

As Introduced

**132nd General Assembly
Regular Session
2017-2018**

H. B. No. 682

Representative Barnes

A BILL

To amend sections 5743.02, 5743.51, and 5747.01 and 1
to enact section 3701.36 of the Revised Code to 2
establish the Hope for a Smile Program through 3
which buses are operated to offer dental hygiene 4
services to Ohio schoolchildren and to fund the 5
Program through a combination of cigarette and 6
tobacco tax receipts, donations, and Medicaid 7
and insurance reimbursements. 8

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

Section 1. That sections 5743.02, 5743.51, and 5747.01 be 9
amended and section 3701.36 of the Revised Code be enacted to 10
read as follows: 11

Sec. 3701.36. (A) The hope for a smile program is hereby 12
established. The primary objective of the program is to improve 13
the oral health of school-age children, which the general 14
assembly hereby declares to be one of the most unmet health care 15
needs of this state. Services provided under the program shall 16
be targeted toward school-age children who are indigent and 17
uninsured, although other children may be served. The hope for a 18
smile advisory council established under division (G) of this 19

section may recommend additional population groups to be 20
targeted. 21

(B) The program shall be operated as a collaboration 22
between the department of health and the following: 23

(1) The Ohio dental association; 24

(2) The Ohio dental hygienists' association; 25

(3) The Ohio state university college of dentistry and the 26
dental hygiene program at that college; 27

(4) Case western reserve university school of dental 28
medicine; 29

(5) Shawnee state university; 30

(6) James A. Rhodes state college; 31

(7) Columbus state community college; 32

(8) Cuyahoga community college, metropolitan campus; 33

(9) Youngstown state university; 34

(10) Lorain county community college; 35

(11) Lakeland community college; 36

(12) University of Cincinnati; 37

(13) Sinclair community college; 38

(14) Owens community college; 39

(15) Stark state college. 40

(C) The director of health shall divide the state into a 41
northern region, a central region, and a southern region. The 42
director shall assign one bus to each region. 43

Dentists, dental hygienists, and the faculty and staff of 44
the dentistry and dental hygiene educational programs of this 45
state shall staff each bus. The faculty and staff of the 46
educational programs may permit students enrolled in the 47
programs to participate in staffing the buses. 48

The individuals staffing each bus shall travel to the 49
schools located in the region assigned to each bus. In 50
scheduling visits to those schools, priority shall be given to 51
schools that are attended by high numbers of children who are in 52
the program's one or more targeted population groups. During 53
each visit, the individuals who provide services to the children 54
shall provide the services in accordance with their authority to 55
practice under Chapter 4715. of the Revised Code. 56

(D) Dentists and dental hygienists who provide services 57
free of charge under the program may deduct the fair market 58
value of those services in computing Ohio adjusted gross income 59
under section 5747.01 of the Revised Code. 60

Participation in the program by students of dentistry and 61
dental hygiene educational programs in this state shall be 62
recognized by the governor and the general assembly as a 63
workforce and economic development initiative. 64

(E) The director of health shall apply on the program's 65
behalf to the department of medicaid for a medicaid provider 66
agreement. The director shall make arrangements with private 67
entities that provide health care insurance or other forms of 68
health care coverage in this state as the director considers 69
necessary for the program to be reimbursed for services provided 70
to children who have health care insurance or coverage through 71
those entities. 72

(F) (1) There is hereby created in the state treasury the 73
hope for a smile program fund, which shall be used by the 74
director of health solely to pay the costs of the hope for a 75
smile program. The fund shall consist of all moneys credited to 76
the fund under divisions (F) (2) and (3) of this section. 77

