (a) Off-duty peace officers. As used in division (A)~~ 179
~~(1) (a) (i) of this section, "peace officer" has the same meaning~~ 180
~~as in section 2935.01 of the Revised Code.~~ 181

~~(ii) (b) Off-duty firefighters, whether paid or volunteer,~~ 182
~~of a lawfully constituted fire department.~~ 183

~~(iii) (c) Off-duty first responders, emergency medical~~ 184
~~technicians-basic, emergency medical technicians-intermediate,~~ 185
~~or emergency medical technicians-paramedic, whether paid or~~ 186
~~volunteer, of an ambulance service organization or emergency~~ 187
~~medical service organization pursuant to Chapter 4765. of the~~ 188
~~Revised Code.~~ 189

~~(b) Every person in the service of any person, firm, or~~ 190
~~private corporation, including any public service corporation,~~ 191

~~that (i) employs one or more persons regularly in the same
business or in or about the same establishment under any
contract of hire, express or implied, oral or written, including
aliens and minors, household workers who earn one hundred sixty
dollars or more in cash in any calendar quarter from a single
household and casual workers who earn one hundred sixty dollars
or more in cash in any calendar quarter from a single employer,
or (ii) is bound by any such contract of hire or by any other
written contract, to pay into the state insurance fund the
premiums provided by this chapter.~~

~~(c) Every person who performs labor or provides services
pursuant to a construction contract, as defined in section
4123.79 of the Revised Code, if at least ten of the following
criteria apply:~~

~~(i) The person is required to comply with instructions
from the other contracting party regarding the manner or method
of performing services;~~

~~(ii) The person is required by the other contracting party
to have particular training;~~

~~(iii) The person's services are integrated into the
regular functioning of the other contracting party;~~

~~(iv) The person is required to perform the work
personally;~~

~~(v) The person is hired, supervised, or paid by the other
contracting party;~~

~~(vi) A continuing relationship exists between the person
and the other contracting party that contemplates continuing or
recurring work even if the work is not full time;~~

(vii) The person's hours of work are established by the	220
other contracting party;	221
(viii) The person is required to devote full time to the	222
business of the other contracting party;	223
(ix) The person is required to perform the work on the	224
premises of the other contracting party;	225
(x) The person is required to follow the order of work set	226
by the other contracting party;	227
(xi) The person is required to make oral or written	228
reports of progress to the other contracting party;	229
(xii) The person is paid for services on a regular basis	230
such as hourly, weekly, or monthly;	231
(xiii) The person's expenses are paid for by the other	232
contracting party;	233
(xiv) The person's tools and materials are furnished by	234
the other contracting party;	235
(xv) The person is provided with the facilities used to	236
perform services;	237
(xvi) The person does not realize a profit or suffer a	238
loss as a result of the services provided;	239
(xvii) The person is not performing services for a number	240
of employers at the same time;	241
(xviii) The person does not make the same services	242
available to the general public;	243
(xix) The other contracting party has a right to discharge	244
the person;	245

~~(xx) The person has the right to end the relationship with
the other contracting party without incurring liability pursuant
to an employment contract or agreement.~~

Every person in the service of any independent contractor
or subcontractor who has failed to pay into the state insurance
fund the amount of premium determined and fixed by the
administrator ~~of workers' compensation~~ for the person's
employment or occupation or if a self-insuring employer has
failed to pay compensation and benefits directly to the
employer's injured and to the dependents of the employer's
killed employees as required by section 4123.35 of the Revised
Code, shall be considered as the employee of the person who has
entered into a contract, whether written or verbal, with such
independent contractor unless such employees or their legal
representatives or beneficiaries elect, after injury or death,
to regard such independent contractor as the employer.

(2) "Employee" does not mean:

(a) A duly ordained, commissioned, or licensed minister or
assistant or associate minister of a church in the exercise of
ministry;

(b) Any officer of a family farm corporation;

(c) An individual incorporated as a corporation; or

(d) An individual who otherwise is an employee of an
employer but who signs the waiver and affidavit specified in
section 4123.15 of the Revised Code on the condition that the
administrator has granted a waiver and exception to the
individual's employer under section 4123.15 of the Revised Code.

Any employer may elect to include as an "employee" within
this chapter, any person excluded from the definition of

"employee" pursuant to division (A) (2) of this section. If an 275
employer is a partnership, sole proprietorship, individual 276
incorporated as a corporation, or family farm corporation, such 277
employer may elect to include as an "employee" within this 278
chapter, any member of such partnership, the owner of the sole 279
proprietorship, the individual incorporated as a corporation, or 280
the officers of the family farm corporation. In the event of an 281
election, the employer shall serve upon the bureau of workers' 282
compensation written notice naming the persons to be covered, 283
include such employee's remuneration for premium purposes in all 284
future payroll reports, and no person excluded from the 285
definition of "employee" pursuant to division (A) (2) of this 286
section, proprietor, individual incorporated as a corporation, 287
or partner shall be deemed an employee within this division 288
until the employer has served such notice. 289

For informational purposes only, the bureau shall 290
prescribe such language as it considers appropriate, on such of 291
its forms as it considers appropriate, to advise employers of 292
their right to elect to include as an "employee" within this 293
chapter a sole proprietor, any member of a partnership, an 294
individual incorporated as a corporation, the officers of a 295
family farm corporation, or a person excluded from the 296
definition of "employee" under division (A) (2) of this section, 297
that they should check any health and disability insurance 298
policy, or other form of health and disability plan or contract, 299
presently covering them, or the purchase of which they may be 300
considering, to determine whether such policy, plan, or contract 301
excludes benefits for illness or injury that they might have 302
elected to have covered by workers' compensation. 303

(B) "Employer" means: 304

(1) The state, including state hospitals, each county, 305
municipal corporation, township, school district, and hospital 306
owned by a political subdivision or subdivisions other than the 307
state; 308

(2) Every person, firm, professional employer 309
organization, and private corporation, including any public 310
service corporation, that (a) has in service one or more 311
employees or shared employees regularly in the same business or 312
in or about the same establishment under any contract of hire, 313
express or implied, oral or written, or (b) is bound by any such 314
contract of hire or by any other written contract, to pay into 315
the insurance fund the premiums provided by this chapter. 316

All such employers are subject to this chapter. Any member 317
of a firm or association, who regularly performs manual labor in 318
or about a mine, factory, or other establishment, including a 319
household establishment, shall be considered an employee in 320
determining whether such person, firm, or private corporation, 321
or public service corporation, has in its service, one or more 322
employees and the employer shall report the income derived from 323
such labor to the bureau as part of the payroll of such 324
employer, and such member shall thereupon be entitled to all the 325
benefits of an employee. 326

(C) "Injury" includes any injury, whether caused by 327
external accidental means or accidental in character and result, 328
received in the course of, and arising out of, the injured 329
employee's employment. "Injury" does not include: 330

(1) Psychiatric conditions except where the claimant's 331
psychiatric conditions have arisen from an injury or 332
occupational disease sustained by that claimant or where the 333
claimant's psychiatric conditions have arisen from sexual 334

conduct in which the claimant was forced by threat of physical	335
harm to engage or participate;	336
(2) Injury or disability caused primarily by the natural	337
deterioration of tissue, an organ, or part of the body;	338
(3) Injury or disability incurred in voluntary	339
participation in an employer-sponsored recreation or fitness	340
activity if the employee signs a waiver of the employee's right	341
to compensation or benefits under this chapter prior to engaging	342
in the recreation or fitness activity;	343
(4) A condition that pre-existed an injury unless that	344
pre-existing condition is substantially aggravated by the	345
injury. Such a substantial aggravation must be documented by	346
objective diagnostic findings, objective clinical findings, or	347
objective test results. Subjective complaints may be evidence of	348
such a substantial aggravation. However, subjective complaints	349
without objective diagnostic findings, objective clinical	350
findings, or objective test results are insufficient to	351
substantiate a substantial aggravation.	352
(D) "Child" includes a posthumous child and a child	353
legally adopted prior to the injury.	354
(E) "Family farm corporation" means a corporation founded	355
for the purpose of farming agricultural land in which the	356
majority of the voting stock is held by and the majority of the	357
stockholders are persons or the spouse of persons related to	358
each other within the fourth degree of kinship, according to the	359
rules of the civil law, and at least one of the related persons	360
is residing on or actively operating the farm, and none of whose	361
stockholders are a corporation. A family farm corporation does	362
not cease to qualify under this division where, by reason of any	363

devise, bequest, or the operation of the laws of descent or 364
distribution, the ownership of shares of voting stock is 365
transferred to another person, as long as that person is within 366
the degree of kinship stipulated in this division. 367

(F) "Occupational disease" means a disease contracted in 368
the course of employment, which by its causes and the 369
characteristics of its manifestation or the condition of the 370
employment results in a hazard which distinguishes the 371
employment in character from employment generally, and the 372
employment creates a risk of contracting the disease in greater 373
degree and in a different manner from the public in general. 374

(G) "Self-insuring employer" means an employer who is 375
granted the privilege of paying compensation and benefits 376
directly under section 4123.35 of the Revised Code, including a 377
board of county commissioners for the sole purpose of 378
constructing a sports facility as defined in section 307.696 of 379
the Revised Code, provided that the electors of the county in 380
which the sports facility is to be built have approved 381
construction of a sports facility by ballot election no later 382
than November 6, 1997. 383

(H) "Private employer" means an employer as defined in 384
division (B) (2) of this section. 385

(I) "Professional employer organization" has the same 386
meaning as in section 4125.01 of the Revised Code. 387

(J) "Public employer" means an employer as defined in 388
division (B) (1) of this section. 389

(K) "Sexual conduct" means vaginal intercourse between a 390
male and female; anal intercourse, fellatio, and cunnilingus 391
between persons regardless of gender; and, without privilege to 392

do so, the insertion, however slight, of any part of the body or 393
any instrument, apparatus, or other object into the vaginal or 394
anal cavity of another. Penetration, however slight, is 395
sufficient to complete vaginal or anal intercourse. 396

(L) "Other-states' insurer" means an insurance company 397
that is authorized to provide workers' compensation insurance 398
coverage in any of the states that permit employers to obtain 399
insurance for workers' compensation claims through insurance 400
companies. 401

(M) "Other-states' coverage" means both of the following: 402

(1) Insurance coverage secured by an eligible employer for 403
workers' compensation claims of employees who are in employment 404
relationships localized in a state other than this state or 405
those employees' dependents; 406

(2) Insurance coverage secured by an eligible employer for 407
workers' compensation claims that arise in a state other than 408
this state where an employer elects to obtain coverage through 409
either the administrator or an other-states' insurer. 410

(N) "Limited other-states coverage" means insurance 411
coverage provided by the administrator to an eligible employer 412
for workers' compensation claims of employees who are in an 413
employment relationship localized in this state but are 414
temporarily working in a state other than this state, or those 415
employees' dependents. 416

Sec. 4123.026. (A) The administrator of workers' 417
compensation, or a self-insuring public employer for the peace 418
officers, firefighters, and emergency medical workers employed 419
by or volunteering for that self-insuring public employer, shall 420
pay the costs of conducting post-exposure medical diagnostic 421

services, consistent with the standards of medical care existing 422
at the time of the exposure, to investigate whether an injury or 423
occupational disease was sustained by a peace officer, 424
firefighter, or emergency medical worker when coming into 425
contact with the blood or other body fluid of another person in 426
the course of and arising out of the peace officer's, 427
firefighter's, or emergency medical worker's employment, or when 428
responding to an inherently dangerous situation in the manner 429
described in, and in accordance with the conditions specified 430
under, division (A) (1) ~~(a)~~ of section 4123.01 of the Revised 431
Code, through any of the following means: 432

(1) Splash or spatter in the eye or mouth, including when 433
received in the course of conducting mouth-to-mouth 434
resuscitation; 435

(2) A puncture in the skin; 436

(3) A cut in the skin or another opening in the skin such 437
as an open sore, wound, lesion, abrasion, or ulcer. 438

(B) As used in this section: 439

(1) "Peace officer" has the same meaning as in section 440
2935.01 of the Revised Code. 441

(2) "Firefighter" means a firefighter, whether paid or 442
volunteer, of a lawfully constituted fire department. 443

(3) "Emergency medical worker" means a first responder, 444
emergency medical technician-basic, emergency medical 445
technician-intermediate, or emergency medical technician- 446
paramedic, certified under Chapter 4765. of the Revised Code, 447
whether paid or volunteer. 448

Sec. 4141.01. As used in this chapter, unless the context 449

otherwise requires: 450

(A) (1) "Employer" means the state, its instrumentalities, 451
its political subdivisions and their instrumentalities, Indian 452
tribes, and any individual or type of organization including any 453
partnership, limited liability company, association, trust, 454
estate, joint-stock company, insurance company, or corporation, 455
whether domestic or foreign, or the receiver, trustee in 456
bankruptcy, trustee, or the successor thereof, or the legal 457
representative of a deceased person who subsequent to December 458
31, 1971, or in the case of political subdivisions or their 459
instrumentalities, subsequent to December 31, 1973: 460

(a) Had in employment at least one individual, or in the 461
case of a nonprofit organization, subsequent to December 31, 462
1973, had not less than four individuals in employment for some 463
portion of a day in each of twenty different calendar weeks, in 464
either the current or the preceding calendar year whether or not 465
the same individual was in employment in each such day; or 466

(b) Except for a nonprofit organization, had paid for 467
service in employment wages of fifteen hundred dollars or more 468
in any calendar quarter in either the current or preceding 469
calendar year; or 470

(c) Had paid, subsequent to December 31, 1977, for 471
employment in domestic service in a local college club, or local 472
chapter of a college fraternity or sorority, cash remuneration 473
of one thousand dollars or more in any calendar quarter in the 474
current calendar year or the preceding calendar year, or had 475
paid subsequent to December 31, 1977, for employment in domestic 476
service in a private home cash remuneration of one thousand 477
dollars in any calendar quarter in the current calendar year or 478
the preceding calendar year: 479

(i) For the purposes of divisions (A) (1) (a) and (b) of
this section, there shall not be taken into account any wages
paid to, or employment of, an individual performing domestic
service as described in this division.

(ii) An employer under this division shall not be an
employer with respect to wages paid for any services other than
domestic service unless the employer is also found to be an
employer under division (A) (1) (a), (b), or (d) of this section.