(2) (a) On or before the first day of July of each year, or 78
as soon as practicable thereafter, the director of budget and 79
management shall certify to the treasurer of state and the 80
director of health a schedule listing receipts from the taxes 81
levied under sections 5743.02 and 5743.51 of the Revised Code 82
that the treasurer of state shall credit to the hope for a smile 83
program fund in each month of the fiscal year. In determining 84
the amount to be transferred each month, the director shall 85
estimate the amount of such receipts necessary to pay the costs 86
of the hope for a smile program for the fiscal year, considering 87
the unencumbered balance of the hope for a smile program fund as 88
of that date and any revenue the director estimates to be 89
credited to the fund in the fiscal year under division (F) (3) of 90
this section. 91

(b) Not later than the last day of each month, the 92
treasurer of state shall credit receipts from the taxes levied 93
under sections 5743.02 and 5743.51 of the Revised Code to the 94
hope for a smile program fund equal to the amount required to be 95
so credited to that fund pursuant to the certification the 96
treasurer receives from the director of budget and management 97
under division (F) (2) (a) of this section. 98

(3) The program may accept grants, donations, and awards. 99
The program may seek payments from the medicaid program for 100
services provided to children who are medicaid recipients. The 101
program may seek reimbursement from private entities that 102

provide health care insurance or other forms of health care 103
coverage for services provided to children who have insurance or 104
coverage through those entities. The program may apply for money 105
allocated by the United States department of labor or other 106
entities for workforce or economic development initiatives. 107

Any amounts received from a source described in division 108
(F) (3) of this section shall be credited to the hope for a smile 109
program fund. 110

(G) The director of health shall establish an advisory 111
council, to be known as the hope for a smile advisory council, 112
to advise the director on matters regarding the implementation 113
and administration of the program. The director shall appoint 114
the council's members, which shall include representatives of 115
the Ohio dental association, the Ohio dental hygienists' 116
association, the Ohio state university college of dentistry and 117
the dental hygiene program at that college, the case western 118
reserve university school of dental medicine, the Ohio council 119
of dental hygiene directors, and other entities considered 120
appropriate by the director. 121

(H) In consultation with the hope for a smile advisory 122
council, the director of health shall adopt rules as the 123
director considers necessary to implement and administer this 124
section. The rules shall be adopted in accordance with Chapter 125
119. of the Revised Code. 126

(I) Not later than the first day of July of each year, the 127
director of health, with input from the hope for a smile 128
advisory council, shall prepare a report on progress the program 129
has made in achieving the objective expressed in division (A) of 130
this section, saving money for the medicaid program and other 131
safety net programs, and promoting workforce and economic 132

development in this state. The director shall submit each report 133
to the governor and, in accordance with section 101.68 of the 134
Revised Code, to the general assembly. 135

Sec. 5743.02. To provide revenues for the general revenue 136
fund and the hope for a smile program, an excise tax on sales of 137
cigarettes is hereby levied at the rate of eighty mills on each 138
cigarette. 139

Only one sale of the same article shall be used in 140
computing the amount of tax due. 141

The treasurer of state shall place to the credit of the 142
tax refund fund created by section 5703.052 of the Revised Code, 143
out of receipts from the tax levied by this section, amounts 144
equal to the refunds certified by the tax commissioner pursuant 145
to section 5743.05 of the Revised Code. The balance of taxes 146
collected under such section, after the credits to the tax 147
refund fund, shall be ~~paid into~~ credited as follows: 148

(A) To the hope for a smile program fund created in 149
section 3701.36 of the Revised Code, the amount required to be 150
credited to that fund pursuant to the certification received by 151
the treasurer of state pursuant to division (F)(2)(a) of that 152
section; 153

(B) To the general revenue fund, all remaining receipts. 154

Sec. 5743.51. (A) To provide revenue for the general 155
revenue fund ~~of the state~~ and the hope for a smile program, an 156
excise tax on tobacco products is hereby levied at one of the 157
following rates: 158

(1) For tobacco products other than little cigars, 159
seventeen per cent of the wholesale price of the tobacco product 160
received by a distributor or sold by a manufacturer to a retail 161

dealer located in this state. 162

(2) For invoices dated October 1, 2013, or later, thirty- 163
seven per cent of the wholesale price of little cigars received 164
by a distributor or sold by a manufacturer to a retail dealer 165
located in this state. 166

Each distributor who brings tobacco products, or causes 167
tobacco products to be brought, into this state for distribution 168
within this state, or any out-of-state distributor who sells 169
tobacco products to wholesale or retail dealers located in this 170
state for resale by those wholesale or retail dealers is liable 171
for the tax imposed by this section. Only one sale of the same 172
article shall be used in computing the amount of the tax due. 173

(B) The treasurer of state shall place to the credit of 174
the tax refund fund created by section 5703.052 of the Revised 175
Code, out of the receipts from the tax levied by this section, 176
amounts equal to the refunds certified by the tax commissioner 177
pursuant to section 5743.53 of the Revised Code. The balance of 178
the taxes collected under this section shall be ~~paid into~~ 179
credited as follows: 180

(1) To the hope for a smile program fund created in 181
section 3701.36 of the Revised Code, the amount required to be 182
credited to that fund pursuant to the certification received by 183
the treasurer of state pursuant to division (F) (2) (a) of that 184
section; 185

(2) To the general revenue fund, all remaining receipts. 186

(C) The commissioner may adopt rules as are necessary to 187
assist in the enforcement and administration of sections 5743.51 188
to 5743.66 of the Revised Code, including rules providing for 189
the remission of penalties imposed. 190

(D) A manufacturer is not liable for payment of the tax 191
imposed by this section for sales of tobacco products to a 192
retail dealer that has filed a signed statement with the 193
manufacturer in which the retail dealer agrees to pay and be 194
liable for the tax, as long as the manufacturer has provided a 195
copy of the statement to the tax commissioner. 196

Sec. 5747.01. Except as otherwise expressly provided or 197
clearly appearing from the context, any term used in this 198
chapter that is not otherwise defined in this section has the 199
same meaning as when used in a comparable context in the laws of 200
the United States relating to federal income taxes or if not 201
used in a comparable context in those laws, has the same meaning 202
as in section 5733.40 of the Revised Code. Any reference in this 203
chapter to the Internal Revenue Code includes other laws of the 204
United States relating to federal income taxes. 205

As used in this chapter: 206

(A) "Adjusted gross income" or "Ohio adjusted gross 207
income" means federal adjusted gross income, as defined and used 208
in the Internal Revenue Code, adjusted as provided in this 209
section: 210

(1) Add interest or dividends on obligations or securities 211
of any state or of any political subdivision or authority of any 212
state, other than this state and its subdivisions and 213
authorities. 214

(2) Add interest or dividends on obligations of any 215
authority, commission, instrumentality, territory, or possession 216
of the United States to the extent that the interest or 217
dividends are exempt from federal income taxes but not from 218
state income taxes. 219

(3) Deduct interest or dividends on obligations of the 220
United States and its territories and possessions or of any 221
authority, commission, or instrumentality of the United States 222
to the extent that the interest or dividends are included in 223
federal adjusted gross income but exempt from state income taxes 224
under the laws of the United States. 225

(4) Deduct disability and survivor's benefits to the 226
extent included in federal adjusted gross income. 227

(5) Deduct benefits under Title II of the Social Security 228
Act and tier 1 railroad retirement benefits to the extent 229
included in federal adjusted gross income under section 86 of 230
the Internal Revenue Code. 231

(6) In the case of a taxpayer who is a beneficiary of a 232
trust that makes an accumulation distribution as defined in 233
section 665 of the Internal Revenue Code, add, for the 234
beneficiary's taxable years beginning before 2002, the portion, 235
if any, of such distribution that does not exceed the 236
undistributed net income of the trust for the three taxable 237
years preceding the taxable year in which the distribution is 238
made to the extent that the portion was not included in the 239
trust's taxable income for any of the trust's taxable years 240
beginning in 2002 or thereafter. "Undistributed net income of a 241
trust" means the taxable income of the trust increased by (a) (i) 242
the additions to adjusted gross income required under division 243
(A) of this section and (ii) the personal exemptions allowed to 244
the trust pursuant to section 642(b) of the Internal Revenue 245
Code, and decreased by (b) (i) the deductions to adjusted gross 246
income required under division (A) of this section, (ii) the 247
amount of federal income taxes attributable to such income, and 248
(iii) the amount of taxable income that has been included in the 249

adjusted gross income of a beneficiary by reason of a prior 250
accumulation distribution. Any undistributed net income included 251
in the adjusted gross income of a beneficiary shall reduce the 252
undistributed net income of the trust commencing with the 253
earliest years of the accumulation period. 254