(d) As a farm operator or a crew leader subsequent to
December 31, 1977, had in employment individuals in agricultural
labor; and

(i) During any calendar quarter in the current calendar
year or the preceding calendar year, paid cash remuneration of
twenty thousand dollars or more for the agricultural labor; or

(ii) Had at least ten individuals in employment in
agricultural labor, not including agricultural workers who are
aliens admitted to the United States to perform agricultural
labor pursuant to sections 1184(c) and 1101(a) (15) (H) of the
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A.
1101(a) (15) (H) (ii) (a), 1184(c), for some portion of a day in
each of the twenty different calendar weeks, in either the
current or preceding calendar year whether or not the same
individual was in employment in each day; or

(e) Is not otherwise an employer as defined under division
(A) (1) (a) or (b) of this section; and

(i) For which, within either the current or preceding
calendar year, service, except for domestic service in a private
home not covered under division (A) (1) (c) of this section, is or
was performed with respect to which such employer is liable for

any federal tax against which credit may be taken for 509
contributions required to be paid into a state unemployment 510
fund; 511

(ii) Which, as a condition for approval of this chapter 512
for full tax credit against the tax imposed by the "Federal 513
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, 514
is required, pursuant to such act to be an employer under this 515
chapter; or 516

(iii) Who became an employer by election under division 517
(A) (4) or (5) of this section and for the duration of such 518
election; or 519

(f) In the case of the state, its instrumentalities, its 520
political subdivisions, and their instrumentalities, and Indian 521
tribes, had in employment, as defined in divisions (B) (2) (a) and 522
(B) (2) (1) of this section, at least one individual; 523

(g) For the purposes of division (A) (1) (a) of this 524
section, if any week includes both the thirty-first day of 525
December and the first day of January, the days of that week 526
before the first day of January shall be considered one calendar 527
week and the days beginning the first day of January another 528
week. 529

(2) Each individual employed to perform or to assist in 530
performing the work of any agent or employee of an employer is 531
employed by such employer for all the purposes of this chapter, 532
whether such individual was hired or paid directly by such 533
employer or by such agent or employee, provided the employer had 534
actual or constructive knowledge of the work. All individuals 535
performing services for an employer of any person in this state 536
who maintains two or more establishments within this state are 537

employed by a single employer for the purposes of this chapter.	538
(3) An employer subject to this chapter within any	539
calendar year is subject to this chapter during the whole of	540
such year and during the next succeeding calendar year.	541
(4) An employer not otherwise subject to this chapter who	542
files with the director of job and family services a written	543
election to become an employer subject to this chapter for not	544
less than two calendar years shall, with the written approval of	545
such election by the director, become an employer subject to	546
this chapter to the same extent as all other employers as of the	547
date stated in such approval, and shall cease to be subject to	548
this chapter as of the first day of January of any calendar year	549
subsequent to such two calendar years only if at least thirty	550
days prior to such first day of January the employer has filed	551
with the director a written notice to that effect.	552
(5) Any employer for whom services that do not constitute	553
employment are performed may file with the director a written	554
election that all such services performed by individuals in the	555
employer's employ in one or more distinct establishments or	556
places of business shall be deemed to constitute employment for	557
all the purposes of this chapter, for not less than two calendar	558
years. Upon written approval of the election by the director,	559
such services shall be deemed to constitute employment subject	560
to this chapter from and after the date stated in such approval.	561
Such services shall cease to be employment subject to this	562
chapter as of the first day of January of any calendar year	563
subsequent to such two calendar years only if at least thirty	564
days prior to such first day of January such employer has filed	565
with the director a written notice to that effect.	566
(B) (1) "Employment" means service performed by an	567

individual for remuneration under any contract of hire, written 568
or oral, express or implied, including service performed in 569
interstate commerce and service performed by an officer of a 570
corporation, without regard to whether such service is 571
executive, managerial, or manual in nature, and without regard 572
to whether such officer is a stockholder or a member of the 573
board of directors of the corporation, unless it is shown to the 574
satisfaction of the director, based upon a determination made by 575
the administrator of workers' compensation under Chapter 4175. 576
of the Revised Code, that such individual has been and will 577
continue to be free from direction or control over the 578
performance of such service, both under a contract of service 579
and in fact. ~~The director shall adopt rules to define "direction~~ 580
~~or control."~~ 581

(2) "Employment" includes: 582

(a) Service performed after December 31, 1977, by an 583
individual in the employ of the state or any of its 584
instrumentalities, or any political subdivision thereof or any 585
of its instrumentalities or any instrumentality of more than one 586
of the foregoing or any instrumentality of any of the foregoing 587
and one or more other states or political subdivisions and 588
without regard to divisions (A) (1) (a) and (b) of this section, 589
provided that such service is excluded from employment as 590
defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 591
U.S.C.A. 3301, 3306(c) (7) and is not excluded under division (B) 592
(3) of this section; or the services of employees covered by 593
voluntary election, as provided under divisions (A) (4) and (5) 594
of this section; 595

(b) Service performed after December 31, 1971, by an 596
individual in the employ of a religious, charitable, 597

educational, or other organization which is excluded from the 598
term "employment" as defined in the "Federal Unemployment Tax 599
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 600
of section 26 U.S.C.A. 3306(c) (8) of that act and is not 601
excluded under division (B) (3) of this section; 602

(c) Domestic service performed after December 31, 1977, 603
for an employer, as provided in division (A) (1) (c) of this 604
section; 605

(d) Agricultural labor performed after December 31, 1977, 606
for a farm operator or a crew leader, as provided in division 607
(A) (1) (d) of this section; 608

(e) Service not covered under division (B) (1) of this 609
section which is performed after December 31, 1971: 610

(i) As an agent-driver or commission-driver engaged in 611
distributing meat products, vegetable products, fruit products, 612
bakery products, beverages other than milk, laundry, or dry- 613
cleaning services, for the individual's employer or principal; 614

(ii) As a traveling or city salesperson, other than as an 615
agent-driver or commission-driver, engaged on a full-time basis 616
in the solicitation on behalf of and in the transmission to the 617
salesperson's employer or principal except for sideline sales 618
activities on behalf of some other person of orders from 619
wholesalers, retailers, contractors, or operators of hotels, 620
restaurants, or other similar establishments for merchandise for 621
resale, or supplies for use in their business operations, 622
provided that for the purposes of division (B) (2) (e) (ii) of this 623
section, the services shall be deemed employment if the contract 624
of service contemplates that substantially all of the services 625
are to be performed personally by the individual and that the 626

individual does not have a substantial investment in facilities 627
used in connection with the performance of the services other 628
than in facilities for transportation, and the services are not 629
in the nature of a single transaction that is not a part of a 630
continuing relationship with the person for whom the services 631
are performed. 632

(f) An individual's entire service performed within or 633
both within and without the state if: 634

(i) The service is localized in this state. 635

(ii) The service is not localized in any state, but some 636
of the service is performed in this state and either the base of 637
operations, or if there is no base of operations then the place 638
from which such service is directed or controlled, is in this 639
state or the base of operations or place from which such service 640
is directed or controlled is not in any state in which some part 641
of the service is performed but the individual's residence is in 642
this state. 643

(g) Service not covered under division (B) (2) (f) (ii) of 644
this section and performed entirely without this state, with 645
respect to no part of which contributions are required and paid 646
under an unemployment compensation law of any other state, the 647
Virgin Islands, Canada, or of the United States, if the 648
individual performing such service is a resident of this state 649
and the director approves the election of the employer for whom 650
such services are performed; or, if the individual is not a 651
resident of this state but the place from which the service is 652
directed or controlled is in this state, the entire services of 653
such individual shall be deemed to be employment subject to this 654
chapter, provided service is deemed to be localized within this 655
state if the service is performed entirely within this state or 656

if the service is performed both within and without this state 657
but the service performed without this state is incidental to 658
the individual's service within the state, for example, is 659
temporary or transitory in nature or consists of isolated 660
transactions; 661

(h) Service of an individual who is a citizen of the 662
United States, performed outside the United States except in 663
Canada after December 31, 1971, or the Virgin Islands, after 664
December 31, 1971, and before the first day of January of the 665
year following that in which the United States secretary of 666
labor approves the Virgin Islands law for the first time, in the 667
employ of an American employer, other than service which is 668
"employment" under divisions (B) (2) (f) and (g) of this section 669
or similar provisions of another state's law, if: 670

(i) The employer's principal place of business in the 671
United States is located in this state; 672

(ii) The employer has no place of business in the United 673
States, but the employer is an individual who is a resident of 674
this state; or the employer is a corporation which is organized 675
under the laws of this state, or the employer is a partnership 676
or a trust and the number of partners or trustees who are 677
residents of this state is greater than the number who are 678
residents of any other state; or 679

(iii) None of the criteria of divisions (B) (2) (f) (i) and 680
(ii) of this section is met but the employer has elected 681
coverage in this state or the employer having failed to elect 682
coverage in any state, the individual has filed a claim for 683
benefits, based on such service, under this chapter. 684

(i) For the purposes of division (B) (2) (h) of this 685

section, the term "American employer" means an employer who is 686
an individual who is a resident of the United States; or a 687
partnership, if two-thirds or more of the partners are residents 688
of the United States; or a trust, if all of the trustees are 689
residents of the United States; or a corporation organized under 690
the laws of the United States or of any state, provided the term 691
"United States" includes the states, the District of Columbia, 692
the Commonwealth of Puerto Rico, and the Virgin Islands. 693

(j) Notwithstanding any other provisions of divisions (B) 694
(1) and (2) of this section, service, except for domestic 695
service in a private home not covered under division (A) (1) (c) 696
of this section, with respect to which a tax is required to be 697
paid under any federal law imposing a tax against which credit 698
may be taken for contributions required to be paid into a state 699
unemployment fund, or service, except for domestic service in a 700
private home not covered under division (A) (1) (c) of this 701
section, which, as a condition for full tax credit against the 702
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 703
26 U.S.C.A. 3301 to 3311, is required to be covered under this 704
chapter. 705

(k) Construction services performed by any individual 706
under a construction contract, as defined in section 4141.39 of 707
the Revised Code, ~~if the director determines that the employer~~ 708
~~for whom services are performed has the right to direct or~~ 709
~~control the performance of the services and that the individuals~~ 710
~~who perform the services receive remuneration for the services~~ 711
~~performed. The director shall presume that the employer for whom~~ 712
~~services are performed has the right to direct or control the~~ 713
~~performance of the services if ten or more of the following~~ 714
~~criteria apply:~~ 715

- ~~(i) The employer directs or controls the manner or method by which instructions are given to the individual performing services;~~ 716
717
718
- ~~(ii) The employer requires particular training for the individual performing services;~~ 719
720
- ~~(iii) Services performed by the individual are integrated into the regular functioning of the employer;~~ 721
722
- ~~(iv) The employer requires that services be provided by a particular individual;~~ 723
724
- ~~(v) The employer hires, supervises, or pays the wages of the individual performing services;~~ 725
726
- ~~(vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full-time work;~~ 727
728
729
- ~~(vii) The employer requires the individual to perform services during established hours;~~ 730
731
- ~~(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;~~ 732
733
734
- ~~(ix) The employer requires the individual to perform services on the employer's premises;~~ 735
736
- ~~(x) The employer requires the individual performing services to follow the order of work established by the employer;~~ 737
738
739
- ~~(xi) The employer requires the individual performing services to make oral or written reports of progress;~~ 740
741
- ~~(xii) The employer makes payment to the individual for~~ 742

services on a regular basis, such as hourly, weekly, or monthly;	743
(xiii) The employer pays expenses for the individual performing services;	744
(xiv) The employer furnishes the tools and materials for use by the individual to perform services;	746
(xv) The individual performing services has not invested in the facilities used to perform services;	748
(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;	750
(xvii) The individual performing services is not performing services for more than two employers simultaneously;	753
(xviii) The individual performing services does not make the services available to the general public;	755
(xix) The employer has a right to discharge the individual performing services;	757
(xx) The individual performing services has the right to end the individual's relationship with the employer without incurring liability pursuant to an employment contract or agreement.	759
(1) Service performed by an individual in the employ of an Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe provided that the service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded	763
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under division (B) (3) of this section. 771

(3) "Employment" does not include the following services 772
if they are found not subject to the "Federal Unemployment Tax 773
Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the 774
services are not required to be included under division (B) (2) 775
(j) of this section: 776

(a) Service performed after December 31, 1977, in 777
agricultural labor, except as provided in division (A) (1) (d) of 778
this section; 779

(b) Domestic service performed after December 31, 1977, in 780
a private home, local college club, or local chapter of a 781
college fraternity or sorority except as provided in division 782
(A) (1) (c) of this section; 783

(c) Service performed after December 31, 1977, for this 784
state or a political subdivision as described in division (B) (2) 785
(a) of this section when performed: 786

(i) As a publicly elected official; 787

(ii) As a member of a legislative body, or a member of the 788
judiciary; 789

(iii) As a military member of the Ohio national guard; 790

(iv) As an employee, not in the classified service as 791
defined in section 124.11 of the Revised Code, serving on a 792
temporary basis in case of fire, storm, snow, earthquake, flood, 793
or similar emergency; 794

(v) In a position which, under or pursuant to law, is 795
designated as a major nontenured policymaking or advisory 796
position, not in the classified service of the state, or a 797
policymaking or advisory position the performance of the duties 798

of which ordinarily does not require more than eight hours per 799
week. 800

(d) In the employ of any governmental unit or 801
instrumentality of the United States; 802

(e) Service performed after December 31, 1971: 803

(i) Service in the employ of an educational institution or 804
institution of higher education, including those operated by the 805
state or a political subdivision, if such service is performed 806
by a student who is enrolled and is regularly attending classes 807
at the educational institution or institution of higher 808
education; or 809

(ii) By an individual who is enrolled at a nonprofit or 810
public educational institution which normally maintains a 811
regular faculty and curriculum and normally has a regularly 812
organized body of students in attendance at the place where its 813
educational activities are carried on as a student in a full- 814
time program, taken for credit at the institution, which 815
combines academic instruction with work experience, if the 816
service is an integral part of the program, and the institution 817
has so certified to the employer, provided that this subdivision 818
shall not apply to service performed in a program established 819
for or on behalf of an employer or group of employers. 820

(f) Service performed by an individual in the employ of 821
the individual's son, daughter, or spouse and service performed 822
by a child under the age of eighteen in the employ of the 823
child's father or mother; 824

(g) Service performed for one or more principals by an 825
individual who is compensated on a commission basis, who in the 826
performance of the work is master of the individual's own time 827

and efforts, and whose remuneration is wholly dependent on the 828
amount of effort the individual chooses to expend, and which 829
service is not subject to the "Federal Unemployment Tax Act," 53 830
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 831
after December 31, 1971: 832

(i) By an individual for an employer as an insurance agent 833
or as an insurance solicitor, if all this service is performed 834
for remuneration solely by way of commission; 835

(ii) As a home worker performing work, according to 836
specifications furnished by the employer for whom the services 837
are performed, on materials or goods furnished by such employer 838
which are required to be returned to the employer or to a person 839
designated for that purpose. 840

(h) Service performed after December 31, 1971: 841

(i) In the employ of a church or convention or association 842
of churches, or in an organization which is operated primarily 843
for religious purposes and which is operated, supervised, 844
controlled, or principally supported by a church or convention 845
or association of churches; 846

(ii) By a duly ordained, commissioned, or licensed 847
minister of a church in the exercise of the individual's 848
ministry or by a member of a religious order in the exercise of 849
duties required by such order; or 850

(iii) In a facility conducted for the purpose of carrying 851
out a program of rehabilitation for individuals whose earning 852
capacity is impaired by age or physical or mental deficiency or 853
injury, or providing remunerative work for individuals who 854
because of their impaired physical or mental capacity cannot be 855
readily absorbed in the competitive labor market, by an 856

individual receiving such rehabilitation or remunerative work. 857

(i) Service performed after June 30, 1939, with respect to 858
which unemployment compensation is payable under the "Railroad 859
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 860
351; 861

(j) Service performed by an individual in the employ of 862
any organization exempt from income tax under section 501 of the 863
"Internal Revenue Code of 1954," if the remuneration for such 864
service does not exceed fifty dollars in any calendar quarter, 865
or if such service is in connection with the collection of dues 866
or premiums for a fraternal beneficial society, order, or 867
association and is performed away from the home office or is 868
ritualistic service in connection with any such society, order, 869
or association; 870

(k) Casual labor not in the course of an employer's trade 871
or business; incidental service performed by an officer, 872
appraiser, or member of a finance committee of a bank, building 873
and loan association, savings and loan association, or savings 874
association when the remuneration for such incidental service 875
exclusive of the amount paid or allotted for directors' fees 876
does not exceed sixty dollars per calendar quarter is casual 877
labor; 878

(l) Service performed in the employ of a voluntary 879
employees' beneficial association providing for the payment of 880
life, sickness, accident, or other benefits to the members of 881
such association or their dependents or their designated 882
beneficiaries, if admission to a membership in such association 883
is limited to individuals who are officers or employees of a 884
municipal or public corporation, of a political subdivision of 885
the state, or of the United States and no part of the net 886

earnings of such association inures, other than through such 887
payments, to the benefit of any private shareholder or 888
individual; 889

(m) Service performed by an individual in the employ of a 890
foreign government, including service as a consular or other 891
officer or employee or of a nondiplomatic representative; 892

(n) Service performed in the employ of an instrumentality 893
wholly owned by a foreign government if the service is of a 894
character similar to that performed in foreign countries by 895
employees of the United States or of an instrumentality thereof 896
and if the director finds that the secretary of state of the 897
United States has certified to the secretary of the treasury of 898
the United States that the foreign government, with respect to 899
whose instrumentality exemption is claimed, grants an equivalent 900
exemption with respect to similar service performed in the 901
foreign country by employees of the United States and of 902
instrumentalities thereof; 903

(o) Service with respect to which unemployment 904
compensation is payable under an unemployment compensation 905
system established by an act of congress; 906

(p) Service performed as a student nurse in the employ of 907
a hospital or a nurses' training school by an individual who is 908
enrolled and is regularly attending classes in a nurses' 909
training school chartered or approved pursuant to state law, and 910
service performed as an intern in the employ of a hospital by an 911
individual who has completed a four years' course in a medical 912
school chartered or approved pursuant to state law; 913

(q) Service performed by an individual under the age of 914
eighteen in the delivery or distribution of newspapers or 915

shopping news, not including delivery or distribution to any 916
point for subsequent delivery or distribution; 917

(r) Service performed in the employ of the United States 918
or an instrumentality of the United States immune under the 919
Constitution of the United States from the contributions imposed 920
by this chapter, except that to the extent that congress permits 921
states to require any instrumentalities of the United States to 922
make payments into an unemployment fund under a state 923
unemployment compensation act, this chapter shall be applicable 924
to such instrumentalities and to services performed for such 925
instrumentalities in the same manner, to the same extent, and on 926
the same terms as to all other employers, individuals, and 927
services, provided that if this state is not certified for any 928
year by the proper agency of the United States under section 929
3304 of the "Internal Revenue Code of 1954," the payments 930
required of such instrumentalities with respect to such year 931
shall be refunded by the director from the fund in the same 932
manner and within the same period as is provided in division (E) 933
of section 4141.09 of the Revised Code with respect to 934
contributions erroneously collected; 935

(s) Service performed by an individual as a member of a 936
band or orchestra, provided such service does not represent the 937
principal occupation of such individual, and which service is 938
not subject to or required to be covered for full tax credit 939
against the tax imposed by the "Federal Unemployment Tax Act," 940
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 941

(t) Service performed in the employ of a day camp whose 942
camping season does not exceed twelve weeks in any calendar 943
year, and which service is not subject to the "Federal 944
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 945

3311. Service performed after December 31, 1971:	946
(i) In the employ of a hospital, if the service is	947
performed by a patient of the hospital, as defined in division	948
(W) of this section;	949
(ii) For a prison or other correctional institution by an	950
inmate of the prison or correctional institution;	951
(iii) Service performed after December 31, 1977, by an	952
inmate of a custodial institution operated by the state, a	953
political subdivision, or a nonprofit organization.	954
(u) Service that is performed by a nonresident alien	955
individual for the period the individual temporarily is present	956
in the United States as a nonimmigrant under division (F), (J),	957
(M), or (Q) of section 101(a)(15) of the "Immigration and	958
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended,	959
that is excluded under section 3306(c)(19) of the "Federal	960
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to	961
3311.	962
(v) Notwithstanding any other provisions of division (B)	963
(3) of this section, services that are excluded under divisions	964
(B)(3)(g), (j), (k), and (l) of this section shall not be	965
excluded from employment when performed for a nonprofit	966
organization, as defined in division (X) of this section, or for	967
this state or its instrumentalities, or for a political	968
subdivision or its instrumentalities or for Indian tribes;	969
(w) Service that is performed by an individual working as	970
an election official or election worker if the amount of	971
remuneration received by the individual during the calendar year	972
for services as an election official or election worker is less	973
than one thousand dollars;	974

(x) Service performed for an elementary or secondary school that is operated primarily for religious purposes, that is described in subsection 501(c) (3) and exempt from federal income taxation under subsection 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501;	975 976 977 978 979
(y) Service performed by a person committed to a penal institution.	980 981
(z) Service performed for an Indian tribe as described in division (B) (2) (1) of this section when performed in any of the following manners:	982 983 984
(i) As a publicly elected official;	985
(ii) As a member of an Indian tribal council;	986
(iii) As a member of a legislative or judiciary body;	987
(iv) In a position which, pursuant to Indian tribal law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours of time per week;	988 989 990 991 992
(v) As an employee serving on a temporary basis in the case of a fire, storm, snow, earthquake, flood, or similar emergency.	993 994 995
(aa) Service performed after December 31, 1971, for a nonprofit organization, this state or its instrumentalities, a political subdivision or its instrumentalities, or an Indian tribe as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision, thereof, by an individual receiving the work-relief or work-	996 997 998 999 1000 1001 1002

training. 1003

(bb) Participation in a learn to earn program as defined 1004
in section 4141.293 of the Revised Code. 1005

(4) If the services performed during one half or more of 1006
any pay period by an employee for the person employing that 1007
employee constitute employment, all the services of such 1008
employee for such period shall be deemed to be employment; but 1009
if the services performed during more than one half of any such 1010
pay period by an employee for the person employing that employee 1011
do not constitute employment, then none of the services of such 1012
employee for such period shall be deemed to be employment. As 1013
used in division (B) (4) of this section, "pay period" means a 1014
period, of not more than thirty-one consecutive days, for which 1015
payment of remuneration is ordinarily made to the employee by 1016
the person employing that employee. Division (B) (4) of this 1017
section does not apply to services performed in a pay period by 1018
an employee for the person employing that employee, if any of 1019
such service is excepted by division (B) (3) (o) of this section. 1020

(C) "Benefits" means money payments payable to an 1021
individual who has established benefit rights, as provided in 1022
this chapter, for loss of remuneration due to the individual's 1023
unemployment. 1024

(D) "Benefit rights" means the weekly benefit amount and 1025
the maximum benefit amount that may become payable to an 1026
individual within the individual's benefit year as determined by 1027
the director. 1028

(E) "Claim for benefits" means a claim for waiting period 1029
or benefits for a designated week. 1030

(F) "Additional claim" means the first claim for benefits 1031

filed following any separation from employment during a benefit 1032
year; "continued claim" means any claim other than the first 1033
claim for benefits and other than an additional claim. 1034

(G) (1) "Wages" means remuneration paid to an employee by 1035
each of the employee's employers with respect to employment; 1036
except that wages shall not include that part of remuneration 1037
paid during any calendar year to an individual by an employer or 1038
such employer's predecessor in interest in the same business or 1039
enterprise, which in any calendar year is in excess of eight 1040
thousand two hundred fifty dollars on and after January 1, 1992; 1041
eight thousand five hundred dollars on and after January 1, 1042
1993; eight thousand seven hundred fifty dollars on and after 1043
January 1, 1994; and nine thousand dollars on and after January 1044
1, 1995. Remuneration in excess of such amounts shall be deemed 1045
wages subject to contribution to the same extent that such 1046
remuneration is defined as wages under the "Federal Unemployment 1047
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 1048
amended. The remuneration paid an employee by an employer with 1049
respect to employment in another state, upon which contributions 1050
were required and paid by such employer under the unemployment 1051
compensation act of such other state, shall be included as a 1052
part of remuneration in computing the amount specified in this 1053
division. 1054

(2) Notwithstanding division (G) (1) of this section, if, 1055
as of the computation date for any calendar year, the director 1056
determines that the level of the unemployment compensation fund 1057
is sixty per cent or more below the minimum safe level as 1058
defined in section 4141.25 of the Revised Code, then, effective 1059
the first day of January of the following calendar year, wages 1060
subject to this chapter shall not include that part of 1061
remuneration paid during any calendar year to an individual by 1062

an employer or such employer's predecessor in interest in the 1063
same business or enterprise which is in excess of nine thousand 1064
dollars. The increase in the dollar amount of wages subject to 1065
this chapter under this division shall remain in effect from the 1066
date of the director's determination pursuant to division (G) (2) 1067
of this section and thereafter notwithstanding the fact that the 1068
level in the fund may subsequently become less than sixty per 1069
cent below the minimum safe level. 1070

(H) (1) "Remuneration" means all compensation for personal 1071
services, including commissions and bonuses and the cash value 1072
of all compensation in any medium other than cash, except that 1073
in the case of agricultural or domestic service, "remuneration" 1074
includes only cash remuneration. Gratuities customarily received 1075
by an individual in the course of the individual's employment 1076
from persons other than the individual's employer and which are 1077
accounted for by such individual to the individual's employer 1078
are taxable wages. 1079

The reasonable cash value of compensation paid in any 1080
medium other than cash shall be estimated and determined in 1081
accordance with rules prescribed by the director, provided that 1082
"remuneration" does not include: 1083

(a) Payments as provided in divisions (b) (2) to (b) (20) of 1084
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 1085
713, 26 U.S.C.A. 3301 to 3311, as amended; 1086

(b) The payment by an employer, without deduction from the 1087
remuneration of the individual in the employer's employ, of the 1088
tax imposed upon an individual in the employer's employ under 1089
section 3101 of the "Internal Revenue Code of 1954," with 1090
respect to services performed after October 1, 1941. 1091

(2) "Cash remuneration" means all remuneration paid in 1092
cash, including commissions and bonuses, but not including the 1093
cash value of all compensation in any medium other than cash. 1094

(I) "Interested party" means the director and any party to 1095
whom notice of a determination of an application for benefit 1096
rights or a claim for benefits is required to be given under 1097
section 4141.28 of the Revised Code. 1098

(J) "Annual payroll" means the total amount of wages 1099
subject to contributions during a twelve-month period ending 1100
with the last day of the second calendar quarter of any calendar 1101
year. 1102

(K) "Average annual payroll" means the average of the last 1103
three annual payrolls of an employer, provided that if, as of 1104
any computation date, the employer has had less than three 1105
annual payrolls in such three-year period, such average shall be 1106
based on the annual payrolls which the employer has had as of 1107
such date. 1108

(L) (1) "Contributions" means the money payments to the 1109
state unemployment compensation fund required of employers by 1110
section 4141.25 of the Revised Code and of the state and any of 1111
its political subdivisions electing to pay contributions under 1112
section 4141.242 of the Revised Code. Employers paying 1113
contributions shall be described as "contributory employers." 1114

(2) "Payments in lieu of contributions" means the money 1115
payments to the state unemployment compensation fund required of 1116
reimbursing employers under sections 4141.241 and 4141.242 of 1117
the Revised Code. 1118

(M) An individual is "totally unemployed" in any week 1119
during which the individual performs no services and with 1120

respect to such week no remuneration is payable to the 1121
individual. 1122

(N) An individual is "partially unemployed" in any week 1123
if, due to involuntary loss of work, the total remuneration 1124
payable to the individual for such week is less than the 1125
individual's weekly benefit amount. 1126

(O) "Week" means the calendar week ending at midnight 1127
Saturday unless an equivalent week of seven consecutive calendar 1128
days is prescribed by the director. 1129

(1) "Qualifying week" means any calendar week in an 1130
individual's base period with respect to which the individual 1131
earns or is paid remuneration in employment subject to this 1132
chapter. A calendar week with respect to which an individual 1133
earns remuneration but for which payment was not made within the 1134
base period, when necessary to qualify for benefit rights, may 1135
be considered to be a qualifying week. The number of qualifying 1136
weeks which may be established in a calendar quarter shall not 1137
exceed the number of calendar weeks in the quarter. 1138

(2) "Average weekly wage" means the amount obtained by 1139
dividing an individual's total remuneration for all qualifying 1140
weeks during the base period by the number of such qualifying 1141
weeks, provided that if the computation results in an amount 1142
that is not a multiple of one dollar, such amount shall be 1143
rounded to the next lower multiple of one dollar. 1144

(P) "Weekly benefit amount" means the amount of benefits 1145
an individual would be entitled to receive for one week of total 1146
unemployment. 1147

(Q) (1) "Base period" means the first four of the last five 1148
completed calendar quarters immediately preceding the first day 1149

of an individual's benefit year, except as provided in division 1150
(Q) (2) of this section. 1151

(2) If an individual does not have sufficient qualifying 1152
weeks and wages in the base period to qualify for benefit 1153
rights, the individual's base period shall be the four most 1154
recently completed calendar quarters preceding the first day of 1155
the individual's benefit year. Such base period shall be known 1156
as the "alternate base period." If information as to weeks and 1157
wages for the most recent quarter of the alternate base period 1158
is not available to the director from the regular quarterly 1159
reports of wage information, which are systematically 1160
accessible, the director may, consistent with the provisions of 1161
section 4141.28 of the Revised Code, base the determination of 1162
eligibility for benefits on the affidavit of the claimant with 1163
respect to weeks and wages for that calendar quarter. The 1164
claimant shall furnish payroll documentation, where available, 1165
in support of the affidavit. The determination based upon the 1166
alternate base period as it relates to the claimant's benefit 1167
rights, shall be amended when the quarterly report of wage 1168
information from the employer is timely received and that 1169
information causes a change in the determination. As provided in 1170
division (B) of section 4141.28 of the Revised Code, any 1171
benefits paid and charged to an employer's account, based upon a 1172
claimant's affidavit, shall be adjusted effective as of the 1173
beginning of the claimant's benefit year. No calendar quarter in 1174
a base period or alternate base period shall be used to 1175
establish a subsequent benefit year. 1176

(3) The "base period" of a combined wage claim, as 1177
described in division (H) of section 4141.43 of the Revised 1178
Code, shall be the base period prescribed by the law of the 1179
state in which the claim is allowed. 1180

(4) For purposes of determining the weeks that comprise a completed calendar quarter under this division, only those weeks ending at midnight Saturday within the calendar quarter shall be utilized.