(7) Deduct the amount of wages and salaries, if any, not 255
otherwise allowable as a deduction but that would have been 256
allowable as a deduction in computing federal adjusted gross 257
income for the taxable year, had the targeted jobs credit 258
allowed and determined under sections 38, 51, and 52 of the 259
Internal Revenue Code not been in effect. 260

(8) Deduct any interest or interest equivalent on public 261
obligations and purchase obligations to the extent that the 262
interest or interest equivalent is included in federal adjusted 263
gross income. 264

(9) Add any loss or deduct any gain resulting from the 265
sale, exchange, or other disposition of public obligations to 266
the extent that the loss has been deducted or the gain has been 267
included in computing federal adjusted gross income. 268

(10) Deduct or add amounts, as provided under section 269
5747.70 of the Revised Code, related to contributions to 270
variable college savings program accounts made or tuition units 271
purchased pursuant to Chapter 3334. of the Revised Code. 272

(11) (a) Deduct, to the extent not otherwise allowable as a 273
deduction or exclusion in computing federal or Ohio adjusted 274
gross income for the taxable year, the amount the taxpayer paid 275
during the taxable year for medical care insurance and qualified 276
long-term care insurance for the taxpayer, the taxpayer's 277
spouse, and dependents. No deduction for medical care insurance 278

under division (A) (11) of this section shall be allowed either 279
to any taxpayer who is eligible to participate in any subsidized 280
health plan maintained by any employer of the taxpayer or of the 281
taxpayer's spouse, or to any taxpayer who is entitled to, or on 282
application would be entitled to, benefits under part A of Title 283
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 284
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 285
of this section, "subsidized health plan" means a health plan 286
for which the employer pays any portion of the plan's cost. The 287
deduction allowed under division (A) (11) (a) of this section 288
shall be the net of any related premium refunds, related premium 289
reimbursements, or related insurance premium dividends received 290
during the taxable year. 291

(b) Deduct, to the extent not otherwise deducted or 292
excluded in computing federal or Ohio adjusted gross income 293
during the taxable year, the amount the taxpayer paid during the 294
taxable year, not compensated for by any insurance or otherwise, 295
for medical care of the taxpayer, the taxpayer's spouse, and 296
dependents, to the extent the expenses exceed seven and one-half 297
per cent of the taxpayer's federal adjusted gross income. 298

(c) Deduct, to the extent not otherwise deducted or 299
excluded in computing federal or Ohio adjusted gross income, any 300
amount included in federal adjusted gross income under section 301
105 or not excluded under section 106 of the Internal Revenue 302
Code solely because it relates to an accident and health plan 303
for a person who otherwise would be a "qualifying relative" and 304
thus a "dependent" under section 152 of the Internal Revenue 305
Code but for the fact that the person fails to meet the income 306
and support limitations under section 152(d) (1) (B) and (C) of 307
the Internal Revenue Code. 308

(d) For purposes of division (A)(11) of this section, 309
"medical care" has the meaning given in section 213 of the 310
Internal Revenue Code, subject to the special rules, 311
limitations, and exclusions set forth therein, and "qualified 312
long-term care" has the same meaning given in section 7702B(c) 313
of the Internal Revenue Code. Solely for purposes of divisions 314
(A)(11)(a) and (c) of this section, "dependent" includes a 315
person who otherwise would be a "qualifying relative" and thus a 316
"dependent" under section 152 of the Internal Revenue Code but 317
for the fact that the person fails to meet the income and 318
support limitations under section 152(d)(1)(B) and (C) of the 319
Internal Revenue Code. 320