(R) (1) "Benefit year" with respect to an individual means the fifty-two week period beginning with the first day of that week with respect to which the individual first files a valid application for determination of benefit rights, and thereafter the fifty-two week period beginning with the first day of that week with respect to which the individual next files a valid application for determination of benefit rights after the termination of the individual's last preceding benefit year, except that the application shall not be considered valid unless the individual has had employment in six weeks that is subject to this chapter or the unemployment compensation act of another state, or the United States, and has, since the beginning of the individual's previous benefit year, in the employment earned three times the average weekly wage determined for the previous benefit year. The "benefit year" of a combined wage claim, as described in division (H) of section 4141.43 of the Revised Code, shall be the benefit year prescribed by the law of the state in which the claim is allowed. Any application for determination of benefit rights made in accordance with section 4141.28 of the Revised Code is valid if the individual filing such application is unemployed, has been employed by an employer or employers subject to this chapter in at least twenty qualifying weeks within the individual's base period, and has earned or been paid remuneration at an average weekly wage of not less than twenty-seven and one-half per cent of the statewide average weekly wage for such weeks. For purposes of determining whether an individual has had sufficient employment

since the beginning of the individual's previous benefit year to 1212
file a valid application, "employment" means the performance of 1213
services for which remuneration is payable. 1214

(2) Effective for benefit years beginning on and after 1215
December 26, 2004, any application for determination of benefit 1216
rights made in accordance with section 4141.28 of the Revised 1217
Code is valid if the individual satisfies the criteria described 1218
in division (R) (1) of this section, and if the reason for the 1219
individual's separation from employment is not disqualifying 1220
pursuant to division (D) (2) of section 4141.29 or section 1221
4141.291 of the Revised Code. A disqualification imposed 1222
pursuant to division (D) (2) of section 4141.29 or section 1223
4141.291 of the Revised Code must be removed as provided in 1224
those sections as a requirement of establishing a valid 1225
application for benefit years beginning on and after December 1226
26, 2004. 1227

(3) The statewide average weekly wage shall be calculated 1228
by the director once a year based on the twelve-month period 1229
ending the thirtieth day of June, as set forth in division (B) 1230
(3) of section 4141.30 of the Revised Code, rounded down to the 1231
nearest dollar. Increases or decreases in the amount of 1232
remuneration required to have been earned or paid in order for 1233
individuals to have filed valid applications shall become 1234
effective on Sunday of the calendar week in which the first day 1235
of January occurs that follows the twelve-month period ending 1236
the thirtieth day of June upon which the calculation of the 1237
statewide average weekly wage was based. 1238

(4) As used in this division, an individual is 1239
"unemployed" if, with respect to the calendar week in which such 1240
application is filed, the individual is "partially unemployed" 1241

or "totally unemployed" as defined in this section or if, prior 1242
to filing the application, the individual was separated from the 1243
individual's most recent work for any reason which terminated 1244
the individual's employee-employer relationship, or was laid off 1245
indefinitely or for a definite period of seven or more days. 1246

(S) "Calendar quarter" means the period of three 1247
consecutive calendar months ending on the thirty-first day of 1248
March, the thirtieth day of June, the thirtieth day of 1249
September, and the thirty-first day of December, or the 1250
equivalent thereof as the director prescribes by rule. 1251

(T) "Computation date" means the first day of the third 1252
calendar quarter of any calendar year. 1253

(U) "Contribution period" means the calendar year 1254
beginning on the first day of January of any year. 1255

(V) "Agricultural labor," for the purpose of this 1256
division, means any service performed prior to January 1, 1972, 1257
which was agricultural labor as defined in this division prior 1258
to that date, and service performed after December 31, 1971: 1259

(1) On a farm, in the employ of any person, in connection 1260
with cultivating the soil, or in connection with raising or 1261
harvesting any agricultural or horticultural commodity, 1262
including the raising, shearing, feeding, caring for, training, 1263
and management of livestock, bees, poultry, and fur-bearing 1264
animals and wildlife; 1265

(2) In the employ of the owner or tenant or other operator 1266
of a farm in connection with the operation, management, 1267
conservation, improvement, or maintenance of such farm and its 1268
tools and equipment, or in salvaging timber or clearing land of 1269
brush and other debris left by hurricane, if the major part of 1270

such service is performed on a farm; 1271

(3) In connection with the production or harvesting of any 1272
commodity defined as an agricultural commodity in section 15 (g) 1273
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 1274
U.S.C. 1141j, as amended, or in connection with the ginning of 1275
cotton, or in connection with the operation or maintenance of 1276
ditches, canals, reservoirs, or waterways, not owned or operated 1277
for profit, used exclusively for supplying and storing water for 1278
farming purposes; 1279

(4) In the employ of the operator of a farm in handling, 1280
planting, drying, packing, packaging, processing, freezing, 1281
grading, storing, or delivering to storage or to market or to a 1282
carrier for transportation to market, in its unmanufactured 1283
state, any agricultural or horticultural commodity, but only if 1284
the operator produced more than one half of the commodity with 1285
respect to which such service is performed; 1286

(5) In the employ of a group of operators of farms, or a 1287
cooperative organization of which the operators are members, in 1288
the performance of service described in division (V) (4) of this 1289
section, but only if the operators produced more than one-half 1290
of the commodity with respect to which the service is performed; 1291

(6) Divisions (V) (4) and (5) of this section shall not be 1292
deemed to be applicable with respect to service performed: 1293

(a) In connection with commercial canning or commercial 1294
freezing or in connection with any agricultural or horticultural 1295
commodity after its delivery to a terminal market for 1296
distribution for consumption; or 1297

(b) On a farm operated for profit if the service is not in 1298
the course of the employer's trade or business. 1299

As used in division (V) of this section, "farm" includes 1300
stock, dairy, poultry, fruit, fur-bearing animal, and truck 1301
farms, plantations, ranches, nurseries, ranges, greenhouses, or 1302
other similar structures used primarily for the raising of 1303
agricultural or horticultural commodities and orchards. 1304

(W) "Hospital" means an institution which has been 1305
registered or licensed by the Ohio department of health as a 1306
hospital. 1307

(X) "Nonprofit organization" means an organization, or 1308
group of organizations, described in section 501(c)(3) of the 1309
"Internal Revenue Code of 1954," and exempt from income tax 1310
under section 501(a) of that code. 1311

(Y) "Institution of higher education" means a public or 1312
nonprofit educational institution, including an educational 1313
institution operated by an Indian tribe, which: 1314

(1) Admits as regular students only individuals having a 1315
certificate of graduation from a high school, or the recognized 1316
equivalent; 1317

(2) Is legally authorized in this state or by the Indian 1318
tribe to provide a program of education beyond high school; and 1319

(3) Provides an educational program for which it awards a 1320
bachelor's or higher degree, or provides a program which is 1321
acceptable for full credit toward such a degree, a program of 1322
post-graduate or post-doctoral studies, or a program of training 1323
to prepare students for gainful employment in a recognized 1324
occupation. 1325

For the purposes of this division, all colleges and 1326
universities in this state are institutions of higher education. 1327

(Z) For the purposes of this chapter, "states" includes 1328
the District of Columbia, the Commonwealth of Puerto Rico, and 1329
the Virgin Islands. 1330

(AA) "Alien" means, for the purposes of division (A) (1) (d) 1331
of this section, an individual who is an alien admitted to the 1332
United States to perform service in agricultural labor pursuant 1333
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and 1334
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 1335

(BB) (1) "Crew leader" means an individual who furnishes 1336
individuals to perform agricultural labor for any other employer 1337
or farm operator, and: 1338

(a) Pays, either on the individual's own behalf or on 1339
behalf of the other employer or farm operator, the individuals 1340
so furnished by the individual for the service in agricultural 1341
labor performed by them; 1342

(b) Has not entered into a written agreement with the 1343
other employer or farm operator under which the agricultural 1344
worker is designated as in the employ of the other employer or 1345
farm operator. 1346

(2) For the purposes of this chapter, any individual who 1347
is a member of a crew furnished by a crew leader to perform 1348
service in agricultural labor for any other employer or farm 1349
operator shall be treated as an employee of the crew leader if: 1350

(a) The crew leader holds a valid certificate of 1351
registration under the "Farm Labor Contractor Registration Act 1352
of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 1353

(b) Substantially all the members of the crew operate or 1354
maintain tractors, mechanized harvesting or crop-dusting 1355
equipment, or any other mechanized equipment, which is provided 1356

by the crew leader; and 1357

(c) If the individual is not in the employment of the 1358
other employer or farm operator within the meaning of division 1359
(B) (1) of this section. 1360

(3) For the purposes of this division, any individual who 1361
is furnished by a crew leader to perform service in agricultural 1362
labor for any other employer or farm operator and who is not 1363
treated as in the employment of the crew leader under division 1364
(BB) (2) of this section shall be treated as the employee of the 1365
other employer or farm operator and not of the crew leader. The 1366
other employer or farm operator shall be treated as having paid 1367
cash remuneration to the individual in an amount equal to the 1368
amount of cash remuneration paid to the individual by the crew 1369
leader, either on the crew leader's own behalf or on behalf of 1370
the other employer or farm operator, for the service in 1371
agricultural labor performed for the other employer or farm 1372
operator. 1373

(CC) "Educational institution" means an institution other 1374
than an institution of higher education as defined in division 1375
(Y) of this section, including an educational institution 1376
operated by an Indian tribe, which: 1377

(1) Offers participants, trainees, or students an 1378
organized course of study or training designed to transfer to 1379
them knowledge, skills, information, doctrines, attitudes, or 1380
abilities from, by, or under the guidance of an instructor or 1381
teacher; and 1382

(2) Is approved, chartered, or issued a permit to operate 1383
as a school by the state board of education, other government 1384
agency, or Indian tribe that is authorized within the state to 1385

approve, charter, or issue a permit for the operation of a 1386
school. 1387

For the purposes of this division, the courses of study or 1388
training which the institution offers may be academic, 1389
technical, trade, or preparation for gainful employment in a 1390
recognized occupation. 1391

(DD) "Cost savings day" means any unpaid day off from work 1392
in which employees continue to accrue employee benefits which 1393
have a determinable value including, but not limited to, 1394
vacation, pension contribution, sick time, and life and health 1395
insurance. 1396

(EE) "Employee" means every person who is an employee 1397
under the rules adopted by the administrator of workers' 1398
compensation pursuant to section 4175.01 of the Revised Code, 1399
unless the services performed by the individual do not 1400
constitute "employment" as defined in division (B) of this 1401
section. 1402

Sec. 4175.01. The administrator of workers' compensation 1403
shall adopt rules to establish a test to determine whether an 1404
individual is an employee or independent contractor for purposes 1405
of Chapters 4121., 4123., 4141., and 5747. of the Revised Code, 1406
consistent with the common law rules for determining an 1407
employer-employee relationship used by the United States 1408
internal revenue service pursuant to section 3121(d)(2) of the 1409
"Internal Revenue Code of 1986," 26 U.S.C. 3121(d)(2), as 1410
amended. 1411

Sec. 4175.02. No employer shall negligently fail to 1412
consider an individual who is an employee under the rules 1413
adopted by the administrator of workers' compensation pursuant 1414

to section 4175.01 of the Revised Code to be an employee for 1415
purposes of Chapter 4121., 4123., 4141., or 5747. of the Revised 1416
Code. 1417

Sec. 4175.03. The administrator of workers' compensation 1418
shall enforce this chapter. The administrator shall adopt 1419
reasonable rules in accordance with Chapter 119. of the Revised 1420
Code to implement and administer this chapter, including rules 1421
to establish an expedited hearing process for an employer 1422
against whom a stop work order is issued under section 4175.061 1423
of the Revised Code. 1424

Sec. 4175.04. (A) An individual may file a complaint with 1425
the administrator of workers' compensation against an employer 1426
if the individual reasonably believes that the employer is in 1427
violation of section 4175.02 of the Revised Code. Upon receipt 1428
of a complaint, the administrator shall conduct an investigation 1429
into whether the employer violated section 4175.02 of the 1430
Revised Code. 1431

(B) The administrator may do all of the following in 1432
investigating a complaint made pursuant to division (A) of this 1433
section: 1434

(1) Enter and inspect, at all reasonable times, all of the 1435
offices and job sites maintained by the employer who is the 1436
subject of the complaint; 1437

(2) Examine and copy business records; 1438

(3) Compel, by subpoena, the attendance and testimony of 1439
witnesses and the production of books, payroll, records, papers, 1440
and other evidence; 1441

(4) Administer oaths to witnesses. 1442

Sec. 4175.05. (A) If, after an investigation pursuant to 1443
section 4175.04 of the Revised Code, the administrator of 1444
workers' compensation determines that reasonable evidence exists 1445
that an employer has violated section 4175.02 of the Revised 1446
Code, the administrator shall do both of the following: 1447

(1) Within seventy-two hours after that determination, 1448
issue a stop work order against the employer pursuant to section 1449
4175.061 of the Revised Code. 1450

(2) Within seven days after that determination, send a 1451
written notice to the employer in the same manner as prescribed 1452
in section 119.07 of the Revised Code for licensees, except that 1453
the notice shall specify that a hearing will be held in 1454
accordance with division (B) of this section and shall specify 1455
the date, time, and place of the hearing. 1456

(B) The administrator shall hold a hearing regarding the 1457
alleged violation in the same manner prescribed for an 1458
adjudication hearing under section 119.09 of the Revised Code. 1459
If the administrator, after the hearing, determines a violation 1460
has occurred, the administrator shall discipline the employer in 1461
accordance with section 4175.06 of the Revised Code. The 1462
administrator's determination is an order that the employer may 1463
appeal in accordance with section 119.12 of the Revised Code. 1464
The stop work order issued pursuant to section 4175.061 of the 1465
Revised Code shall not be subject to suspension by the court 1466
during the pendency of any appeal filed under section 119.12 of 1467
the Revised Code. If an employer who allegedly violated section 1468
4175.02 of the Revised Code fails to appear for a hearing, the 1469
administrator may make the determination without the employer's 1470
appearance or request the court of common pleas of the county 1471
where the alleged violation occurred to compel the person to 1472

appear before the administrator for a hearing. 1473

The administrator's determination that an employer has 1474
misclassified an employee as an independent contractor is 1475
binding on the director of job and family services and the tax 1476
commissioner unless the individual is otherwise not considered 1477
an employee under the applicable law. Notwithstanding any 1478
provision of this section to the contrary, nothing in this 1479
chapter shall be construed to limit or otherwise constrain the 1480
duties and powers of the administrator under Chapters 4121., 1481
4123., 4127., and 4131. of the Revised Code, the director under 1482
Chapter 4141. of the Revised Code, or the tax commissioner under 1483
Chapter 5703. or 5747. of the Revised Code. 1484

Sec. 4175.06. (A) If, after a hearing held in accordance 1485
with section 4175.05 of the Revised Code, the administrator of 1486
workers' compensation determines that an employer violated 1487
section 4175.02 of the Revised Code, the administrator shall do 1488
all of the following: 1489

(1) Notify the director of job and family services and the 1490
tax commissioner, each of whom shall determine whether the 1491
employer's violation of section 4175.02 of the Revised Code 1492
results in the employer not complying with the requirements of 1493
Chapter 4141. or 5747. of the Revised Code, as applicable; 1494

(2) Continue to enforce the stop work order issued against 1495
the employer pursuant to section 4175.061 of the Revised Code; 1496

(3) Assess against the employer a penalty of five thousand 1497
dollars for each employee the employer misclassified as an 1498
independent contractor in violation of section 4175.02 of the 1499
Revised Code. 1500

(B) With respect to a fine assessed under division (A) (3) 1501

of this section, the administrator may assess an additional 1502
amount against an employer who has previously violated section 1503
4175.02 of the Revised Code. 1504

Sec. 4175.061. (A) The administrator of workers' 1505
compensation shall issue a stop work order, requiring the 1506
cessation of all business operations, against an employer if, 1507
after an investigation pursuant to section 4175.04 of the 1508
Revised Code, the administrator determines that reasonable 1509
evidence exists that the employer violated section 4175.02 of 1510
the Revised Code. 1511

(B) (1) A stop work order issued under this section shall 1512
take effect for all worksites in the state for which the 1513
administrator determined that reasonable evidence exists that 1514
the employer is in violation of section 4175.02 of the Revised 1515
Code when the stop work order is served upon the employer. 1516

(2) If the administrator determined that reasonable 1517
evidence exists that the employer is in violation of section 1518
4175.02 of the Revised Code at only one worksite of the 1519
employer, the administrator may serve a stop work order on the 1520
particular worksite by posting a copy of the stop work order in 1521
a conspicuous location at the worksite. The stop work order 1522
shall take effect for the particular worksite upon service at 1523
the worksite. 1524

(C) A stop work order issued under this section shall 1525
remain in effect until the administrator issues an order 1526
releasing the stop work order. The administrator shall issue the 1527
order of release upon either of the following events: 1528

(1) The administrator determines that the employer did not 1529
violate section 4175.02 of the Revised Code after a hearing held 1530

in accordance with section 4175.05 of the Revised Code; 1531

(2) If the administrator determined that the employer did 1532
violate section 4175.02 of the Revised Code after a hearing held 1533
in accordance with section 4175.05 of the Revised Code, the 1534
administrator determines that the employer is no longer in 1535
violation of section 4175.02 of the Revised Code and has paid 1536
any penalty assessed under this chapter. 1537

(D) (1) The administrator may issue an order of conditional 1538
release from a stop work order to an employer upon a finding 1539
that the employer is no longer in violation of section 4175.02 1540
of the Revised Code and has agreed to remit periodic payments of 1541
any penalty assessed under this chapter pursuant to a payment 1542
agreement schedule with the administrator. A payment agreement 1543
schedule entered into under this division shall require an 1544
initial payment of at least one thousand dollars. 1545

(2) If the administrator issues an order of conditional 1546
release, and if the employer fails to meet any term or condition 1547
of the penalty payment agreement, the administrator shall 1548
immediately reinstate the stop work order and the entire unpaid 1549
balance of the penalty shall immediately become due. 1550

(E) The administrator may require an employer, as a 1551
condition of release from a stop work order, to file periodic 1552
reports with the administrator to demonstrate the employer's 1553
continued compliance with section 4175.02 of the Revised Code 1554
for a probationary period that shall not exceed two years from 1555
the date the administrator issues the order of release. 1556

(F) The administrator shall assess a penalty of five 1557
thousand dollars against an employer for each day that the 1558
employer conducts business operations in violation of a stop 1559

work order issued under this section. 1560

(G) A stop work order or penalty issued under this section 1561
against an employer shall be in effect against any successor 1562
corporation or business entity that has one or more of the same 1563
principals or officers as the employer against whom the stop 1564
work order was issued and is engaged in the same or similar 1565
trade or activity as the employer against whom the stop work 1566
order was issued. 1567

(H) A stop work order issued under this section shall be 1568
limited to the work of the employer for whom the administrator 1569
determined reasonable evidence exists that the employer is in 1570
violation of section 4175.02 of the Revised Code and shall not 1571
be construed to require any work performed by a person other 1572
than the employer or employees of the employer to cease. 1573

Sec. 4175.07. There is hereby created in the state 1574
treasury the employee classification fund. The administrator of 1575
workers' compensation shall deposit all moneys the administrator 1576
receives under this chapter into the fund. The administrator 1577
shall use the fund for the administration, investigation, and 1578
other expenses incurred in carrying out the administrator's 1579
powers and duties under this chapter. 1580

Sec. 4175.99. Whoever violates section 4175.02 of the 1581
Revised Code within five years after the date the director 1582
assesses a civil penalty pursuant to section 4175.05 of the 1583
Revised Code or five years after the date the employer was 1584
convicted of or pleaded guilty to a violation of that section is 1585
guilty of the following: 1586

(A) If the amount the employer is liable for due to the 1587
violation is less than twenty thousand dollars, a felony of the 1588

third degree. 1589

(B) If the amount the employer is liable for due to the 1590
violation is twenty thousand dollars or more, but less than one 1591
hundred thousand dollars, a felony of the second degree. 1592

(C) If the amount is one hundred thousand dollars or more, 1593
a felony of the first degree. 1594

Sec. 5747.01. Except as otherwise expressly provided or 1595
clearly appearing from the context, any term used in this 1596
chapter that is not otherwise defined in this section has the 1597
same meaning as when used in a comparable context in the laws of 1598
the United States relating to federal income taxes or if not 1599
used in a comparable context in those laws, has the same meaning 1600
as in section 5733.40 of the Revised Code. Any reference in this 1601
chapter to the Internal Revenue Code includes other laws of the 1602
United States relating to federal income taxes. 1603

As used in this chapter: 1604

(A) "Adjusted gross income" or "Ohio adjusted gross 1605
income" means federal adjusted gross income, as defined and used 1606
in the Internal Revenue Code, adjusted as provided in this 1607
section: 1608

(1) Add interest or dividends on obligations or securities 1609
of any state or of any political subdivision or authority of any 1610
state, other than this state and its subdivisions and 1611
authorities. 1612

(2) Add interest or dividends on obligations of any 1613
authority, commission, instrumentality, territory, or possession 1614
of the United States to the extent that the interest or 1615
dividends are exempt from federal income taxes but not from 1616
state income taxes. 1617

(3) Deduct interest or dividends on obligations of the 1618
United States and its territories and possessions or of any 1619
authority, commission, or instrumentality of the United States 1620
to the extent that the interest or dividends are included in 1621
federal adjusted gross income but exempt from state income taxes 1622
under the laws of the United States. 1623

(4) Deduct disability and survivor's benefits to the 1624
extent included in federal adjusted gross income. 1625

(5) Deduct benefits under Title II of the Social Security 1626
Act and tier 1 railroad retirement benefits to the extent 1627
included in federal adjusted gross income under section 86 of 1628
the Internal Revenue Code. 1629

(6) In the case of a taxpayer who is a beneficiary of a 1630
trust that makes an accumulation distribution as defined in 1631
section 665 of the Internal Revenue Code, add, for the 1632
beneficiary's taxable years beginning before 2002, the portion, 1633
if any, of such distribution that does not exceed the 1634
undistributed net income of the trust for the three taxable 1635
years preceding the taxable year in which the distribution is 1636
made to the extent that the portion was not included in the 1637
trust's taxable income for any of the trust's taxable years 1638
beginning in 2002 or thereafter. "Undistributed net income of a 1639
trust" means the taxable income of the trust increased by (a) (i) 1640
the additions to adjusted gross income required under division 1641
(A) of this section and (ii) the personal exemptions allowed to 1642
the trust pursuant to section 642(b) of the Internal Revenue 1643
Code, and decreased by (b) (i) the deductions to adjusted gross 1644
income required under division (A) of this section, (ii) the 1645
amount of federal income taxes attributable to such income, and 1646
(iii) the amount of taxable income that has been included in the 1647

adjusted gross income of a beneficiary by reason of a prior 1648
accumulation distribution. Any undistributed net income included 1649
in the adjusted gross income of a beneficiary shall reduce the 1650
undistributed net income of the trust commencing with the 1651
earliest years of the accumulation period. 1652

(7) Deduct the amount of wages and salaries, if any, not 1653
otherwise allowable as a deduction but that would have been 1654
allowable as a deduction in computing federal adjusted gross 1655
income for the taxable year, had the targeted jobs credit 1656
allowed and determined under sections 38, 51, and 52 of the 1657
Internal Revenue Code not been in effect. 1658

(8) Deduct any interest or interest equivalent on public 1659
obligations and purchase obligations to the extent that the 1660
interest or interest equivalent is included in federal adjusted 1661
gross income. 1662

(9) Add any loss or deduct any gain resulting from the 1663
sale, exchange, or other disposition of public obligations to 1664
the extent that the loss has been deducted or the gain has been 1665
included in computing federal adjusted gross income. 1666

(10) Deduct or add amounts, as provided under section 1667
5747.70 of the Revised Code, related to contributions to 1668
variable college savings program accounts made or tuition units 1669
purchased pursuant to Chapter 3334. of the Revised Code. 1670

(11) (a) Deduct, to the extent not otherwise allowable as a 1671
deduction or exclusion in computing federal or Ohio adjusted 1672
gross income for the taxable year, the amount the taxpayer paid 1673
during the taxable year for medical care insurance and qualified 1674
long-term care insurance for the taxpayer, the taxpayer's 1675
spouse, and dependents. No deduction for medical care insurance 1676

under division (A) (11) of this section shall be allowed either 1677
to any taxpayer who is eligible to participate in any subsidized 1678
health plan maintained by any employer of the taxpayer or of the 1679
taxpayer's spouse, or to any taxpayer who is entitled to, or on 1680
application would be entitled to, benefits under part A of Title 1681
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 1682
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 1683
of this section, "subsidized health plan" means a health plan 1684
for which the employer pays any portion of the plan's cost. The 1685
deduction allowed under division (A) (11) (a) of this section 1686
shall be the net of any related premium refunds, related premium 1687
reimbursements, or related insurance premium dividends received 1688
during the taxable year. 1689

(b) Deduct, to the extent not otherwise deducted or 1690
excluded in computing federal or Ohio adjusted gross income 1691
during the taxable year, the amount the taxpayer paid during the 1692
taxable year, not compensated for by any insurance or otherwise, 1693
for medical care of the taxpayer, the taxpayer's spouse, and 1694
dependents, to the extent the expenses exceed seven and one-half 1695
per cent of the taxpayer's federal adjusted gross income. 1696

(c) Deduct, to the extent not otherwise deducted or 1697
excluded in computing federal or Ohio adjusted gross income, any 1698
amount included in federal adjusted gross income under section 1699
105 or not excluded under section 106 of the Internal Revenue 1700
Code solely because it relates to an accident and health plan 1701
for a person who otherwise would be a "qualifying relative" and 1702
thus a "dependent" under section 152 of the Internal Revenue 1703
Code but for the fact that the person fails to meet the income 1704
and support limitations under section 152(d) (1) (B) and (C) of 1705
the Internal Revenue Code. 1706

(d) For purposes of division (A)(11) of this section, 1707
"medical care" has the meaning given in section 213 of the 1708
Internal Revenue Code, subject to the special rules, 1709
limitations, and exclusions set forth therein, and "qualified 1710
long-term care" has the same meaning given in section 7702B(c) 1711
of the Internal Revenue Code. Solely for purposes of divisions 1712
(A)(11)(a) and (c) of this section, "dependent" includes a 1713
person who otherwise would be a "qualifying relative" and thus a 1714
"dependent" under section 152 of the Internal Revenue Code but 1715
for the fact that the person fails to meet the income and 1716
support limitations under section 152(d)(1)(B) and (C) of the 1717
Internal Revenue Code. 1718