(12)(a) Deduct any amount included in federal adjusted 321
gross income solely because the amount represents a 322
reimbursement or refund of expenses that in any year the 323
taxpayer had deducted as an itemized deduction pursuant to 324
section 63 of the Internal Revenue Code and applicable United 325
States department of the treasury regulations. The deduction 326
otherwise allowed under division (A)(12)(a) of this section 327
shall be reduced to the extent the reimbursement is attributable 328
to an amount the taxpayer deducted under this section in any 329
taxable year. 330

(b) Add any amount not otherwise included in Ohio adjusted 331
gross income for any taxable year to the extent that the amount 332
is attributable to the recovery during the taxable year of any 333
amount deducted or excluded in computing federal or Ohio 334
adjusted gross income in any taxable year. 335

(13) Deduct any portion of the deduction described in 336
section 1341(a)(2) of the Internal Revenue Code, for repaying 337
previously reported income received under a claim of right, that 338

meets both of the following requirements: 339

(a) It is allowable for repayment of an item that was 340
included in the taxpayer's adjusted gross income for a prior 341
taxable year and did not qualify for a credit under division (A) 342
or (B) of section 5747.05 of the Revised Code for that year; 343

(b) It does not otherwise reduce the taxpayer's adjusted 344
gross income for the current or any other taxable year. 345

(14) Deduct an amount equal to the deposits made to, and 346
net investment earnings of, a medical savings account during the 347
taxable year, in accordance with section 3924.66 of the Revised 348
Code. The deduction allowed by division (A) (14) of this section 349
does not apply to medical savings account deposits and earnings 350
otherwise deducted or excluded for the current or any other 351
taxable year from the taxpayer's federal adjusted gross income. 352

(15) (a) Add an amount equal to the funds withdrawn from a 353
medical savings account during the taxable year, and the net 354
investment earnings on those funds, when the funds withdrawn 355
were used for any purpose other than to reimburse an account 356
holder for, or to pay, eligible medical expenses, in accordance 357
with section 3924.66 of the Revised Code; 358

(b) Add the amounts distributed from a medical savings 359
account under division (A) (2) of section 3924.68 of the Revised 360
Code during the taxable year. 361

(16) Add any amount claimed as a credit under section 362
5747.059 or 5747.65 of the Revised Code to the extent that such 363
amount satisfies either of the following: 364

(a) The amount was deducted or excluded from the 365
computation of the taxpayer's federal adjusted gross income as 366
required to be reported for the taxpayer's taxable year under 367

the Internal Revenue Code; 368

(b) The amount resulted in a reduction of the taxpayer's 369
federal adjusted gross income as required to be reported for any 370
of the taxpayer's taxable years under the Internal Revenue Code. 371

(17) Deduct the amount contributed by the taxpayer to an 372
individual development account program established by a county 373
department of job and family services pursuant to sections 374
329.11 to 329.14 of the Revised Code for the purpose of matching 375
funds deposited by program participants. On request of the tax 376
commissioner, the taxpayer shall provide any information that, 377
in the tax commissioner's opinion, is necessary to establish the 378
amount deducted under division (A) (17) of this section. 379

(18) Beginning in taxable year 2001 but not for any 380
taxable year beginning after December 31, 2005, if the taxpayer 381
is married and files a joint return and the combined federal 382
adjusted gross income of the taxpayer and the taxpayer's spouse 383
for the taxable year does not exceed one hundred thousand 384
dollars, or if the taxpayer is single and has a federal adjusted 385
gross income for the taxable year not exceeding fifty thousand 386
dollars, deduct amounts paid during the taxable year for 387
qualified tuition and fees paid to an eligible institution for 388
the taxpayer, the taxpayer's spouse, or any dependent of the 389
taxpayer, who is a resident of this state and is enrolled in or 390
attending a program that culminates in a degree or diploma at an 391
eligible institution. The deduction may be claimed only to the 392
extent that qualified tuition and fees are not otherwise 393
deducted or excluded for any taxable year from federal or Ohio 394
adjusted gross income. The deduction may not be claimed for 395
educational expenses for which the taxpayer claims a credit 396
under section 5747.27 of the Revised Code. 397