(12)(a) Deduct any amount included in federal adjusted 1719
gross income solely because the amount represents a 1720
reimbursement or refund of expenses that in any year the 1721
taxpayer had deducted as an itemized deduction pursuant to 1722
section 63 of the Internal Revenue Code and applicable United 1723
States department of the treasury regulations. The deduction 1724
otherwise allowed under division (A)(12)(a) of this section 1725
shall be reduced to the extent the reimbursement is attributable 1726
to an amount the taxpayer deducted under this section in any 1727
taxable year. 1728

(b) Add any amount not otherwise included in Ohio adjusted 1729
gross income for any taxable year to the extent that the amount 1730
is attributable to the recovery during the taxable year of any 1731
amount deducted or excluded in computing federal or Ohio 1732
adjusted gross income in any taxable year. 1733

(13) Deduct any portion of the deduction described in 1734
section 1341(a)(2) of the Internal Revenue Code, for repaying 1735
previously reported income received under a claim of right, that 1736

meets both of the following requirements: 1737

(a) It is allowable for repayment of an item that was 1738
included in the taxpayer's adjusted gross income for a prior 1739
taxable year and did not qualify for a credit under division (A) 1740
or (B) of section 5747.05 of the Revised Code for that year; 1741

(b) It does not otherwise reduce the taxpayer's adjusted 1742
gross income for the current or any other taxable year. 1743

(14) Deduct an amount equal to the deposits made to, and 1744
net investment earnings of, a medical savings account during the 1745
taxable year, in accordance with section 3924.66 of the Revised 1746
Code. The deduction allowed by division (A) (14) of this section 1747
does not apply to medical savings account deposits and earnings 1748
otherwise deducted or excluded for the current or any other 1749
taxable year from the taxpayer's federal adjusted gross income. 1750

(15) (a) Add an amount equal to the funds withdrawn from a 1751
medical savings account during the taxable year, and the net 1752
investment earnings on those funds, when the funds withdrawn 1753
were used for any purpose other than to reimburse an account 1754
holder for, or to pay, eligible medical expenses, in accordance 1755
with section 3924.66 of the Revised Code; 1756

(b) Add the amounts distributed from a medical savings 1757
account under division (A) (2) of section 3924.68 of the Revised 1758
Code during the taxable year. 1759

(16) Add any amount claimed as a credit under section 1760
5747.059 or 5747.65 of the Revised Code to the extent that such 1761
amount satisfies either of the following: 1762

(a) The amount was deducted or excluded from the 1763
computation of the taxpayer's federal adjusted gross income as 1764
required to be reported for the taxpayer's taxable year under 1765

the Internal Revenue Code; 1766

(b) The amount resulted in a reduction of the taxpayer's 1767
federal adjusted gross income as required to be reported for any 1768
of the taxpayer's taxable years under the Internal Revenue Code. 1769

(17) Deduct the amount contributed by the taxpayer to an 1770
individual development account program established by a county 1771
department of job and family services pursuant to sections 1772
329.11 to 329.14 of the Revised Code for the purpose of matching 1773
funds deposited by program participants. On request of the tax 1774
commissioner, the taxpayer shall provide any information that, 1775
in the tax commissioner's opinion, is necessary to establish the 1776
amount deducted under division (A) (17) of this section. 1777

(18) Beginning in taxable year 2001 but not for any 1778
taxable year beginning after December 31, 2005, if the taxpayer 1779
is married and files a joint return and the combined federal 1780
adjusted gross income of the taxpayer and the taxpayer's spouse 1781
for the taxable year does not exceed one hundred thousand 1782
dollars, or if the taxpayer is single and has a federal adjusted 1783
gross income for the taxable year not exceeding fifty thousand 1784
dollars, deduct amounts paid during the taxable year for 1785
qualified tuition and fees paid to an eligible institution for 1786
the taxpayer, the taxpayer's spouse, or any dependent of the 1787
taxpayer, who is a resident of this state and is enrolled in or 1788
attending a program that culminates in a degree or diploma at an 1789
eligible institution. The deduction may be claimed only to the 1790
extent that qualified tuition and fees are not otherwise 1791
deducted or excluded for any taxable year from federal or Ohio 1792
adjusted gross income. The deduction may not be claimed for 1793
educational expenses for which the taxpayer claims a credit 1794
under section 5747.27 of the Revised Code. 1795

(19) Add any reimbursement received during the taxable 1796
year of any amount the taxpayer deducted under division (A) (18) 1797
of this section in any previous taxable year to the extent the 1798
amount is not otherwise included in Ohio adjusted gross income. 1799

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 1800
(v) of this section, add five-sixths of the amount of 1801
depreciation expense allowed by subsection (k) of section 168 of 1802
the Internal Revenue Code, including the taxpayer's 1803
proportionate or distributive share of the amount of 1804
depreciation expense allowed by that subsection to a pass- 1805
through entity in which the taxpayer has a direct or indirect 1806
ownership interest. 1807

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 1808
of this section, add five-sixths of the amount of qualifying 1809
section 179 depreciation expense, including the taxpayer's 1810
proportionate or distributive share of the amount of qualifying 1811
section 179 depreciation expense allowed to any pass-through 1812
entity in which the taxpayer has a direct or indirect ownership 1813
interest. 1814

(iii) Subject to division (A) (20) (a) (v) of this section, 1815
for taxable years beginning in 2012 or thereafter, if the 1816
increase in income taxes withheld by the taxpayer is equal to or 1817
greater than ten per cent of income taxes withheld by the 1818
taxpayer during the taxpayer's immediately preceding taxable 1819
year, "two-thirds" shall be substituted for "five-sixths" for 1820
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 1821

(iv) Subject to division (A) (20) (a) (v) of this section, 1822
for taxable years beginning in 2012 or thereafter, a taxpayer is 1823
not required to add an amount under division (A) (20) of this 1824
section if the increase in income taxes withheld by the taxpayer 1825

and by any pass-through entity in which the taxpayer has a 1826
direct or indirect ownership interest is equal to or greater 1827
than the sum of (I) the amount of qualifying section 179 1828
depreciation expense and (II) the amount of depreciation expense 1829
allowed to the taxpayer by subsection (k) of section 168 of the 1830
Internal Revenue Code, and including the taxpayer's 1831
proportionate or distributive shares of such amounts allowed to 1832
any such pass-through entities. 1833

(v) If a taxpayer directly or indirectly incurs a net 1834
operating loss for the taxable year for federal income tax 1835
purposes, to the extent such loss resulted from depreciation 1836
expense allowed by subsection (k) of section 168 of the Internal 1837
Revenue Code and by qualifying section 179 depreciation expense, 1838
"the entire" shall be substituted for "five-sixths of the" for 1839
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 1840

The tax commissioner, under procedures established by the 1841
commissioner, may waive the add-backs related to a pass-through 1842
entity if the taxpayer owns, directly or indirectly, less than 1843
five per cent of the pass-through entity. 1844

(b) Nothing in division (A) (20) of this section shall be 1845
construed to adjust or modify the adjusted basis of any asset. 1846

(c) To the extent the add-back required under division (A) 1847
(20) (a) of this section is attributable to property generating 1848
nonbusiness income or loss allocated under section 5747.20 of 1849
the Revised Code, the add-back shall be situated to the same 1850
location as the nonbusiness income or loss generated by the 1851
property for the purpose of determining the credit under 1852
division (A) of section 5747.05 of the Revised Code. Otherwise, 1853
the add-back shall be apportioned, subject to one or more of the 1854
four alternative methods of apportionment enumerated in section 1855

5747.21 of the Revised Code. 1856

(d) For the purposes of division (A) (20) (a) (v) of this 1857
section, net operating loss carryback and carryforward shall not 1858
include the allowance of any net operating loss deduction 1859
carryback or carryforward to the taxable year to the extent such 1860
loss resulted from depreciation allowed by section 168(k) of the 1861
Internal Revenue Code and by the qualifying section 179 1862
depreciation expense amount. 1863

(e) For the purposes of divisions (A) (20) and (21) of this 1864
section: 1865

(i) "Income taxes withheld" means the total amount 1866
withheld and remitted under sections 5747.06 and 5747.07 of the 1867
Revised Code by an employer during the employer's taxable year. 1868

(ii) "Increase in income taxes withheld" means the amount 1869
by which the amount of income taxes withheld by an employer 1870
during the employer's current taxable year exceeds the amount of 1871
income taxes withheld by that employer during the employer's 1872
immediately preceding taxable year. 1873

(iii) "Qualifying section 179 depreciation expense" means 1874
the difference between (I) the amount of depreciation expense 1875
directly or indirectly allowed to a taxpayer under section 179 1876
of the Internal Revised Code, and (II) the amount of 1877
depreciation expense directly or indirectly allowed to the 1878
taxpayer under section 179 of the Internal Revenue Code as that 1879
section existed on December 31, 2002. 1880

(21) (a) If the taxpayer was required to add an amount 1881
under division (A) (20) (a) of this section for a taxable year, 1882
deduct one of the following: 1883

(i) One-fifth of the amount so added for each of the five 1884

succeeding taxable years if the amount so added was five-sixths 1885
of qualifying section 179 depreciation expense or depreciation 1886
expense allowed by subsection (k) of section 168 of the Internal 1887
Revenue Code; 1888

(ii) One-half of the amount so added for each of the two 1889
succeeding taxable years if the amount so added was two-thirds 1890
of such depreciation expense; 1891

(iii) One-sixth of the amount so added for each of the six 1892
succeeding taxable years if the entire amount of such 1893
depreciation expense was so added. 1894

(b) If the amount deducted under division (A) (21) (a) of 1895
this section is attributable to an add-back allocated under 1896
division (A) (20) (c) of this section, the amount deducted shall 1897
be situated to the same location. Otherwise, the add-back shall 1898
be apportioned using the apportionment factors for the taxable 1899
year in which the deduction is taken, subject to one or more of 1900
the four alternative methods of apportionment enumerated in 1901
section 5747.21 of the Revised Code. 1902

(c) No deduction is available under division (A) (21) (a) of 1903
this section with regard to any depreciation allowed by section 1904
168(k) of the Internal Revenue Code and by the qualifying 1905
section 179 depreciation expense amount to the extent that such 1906
depreciation results in or increases a federal net operating 1907
loss carryback or carryforward. If no such deduction is 1908
available for a taxable year, the taxpayer may carry forward the 1909
amount not deducted in such taxable year to the next taxable 1910
year and add that amount to any deduction otherwise available 1911
under division (A) (21) (a) of this section for that next taxable 1912
year. The carryforward of amounts not so deducted shall continue 1913
until the entire addition required by division (A) (20) (a) of 1914

this section has been deducted. 1915

(d) No refund shall be allowed as a result of adjustments 1916
made by division (A) (21) of this section. 1917

(22) Deduct, to the extent not otherwise deducted or 1918
excluded in computing federal or Ohio adjusted gross income for 1919
the taxable year, the amount the taxpayer received during the 1920
taxable year as reimbursement for life insurance premiums under 1921
section 5919.31 of the Revised Code. 1922

(23) Deduct, to the extent not otherwise deducted or 1923
excluded in computing federal or Ohio adjusted gross income for 1924
the taxable year, the amount the taxpayer received during the 1925
taxable year as a death benefit paid by the adjutant general 1926
under section 5919.33 of the Revised Code. 1927

(24) Deduct, to the extent included in federal adjusted 1928
gross income and not otherwise allowable as a deduction or 1929
exclusion in computing federal or Ohio adjusted gross income for 1930
the taxable year, military pay and allowances received by the 1931
taxpayer during the taxable year for active duty service in the 1932
United States army, air force, navy, marine corps, or coast 1933
guard or reserve components thereof or the national guard. The 1934
deduction may not be claimed for military pay and allowances 1935
received by the taxpayer while the taxpayer is stationed in this 1936
state. 1937

(25) Deduct, to the extent not otherwise allowable as a 1938
deduction or exclusion in computing federal or Ohio adjusted 1939
gross income for the taxable year and not otherwise compensated 1940
for by any other source, the amount of qualified organ donation 1941
expenses incurred by the taxpayer during the taxable year, not 1942
to exceed ten thousand dollars. A taxpayer may deduct qualified 1943

organ donation expenses only once for all taxable years 1944
beginning with taxable years beginning in 2007. 1945

For the purposes of division (A) (25) of this section: 1946

(a) "Human organ" means all or any portion of a human 1947
liver, pancreas, kidney, intestine, or lung, and any portion of 1948
human bone marrow. 1949

(b) "Qualified organ donation expenses" means travel 1950
expenses, lodging expenses, and wages and salary forgone by a 1951
taxpayer in connection with the taxpayer's donation, while 1952
living, of one or more of the taxpayer's human organs to another 1953
human being. 1954

(26) Deduct, to the extent not otherwise deducted or 1955
excluded in computing federal or Ohio adjusted gross income for 1956
the taxable year, amounts received by the taxpayer as retired 1957
personnel pay for service in the uniformed services or reserve 1958
components thereof, or the national guard, or received by the 1959
surviving spouse or former spouse of such a taxpayer under the 1960
survivor benefit plan on account of such a taxpayer's death. If 1961
the taxpayer receives income on account of retirement paid under 1962
the federal civil service retirement system or federal employees 1963
retirement system, or under any successor retirement program 1964
enacted by the congress of the United States that is established 1965
and maintained for retired employees of the United States 1966
government, and such retirement income is based, in whole or in 1967
part, on credit for the taxpayer's uniformed service, the 1968
deduction allowed under this division shall include only that 1969
portion of such retirement income that is attributable to the 1970
taxpayer's uniformed service, to the extent that portion of such 1971
retirement income is otherwise included in federal adjusted 1972
gross income and is not otherwise deducted under this section. 1973

Any amount deducted under division (A) (26) of this section is 1974
not included in a taxpayer's adjusted gross income for the 1975
purposes of section 5747.055 of the Revised Code. No amount may 1976
be deducted under division (A) (26) of this section on the basis 1977
of which a credit was claimed under section 5747.055 of the 1978
Revised Code. 1979

(27) Deduct, to the extent not otherwise deducted or 1980
excluded in computing federal or Ohio adjusted gross income for 1981
the taxable year, the amount the taxpayer received during the 1982
taxable year from the military injury relief fund created in 1983
section 5101.98 of the Revised Code. 1984

(28) Deduct, to the extent not otherwise deducted or 1985
excluded in computing federal or Ohio adjusted gross income for 1986
the taxable year, the amount the taxpayer received as a veterans 1987
bonus during the taxable year from the Ohio department of 1988
veterans services as authorized by Section 2r of Article VIII, 1989
Ohio Constitution. 1990

(29) Deduct, to the extent not otherwise deducted or 1991
excluded in computing federal or Ohio adjusted gross income for 1992
the taxable year, any income derived from a transfer agreement 1993
or from the enterprise transferred under that agreement under 1994
section 4313.02 of the Revised Code. 1995

(30) Deduct, to the extent not otherwise deducted or 1996
excluded in computing federal or Ohio adjusted gross income for 1997
the taxable year, Ohio college opportunity or federal Pell grant 1998
amounts received by the taxpayer or the taxpayer's spouse or 1999
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 2001
by the educational institution for which the grant was awarded 2002
at the institution's facilities, including meal plans 2003

administered by the institution. For the purposes of this 2004
division, receipt of a grant includes the distribution of a 2005
grant directly to an educational institution and the crediting 2006
of the grant to the enrollee's account with the institution. 2007

(31) Deduct one-half of the taxpayer's Ohio small business 2008
investor income, the deduction not to exceed sixty-two thousand 2009
five hundred dollars for each spouse if spouses file separate 2010
returns under section 5747.08 of the Revised Code or one hundred 2011
twenty-five thousand dollars for all other taxpayers. No pass- 2012
through entity may claim a deduction under this division. 2013

For the purposes of this division, "Ohio small business 2014
investor income" means the portion of a taxpayer's adjusted 2015
gross income that is business income reduced by deductions from 2016
business income and apportioned or allocated to this state under 2017
sections 5747.21 and 5747.22 of the Revised Code, to the extent 2018
not otherwise deducted or excluded in computing federal or Ohio 2019
adjusted gross income for the taxable year. 2020

(B) "Business income" means income, including gain or 2021
loss, arising from transactions, activities, and sources in the 2022
regular course of a trade or business and includes income, gain, 2023
or loss from real property, tangible property, and intangible 2024
property if the acquisition, rental, management, and disposition 2025
of the property constitute integral parts of the regular course 2026
of a trade or business operation. "Business income" includes 2027
income, including gain or loss, from a partial or complete 2028
liquidation of a business, including, but not limited to, gain 2029
or loss from the sale or other disposition of goodwill. 2030

(C) "Nonbusiness income" means all income other than 2031
business income and may include, but is not limited to, 2032
compensation, rents and royalties from real or tangible personal 2033

property, capital gains, interest, dividends and distributions, 2034
patent or copyright royalties, or lottery winnings, prizes, and 2035
awards. 2036

(D) "Compensation" means any form of remuneration paid to 2037
an employee for personal services. 2038

(E) "Fiduciary" means a guardian, trustee, executor, 2039
administrator, receiver, conservator, or any other person acting 2040
in any fiduciary capacity for any individual, trust, or estate. 2041

(F) "Fiscal year" means an accounting period of twelve 2042
months ending on the last day of any month other than December. 2043

(G) "Individual" means any natural person. 2044

(H) "Internal Revenue Code" means the "Internal Revenue 2045
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2046

(I) "Resident" means any of the following, provided that 2047
division (I) (3) of this section applies only to taxable years of 2048
a trust beginning in 2002 or thereafter: 2049

(1) An individual who is domiciled in this state, subject 2050
to section 5747.24 of the Revised Code; 2051

(2) The estate of a decedent who at the time of death was 2052
domiciled in this state. The domicile tests of section 5747.24 2053
of the Revised Code are not controlling for purposes of division 2054
(I) (2) of this section. 2055

(3) A trust that, in whole or part, resides in this state. 2056
If only part of a trust resides in this state, the trust is a 2057
resident only with respect to that part. 2058

For the purposes of division (I) (3) of this section: 2059

(a) A trust resides in this state for the trust's current 2060

taxable year to the extent, as described in division (I) (3) (d) 2061
of this section, that the trust consists directly or indirectly, 2062
in whole or in part, of assets, net of any related liabilities, 2063
that were transferred, or caused to be transferred, directly or 2064
indirectly, to the trust by any of the following: 2065

(i) A person, a court, or a governmental entity or 2066
instrumentality on account of the death of a decedent, but only 2067
if the trust is described in division (I) (3) (e) (i) or (ii) of 2068
this section; 2069

(ii) A person who was domiciled in this state for the 2070
purposes of this chapter when the person directly or indirectly 2071
transferred assets to an irrevocable trust, but only if at least 2072
one of the trust's qualifying beneficiaries is domiciled in this 2073
state for the purposes of this chapter during all or some 2074
portion of the trust's current taxable year; 2075

(iii) A person who was domiciled in this state for the 2076
purposes of this chapter when the trust document or instrument 2077
or part of the trust document or instrument became irrevocable, 2078
but only if at least one of the trust's qualifying beneficiaries 2079
is a resident domiciled in this state for the purposes of this 2080
chapter during all or some portion of the trust's current 2081
taxable year. If a trust document or instrument became 2082
irrevocable upon the death of a person who at the time of death 2083
was domiciled in this state for purposes of this chapter, that 2084
person is a person described in division (I) (3) (a) (iii) of this 2085
section. 2086

(b) A trust is irrevocable to the extent that the 2087
transferor is not considered to be the owner of the net assets 2088
of the trust under sections 671 to 678 of the Internal Revenue 2089
Code. 2090

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

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

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

(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the

qualifying ratio last computed without regard to the subsequent 2121
transfer, and (2) the fair market value of the subsequently 2122
transferred assets at the time transferred, net of any related 2123
liabilities, from sources enumerated in division (I) (3) (a) of 2124
this section. The denominator of the revised qualifying ratio is 2125
the fair market value of all the trust's assets immediately 2126
after the subsequent transfer, net of any related liabilities. 2127

(iii) Whether a transfer to the trust is by or from any of 2128
the sources enumerated in division (I) (3) (a) of this section 2129
shall be ascertained without regard to the domicile of the 2130
trust's beneficiaries. 2131

(e) For the purposes of division (I) (3) (a) (i) of this 2132
section: 2133

(i) A trust is described in division (I) (3) (e) (i) of this 2134
section if the trust is a testamentary trust and the testator of 2135
that testamentary trust was domiciled in this state at the time 2136
of the testator's death for purposes of the taxes levied under 2137
Chapter 5731. of the Revised Code. 2138

(ii) A trust is described in division (I) (3) (e) (ii) of 2139
this section if the transfer is a qualifying transfer described 2140
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 2141
trust is an irrevocable inter vivos trust, and at least one of 2142
the trust's qualifying beneficiaries is domiciled in this state 2143
for purposes of this chapter during all or some portion of the 2144
trust's current taxable year. 2145

(f) For the purposes of division (I) (3) (e) (ii) of this 2146
section, a "qualifying transfer" is a transfer of assets, net of 2147
any related liabilities, directly or indirectly to a trust, if 2148
the transfer is described in any of the following: 2149

(i) The transfer is made to a trust, created by the 2150
decedent before the decedent's death and while the decedent was 2151
domiciled in this state for the purposes of this chapter, and, 2152
prior to the death of the decedent, the trust became irrevocable 2153
while the decedent was domiciled in this state for the purposes 2154
of this chapter. 2155

(ii) The transfer is made to a trust to which the 2156
decedent, prior to the decedent's death, had directly or 2157
indirectly transferred assets, net of any related liabilities, 2158
while the decedent was domiciled in this state for the purposes 2159
of this chapter, and prior to the death of the decedent the 2160
trust became irrevocable while the decedent was domiciled in 2161
this state for the purposes of this chapter. 2162

(iii) The transfer is made on account of a contractual 2163
relationship existing directly or indirectly between the 2164
transferor and either the decedent or the estate of the decedent 2165
at any time prior to the date of the decedent's death, and the 2166
decedent was domiciled in this state at the time of death for 2167
purposes of the taxes levied under Chapter 5731. of the Revised 2168
Code. 2169

(iv) The transfer is made to a trust on account of a 2170
contractual relationship existing directly or indirectly between 2171
the transferor and another person who at the time of the 2172
decedent's death was domiciled in this state for purposes of 2173
this chapter. 2174

(v) The transfer is made to a trust on account of the will 2175
of a testator who was domiciled in this state at the time of the 2176
testator's death for purposes of the taxes levied under Chapter 2177
5731. of the Revised Code. 2178

(vi) The transfer is made to a trust created by or caused	2179
to be created by a court, and the trust was directly or	2180
indirectly created in connection with or as a result of the	2181
death of an individual who, for purposes of the taxes levied	2182
under Chapter 5731. of the Revised Code, was domiciled in this	2183
state at the time of the individual's death.	2184
(g) The tax commissioner may adopt rules to ascertain the	2185
part of a trust residing in this state.	2186
(J) "Nonresident" means an individual or estate that is	2187
not a resident. An individual who is a resident for only part of	2188
a taxable year is a nonresident for the remainder of that	2189
taxable year.	2190
(K) "Pass-through entity" has the same meaning as in	2191
section 5733.04 of the Revised Code.	2192
(L) "Return" means the notifications and reports required	2193
to be filed pursuant to this chapter for the purpose of	2194
reporting the tax due and includes declarations of estimated tax	2195
when so required.	2196
(M) "Taxable year" means the calendar year or the	2197
taxpayer's fiscal year ending during the calendar year, or	2198
fractional part thereof, upon which the adjusted gross income is	2199
calculated pursuant to this chapter.	2200
(N) "Taxpayer" means any person subject to the tax imposed	2201
by section 5747.02 of the Revised Code or any pass-through	2202
entity that makes the election under division (D) of section	2203
5747.08 of the Revised Code.	2204
(O) "Dependents" means dependents as defined in the	2205
Internal Revenue Code and as claimed in the taxpayer's federal	2206
income tax return for the taxable year or which the taxpayer	2207

would have been permitted to claim had the taxpayer filed a 2208
federal income tax return. 2209

(P) "Principal county of employment" means, in the case of 2210
a nonresident, the county within the state in which a taxpayer 2211
performs services for an employer or, if those services are 2212
performed in more than one county, the county in which the major 2213
portion of the services are performed. 2214

(Q) As used in sections 5747.50 to 5747.55 of the Revised 2215
Code: 2216

(1) "Subdivision" means any county, municipal corporation, 2217
park district, or township. 2218

(2) "Essential local government purposes" includes all 2219
functions that any subdivision is required by general law to 2220
exercise, including like functions that are exercised under a 2221
charter adopted pursuant to the Ohio Constitution. 2222

(R) "Overpayment" means any amount already paid that 2223
exceeds the figure determined to be the correct amount of the 2224
tax. 2225

(S) "Taxable income" or "Ohio taxable income" applies only 2226
to estates and trusts, and means federal taxable income, as 2227
defined and used in the Internal Revenue Code, adjusted as 2228
follows: 2229

(1) Add interest or dividends, net of ordinary, necessary, 2230
and reasonable expenses not deducted in computing federal 2231
taxable income, on obligations or securities of any state or of 2232
any political subdivision or authority of any state, other than 2233
this state and its subdivisions and authorities, but only to the 2234
extent that such net amount is not otherwise includible in Ohio 2235
taxable income and is described in either division (S) (1) (a) or 2236

(b) of this section:	2237
(a) The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to beneficiaries for the taxable year;	2238 2239 2240
(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.	2241 2242
(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S) (1) (a) or (b) of this section;	2243 2244 2245 2246 2247 2248 2249 2250 2251
(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;	2252 2253
(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S) (1) (a) or (b) of this section;	2254 2255 2256 2257 2258 2259 2260 2261 2262
(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for	2263 2264 2265

the taxable year, had the targeted jobs credit allowed under 2266
sections 38, 51, and 52 of the Internal Revenue Code not been in 2267
effect, but only to the extent such amount relates either to 2268
income included in federal taxable income for the taxable year 2269
or to income of the S portion of an electing small business 2270
trust for the taxable year; 2271

(6) Deduct any interest or interest equivalent, net of 2272
related expenses deducted in computing federal taxable income, 2273
on public obligations and purchase obligations, but only to the 2274
extent that such net amount relates either to income included in 2275
federal taxable income for the taxable year or to income of the 2276
S portion of an electing small business trust for the taxable 2277
year; 2278

(7) Add any loss or deduct any gain resulting from sale, 2279
exchange, or other disposition of public obligations to the 2280
extent that such loss has been deducted or such gain has been 2281
included in computing either federal taxable income or income of 2282
the S portion of an electing small business trust for the 2283
taxable year; 2284

(8) Except in the case of the final return of an estate, 2285
add any amount deducted by the taxpayer on both its Ohio estate 2286
tax return pursuant to section 5731.14 of the Revised Code, and 2287
on its federal income tax return in determining federal taxable 2288
income; 2289

(9) (a) Deduct any amount included in federal taxable 2290
income solely because the amount represents a reimbursement or 2291
refund of expenses that in a previous year the decedent had 2292
deducted as an itemized deduction pursuant to section 63 of the 2293
Internal Revenue Code and applicable treasury regulations. The 2294
deduction otherwise allowed under division (S) (9) (a) of this 2295

section shall be reduced to the extent the reimbursement is 2296
attributable to an amount the taxpayer or decedent deducted 2297
under this section in any taxable year. 2298

(b) Add any amount not otherwise included in Ohio taxable 2299
income for any taxable year to the extent that the amount is 2300
attributable to the recovery during the taxable year of any 2301
amount deducted or excluded in computing federal or Ohio taxable 2302
income in any taxable year, but only to the extent such amount 2303
has not been distributed to beneficiaries for the taxable year. 2304

(10) Deduct any portion of the deduction described in 2305
section 1341(a)(2) of the Internal Revenue Code, for repaying 2306
previously reported income received under a claim of right, that 2307
meets both of the following requirements: 2308

(a) It is allowable for repayment of an item that was 2309
included in the taxpayer's taxable income or the decedent's 2310
adjusted gross income for a prior taxable year and did not 2311
qualify for a credit under division (A) or (B) of section 2312
5747.05 of the Revised Code for that year. 2313

(b) It does not otherwise reduce the taxpayer's taxable 2314
income or the decedent's adjusted gross income for the current 2315
or any other taxable year. 2316

(11) Add any amount claimed as a credit under section 2317
5747.059 or 5747.65 of the Revised Code to the extent that the 2318
amount satisfies either of the following: 2319