(19) Add any reimbursement received during the taxable 398
year of any amount the taxpayer deducted under division (A) (18) 399
of this section in any previous taxable year to the extent the 400
amount is not otherwise included in Ohio adjusted gross income. 401

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 402
(v) of this section, add five-sixths of the amount of 403
depreciation expense allowed by subsection (k) of section 168 of 404
the Internal Revenue Code, including the taxpayer's 405
proportionate or distributive share of the amount of 406
depreciation expense allowed by that subsection to a pass- 407
through entity in which the taxpayer has a direct or indirect 408
ownership interest. 409

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 410
of this section, add five-sixths of the amount of qualifying 411
section 179 depreciation expense, including the taxpayer's 412
proportionate or distributive share of the amount of qualifying 413
section 179 depreciation expense allowed to any pass-through 414
entity in which the taxpayer has a direct or indirect ownership 415
interest. 416

(iii) Subject to division (A) (20) (a) (v) of this section, 417
for taxable years beginning in 2012 or thereafter, if the 418
increase in income taxes withheld by the taxpayer is equal to or 419
greater than ten per cent of income taxes withheld by the 420
taxpayer during the taxpayer's immediately preceding taxable 421
year, "two-thirds" shall be substituted for "five-sixths" for 422
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 423

(iv) Subject to division (A) (20) (a) (v) of this section, 424
for taxable years beginning in 2012 or thereafter, a taxpayer is 425
not required to add an amount under division (A) (20) of this 426
section if the increase in income taxes withheld by the taxpayer 427

and by any pass-through entity in which the taxpayer has a 428
direct or indirect ownership interest is equal to or greater 429
than the sum of (I) the amount of qualifying section 179 430
depreciation expense and (II) the amount of depreciation expense 431
allowed to the taxpayer by subsection (k) of section 168 of the 432
Internal Revenue Code, and including the taxpayer's 433
proportionate or distributive shares of such amounts allowed to 434
any such pass-through entities. 435

(v) If a taxpayer directly or indirectly incurs a net 436
operating loss for the taxable year for federal income tax 437
purposes, to the extent such loss resulted from depreciation 438
expense allowed by subsection (k) of section 168 of the Internal 439
Revenue Code and by qualifying section 179 depreciation expense, 440
"the entire" shall be substituted for "five-sixths of the" for 441
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 442

The tax commissioner, under procedures established by the 443
commissioner, may waive the add-backs related to a pass-through 444
entity if the taxpayer owns, directly or indirectly, less than 445
five per cent of the pass-through entity. 446

(b) Nothing in division (A) (20) of this section shall be 447
construed to adjust or modify the adjusted basis of any asset. 448

(c) To the extent the add-back required under division (A) 449
(20) (a) of this section is attributable to property generating 450
nonbusiness income or loss allocated under section 5747.20 of 451
the Revised Code, the add-back shall be situated to the same 452
location as the nonbusiness income or loss generated by the 453
property for the purpose of determining the credit under 454
division (A) of section 5747.05 of the Revised Code. Otherwise, 455
the add-back shall be apportioned, subject to one or more of the 456
four alternative methods of apportionment enumerated in section 457

5747.21 of the Revised Code. 458

(d) For the purposes of division (A) (20) (a) (v) of this 459
section, net operating loss carryback and carryforward shall not 460
include the allowance of any net operating loss deduction 461
carryback or carryforward to the taxable year to the extent such 462
loss resulted from depreciation allowed by section 168(k) of the 463
Internal Revenue Code and by the qualifying section 179 464
depreciation expense amount. 465