(a) The amount was deducted or excluded from the 2320
computation of the taxpayer's federal taxable income as required 2321
to be reported for the taxpayer's taxable year under the 2322
Internal Revenue Code; 2323

(b) The amount resulted in a reduction in the taxpayer's 2324

federal taxable income as required to be reported for any of the 2325
taxpayer's taxable years under the Internal Revenue Code. 2326

(12) Deduct any amount, net of related expenses deducted 2327
in computing federal taxable income, that a trust is required to 2328
report as farm income on its federal income tax return, but only 2329
if the assets of the trust include at least ten acres of land 2330
satisfying the definition of "land devoted exclusively to 2331
agricultural use" under section 5713.30 of the Revised Code, 2332
regardless of whether the land is valued for tax purposes as 2333
such land under sections 5713.30 to 5713.38 of the Revised Code. 2334
If the trust is a pass-through entity investor, section 5747.231 2335
of the Revised Code applies in ascertaining if the trust is 2336
eligible to claim the deduction provided by division (S) (12) of 2337
this section in connection with the pass-through entity's farm 2338
income. 2339

Except for farm income attributable to the S portion of an 2340
electing small business trust, the deduction provided by 2341
division (S) (12) of this section is allowed only to the extent 2342
that the trust has not distributed such farm income. Division 2343
(S) (12) of this section applies only to taxable years of a trust 2344
beginning in 2002 or thereafter. 2345

(13) Add the net amount of income described in section 2346
641(c) of the Internal Revenue Code to the extent that amount is 2347
not included in federal taxable income. 2348

(14) Add or deduct the amount the taxpayer would be 2349
required to add or deduct under division (A) (20) or (21) of this 2350
section if the taxpayer's Ohio taxable income were computed in 2351
the same manner as an individual's Ohio adjusted gross income is 2352
computed under this section. In the case of a trust, division 2353
(S) (14) of this section applies only to any of the trust's 2354

taxable years beginning in 2002 or thereafter. 2355

(T) "School district income" and "school district income 2356
tax" have the same meanings as in section 5748.01 of the Revised 2357
Code. 2358

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S) 2359
(7) of this section, "public obligations," "purchase 2360
obligations," and "interest or interest equivalent" have the 2361
same meanings as in section 5709.76 of the Revised Code. 2362

(V) "Limited liability company" means any limited 2363
liability company formed under Chapter 1705. of the Revised Code 2364
or under the laws of any other state. 2365

(W) "Pass-through entity investor" means any person who, 2366
during any portion of a taxable year of a pass-through entity, 2367
is a partner, member, shareholder, or equity investor in that 2368
pass-through entity. 2369

(X) "Banking day" has the same meaning as in section 2370
1304.01 of the Revised Code. 2371

(Y) "Month" means a calendar month. 2372

(Z) "Quarter" means the first three months, the second 2373
three months, the third three months, or the last three months 2374
of the taxpayer's taxable year. 2375

(AA)(1) "Eligible institution" means a state university or 2376
state institution of higher education as defined in section 2377
3345.011 of the Revised Code, or a private, nonprofit college, 2378
university, or other post-secondary institution located in this 2379
state that possesses a certificate of authorization issued by 2380
the Ohio board of regents pursuant to Chapter 1713. of the 2381
Revised Code or a certificate of registration issued by the 2382

state board of career colleges and schools under Chapter 3332. 2383
of the Revised Code. 2384

(2) "Qualified tuition and fees" means tuition and fees 2385
imposed by an eligible institution as a condition of enrollment 2386
or attendance, not exceeding two thousand five hundred dollars 2387
in each of the individual's first two years of post-secondary 2388
education. If the individual is a part-time student, "qualified 2389
tuition and fees" includes tuition and fees paid for the 2390
academic equivalent of the first two years of post-secondary 2391
education during a maximum of five taxable years, not exceeding 2392
a total of five thousand dollars. "Qualified tuition and fees" 2393
does not include: 2394

(a) Expenses for any course or activity involving sports, 2395
games, or hobbies unless the course or activity is part of the 2396
individual's degree or diploma program; 2397

(b) The cost of books, room and board, student activity 2398
fees, athletic fees, insurance expenses, or other expenses 2399
unrelated to the individual's academic course of instruction; 2400

(c) Tuition, fees, or other expenses paid or reimbursed 2401
through an employer, scholarship, grant in aid, or other 2402
educational benefit program. 2403

(BB) (1) "Modified business income" means the business 2404
income included in a trust's Ohio taxable income after such 2405
taxable income is first reduced by the qualifying trust amount, 2406
if any. 2407

(2) "Qualifying trust amount" of a trust means capital 2408
gains and losses from the sale, exchange, or other disposition 2409
of equity or ownership interests in, or debt obligations of, a 2410
qualifying investee to the extent included in the trust's Ohio 2411

taxable income, but only if the following requirements are	2412
satisfied:	2413
(a) The book value of the qualifying investee's physical	2414
assets in this state and everywhere, as of the last day of the	2415
qualifying investee's fiscal or calendar year ending immediately	2416
prior to the date on which the trust recognizes the gain or	2417
loss, is available to the trust.	2418
(b) The requirements of section 5747.011 of the Revised	2419
Code are satisfied for the trust's taxable year in which the	2420
trust recognizes the gain or loss.	2421
Any gain or loss that is not a qualifying trust amount is	2422
modified business income, qualifying investment income, or	2423
modified nonbusiness income, as the case may be.	2424
(3) "Modified nonbusiness income" means a trust's Ohio	2425
taxable income other than modified business income, other than	2426
the qualifying trust amount, and other than qualifying	2427
investment income, as defined in section 5747.012 of the Revised	2428
Code, to the extent such qualifying investment income is not	2429
otherwise part of modified business income.	2430
(4) "Modified Ohio taxable income" applies only to trusts,	2431
and means the sum of the amounts described in divisions (BB) (4)	2432
(a) to (c) of this section:	2433
(a) The fraction, calculated under section 5747.013, and	2434
applying section 5747.231 of the Revised Code, multiplied by the	2435
sum of the following amounts:	2436
(i) The trust's modified business income;	2437
(ii) The trust's qualifying investment income, as defined	2438
in section 5747.012 of the Revised Code, but only to the extent	2439

the qualifying investment income does not otherwise constitute 2440
modified business income and does not otherwise constitute a 2441
qualifying trust amount. 2442

(b) The qualifying trust amount multiplied by a fraction, 2443
the numerator of which is the sum of the book value of the 2444
qualifying investee's physical assets in this state on the last 2445
day of the qualifying investee's fiscal or calendar year ending 2446
immediately prior to the day on which the trust recognizes the 2447
qualifying trust amount, and the denominator of which is the sum 2448
of the book value of the qualifying investee's total physical 2449
assets everywhere on the last day of the qualifying investee's 2450
fiscal or calendar year ending immediately prior to the day on 2451
which the trust recognizes the qualifying trust amount. If, for 2452
a taxable year, the trust recognizes a qualifying trust amount 2453
with respect to more than one qualifying investee, the amount 2454
described in division (BB) (4) (b) of this section shall equal the 2455
sum of the products so computed for each such qualifying 2456
investee. 2457

(c) (i) With respect to a trust or portion of a trust that 2458
is a resident as ascertained in accordance with division (I) (3) 2459
(d) of this section, its modified nonbusiness income. 2460

(ii) With respect to a trust or portion of a trust that is 2461
not a resident as ascertained in accordance with division (I) (3) 2462
(d) of this section, the amount of its modified nonbusiness 2463
income satisfying the descriptions in divisions (B) (2) to (5) of 2464
section 5747.20 of the Revised Code, except as otherwise 2465
provided in division (BB) (4) (c) (ii) of this section. With 2466
respect to a trust or portion of a trust that is not a resident 2467
as ascertained in accordance with division (I) (3) (d) of this 2468
section, the trust's portion of modified nonbusiness income 2469

recognized from the sale, exchange, or other disposition of a 2470
debt interest in or equity interest in a section 5747.212 2471
entity, as defined in section 5747.212 of the Revised Code, 2472
without regard to division (A) of that section, shall not be 2473
allocated to this state in accordance with section 5747.20 of 2474
the Revised Code but shall be apportioned to this state in 2475
accordance with division (B) of section 5747.212 of the Revised 2476
Code without regard to division (A) of that section. 2477

If the allocation and apportionment of a trust's income 2478
under divisions (BB) (4) (a) and (c) of this section do not fairly 2479
represent the modified Ohio taxable income of the trust in this 2480
state, the alternative methods described in division (C) of 2481
section 5747.21 of the Revised Code may be applied in the manner 2482
and to the same extent provided in that section. 2483

(5) (a) Except as set forth in division (BB) (5) (b) of this 2484
section, "qualifying investee" means a person in which a trust 2485
has an equity or ownership interest, or a person or unit of 2486
government the debt obligations of either of which are owned by 2487
a trust. For the purposes of division (BB) (2) (a) of this section 2488
and for the purpose of computing the fraction described in 2489
division (BB) (4) (b) of this section, all of the following apply: 2490

(i) If the qualifying investee is a member of a qualifying 2491
controlled group on the last day of the qualifying investee's 2492
fiscal or calendar year ending immediately prior to the date on 2493
which the trust recognizes the gain or loss, then "qualifying 2494
investee" includes all persons in the qualifying controlled 2495
group on such last day. 2496

(ii) If the qualifying investee, or if the qualifying 2497
investee and any members of the qualifying controlled group of 2498
which the qualifying investee is a member on the last day of the 2499

qualifying investee's fiscal or calendar year ending immediately 2500
prior to the date on which the trust recognizes the gain or 2501
loss, separately or cumulatively own, directly or indirectly, on 2502
the last day of the qualifying investee's fiscal or calendar 2503
year ending immediately prior to the date on which the trust 2504
recognizes the qualifying trust amount, more than fifty per cent 2505
of the equity of a pass-through entity, then the qualifying 2506
investee and the other members are deemed to own the 2507
proportionate share of the pass-through entity's physical assets 2508
which the pass-through entity directly or indirectly owns on the 2509
last day of the pass-through entity's calendar or fiscal year 2510
ending within or with the last day of the qualifying investee's 2511
fiscal or calendar year ending immediately prior to the date on 2512
which the trust recognizes the qualifying trust amount. 2513

(iii) For the purposes of division (BB) (5) (a) (iii) of this 2514
section, "upper level pass-through entity" means a pass-through 2515
entity directly or indirectly owning any equity of another pass- 2516
through entity, and "lower level pass-through entity" means that 2517
other pass-through entity. 2518

An upper level pass-through entity, whether or not it is 2519
also a qualifying investee, is deemed to own, on the last day of 2520
the upper level pass-through entity's calendar or fiscal year, 2521
the proportionate share of the lower level pass-through entity's 2522
physical assets that the lower level pass-through entity 2523
directly or indirectly owns on the last day of the lower level 2524
pass-through entity's calendar or fiscal year ending within or 2525
with the last day of the upper level pass-through entity's 2526
fiscal or calendar year. If the upper level pass-through entity 2527
directly and indirectly owns less than fifty per cent of the 2528
equity of the lower level pass-through entity on each day of the 2529
upper level pass-through entity's calendar or fiscal year in 2530

which or with which ends the calendar or fiscal year of the 2531
lower level pass-through entity and if, based upon clear and 2532
convincing evidence, complete information about the location and 2533
cost of the physical assets of the lower pass-through entity is 2534
not available to the upper level pass-through entity, then 2535
solely for purposes of ascertaining if a gain or loss 2536
constitutes a qualifying trust amount, the upper level pass- 2537
through entity shall be deemed as owning no equity of the lower 2538
level pass-through entity for each day during the upper level 2539
pass-through entity's calendar or fiscal year in which or with 2540
which ends the lower level pass-through entity's calendar or 2541
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 2542
shall be construed to provide for any deduction or exclusion in 2543
computing any trust's Ohio taxable income. 2544

(b) With respect to a trust that is not a resident for the 2545
taxable year and with respect to a part of a trust that is not a 2546
resident for the taxable year, "qualifying investee" for that 2547
taxable year does not include a C corporation if both of the 2548
following apply: 2549

(i) During the taxable year the trust or part of the trust 2550
recognizes a gain or loss from the sale, exchange, or other 2551
disposition of equity or ownership interests in, or debt 2552
obligations of, the C corporation. 2553

(ii) Such gain or loss constitutes nonbusiness income. 2554

(6) "Available" means information is such that a person is 2555
able to learn of the information by the due date plus 2556
extensions, if any, for filing the return for the taxable year 2557
in which the trust recognizes the gain or loss. 2558

(CC) "Qualifying controlled group" has the same meaning as 2559

in section 5733.04 of the Revised Code.	2560
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	2561 2562
(EE) (1) For the purposes of division (EE) of this section:	2563
(a) "Qualifying person" means any person other than a qualifying corporation.	2564 2565
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	2566 2567 2568
(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;	2569 2570 2571 2572
(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.	2573 2574 2575 2576 2577
(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.	2578 2579 2580
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	2581 2582
(1) "Trust" does not include a qualified pre-income tax trust.	2583 2584
(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election	2585 2586

as described in division (FF) (3) of this section. 2587

(3) A "qualifying pre-income tax trust election" is an 2588
election by a pre-income tax trust to subject to the tax imposed 2589
by section 5751.02 of the Revised Code the pre-income tax trust 2590
and all pass-through entities of which the trust owns or 2591
controls, directly, indirectly, or constructively through 2592
related interests, five per cent or more of the ownership or 2593
equity interests. The trustee shall notify the tax commissioner 2594
in writing of the election on or before April 15, 2006. The 2595
election, if timely made, shall be effective on and after 2596
January 1, 2006, and shall apply for all tax periods and tax 2597
years until revoked by the trustee of the trust. 2598

(4) A "pre-income tax trust" is a trust that satisfies all 2599
of the following requirements: 2600

(a) The document or instrument creating the trust was 2601
executed by the grantor before January 1, 1972; 2602

(b) The trust became irrevocable upon the creation of the 2603
trust; and 2604

(c) The grantor was domiciled in this state at the time 2605
the trust was created. 2606

(GG) "Uniformed services" has the same meaning as in 10 2607
U.S.C. 101. 2608

(HH) "Employee" means an individual who is an employee 2609
under the rules adopted by the administrator of workers' 2610
compensation pursuant to section 4175.01 of the Revised Code. 2611

Section 2. That existing sections 1349.61, 4121.01, 2612
4123.01, 4123.026, 4141.01, and 5747.01 of the Revised Code are 2613
hereby repealed. 2614