(e) For the purposes of divisions (A) (20) and (21) of this 466
section: 467

(i) "Income taxes withheld" means the total amount 468
withheld and remitted under sections 5747.06 and 5747.07 of the 469
Revised Code by an employer during the employer's taxable year. 470

(ii) "Increase in income taxes withheld" means the amount 471
by which the amount of income taxes withheld by an employer 472
during the employer's current taxable year exceeds the amount of 473
income taxes withheld by that employer during the employer's 474
immediately preceding taxable year. 475

(iii) "Qualifying section 179 depreciation expense" means 476
the difference between (I) the amount of depreciation expense 477
directly or indirectly allowed to a taxpayer under section 179 478
of the Internal Revised Code, and (II) the amount of 479
depreciation expense directly or indirectly allowed to the 480
taxpayer under section 179 of the Internal Revenue Code as that 481
section existed on December 31, 2002. 482

(21) (a) If the taxpayer was required to add an amount 483
under division (A) (20) (a) of this section for a taxable year, 484
deduct one of the following: 485

(i) One-fifth of the amount so added for each of the five 486

succeeding taxable years if the amount so added was five-sixths 487
of qualifying section 179 depreciation expense or depreciation 488
expense allowed by subsection (k) of section 168 of the Internal 489
Revenue Code; 490

(ii) One-half of the amount so added for each of the two 491
succeeding taxable years if the amount so added was two-thirds 492
of such depreciation expense; 493

(iii) One-sixth of the amount so added for each of the six 494
succeeding taxable years if the entire amount of such 495
depreciation expense was so added. 496

(b) If the amount deducted under division (A) (21) (a) of 497
this section is attributable to an add-back allocated under 498
division (A) (20) (c) of this section, the amount deducted shall 499
be situated to the same location. Otherwise, the add-back shall 500
be apportioned using the apportionment factors for the taxable 501
year in which the deduction is taken, subject to one or more of 502
the four alternative methods of apportionment enumerated in 503
section 5747.21 of the Revised Code. 504

(c) No deduction is available under division (A) (21) (a) of 505
this section with regard to any depreciation allowed by section 506
168(k) of the Internal Revenue Code and by the qualifying 507
section 179 depreciation expense amount to the extent that such 508
depreciation results in or increases a federal net operating 509
loss carryback or carryforward. If no such deduction is 510
available for a taxable year, the taxpayer may carry forward the 511
amount not deducted in such taxable year to the next taxable 512
year and add that amount to any deduction otherwise available 513
under division (A) (21) (a) of this section for that next taxable 514
year. The carryforward of amounts not so deducted shall continue 515
until the entire addition required by division (A) (20) (a) of 516

this section has been deducted. 517

(d) No refund shall be allowed as a result of adjustments 518
made by division (A) (21) of this section. 519

(22) Deduct, to the extent not otherwise deducted or 520
excluded in computing federal or Ohio adjusted gross income for 521
the taxable year, the amount the taxpayer received during the 522
taxable year as reimbursement for life insurance premiums under 523
section 5919.31 of the Revised Code. 524

(23) Deduct, to the extent not otherwise deducted or 525
excluded in computing federal or Ohio adjusted gross income for 526
the taxable year, the amount the taxpayer received during the 527
taxable year as a death benefit paid by the adjutant general 528
under section 5919.33 of the Revised Code. 529

(24) Deduct, to the extent included in federal adjusted 530
gross income and not otherwise allowable as a deduction or 531
exclusion in computing federal or Ohio adjusted gross income for 532
the taxable year, military pay and allowances received by the 533
taxpayer during the taxable year for active duty service in the 534
United States army, air force, navy, marine corps, or coast 535
guard or reserve components thereof or the national guard. The 536
deduction may not be claimed for military pay and allowances 537
received by the taxpayer while the taxpayer is stationed in this 538
state. 539

(25) Deduct, to the extent not otherwise allowable as a 540
deduction or exclusion in computing federal or Ohio adjusted 541
gross income for the taxable year and not otherwise compensated 542
for by any other source, the amount of qualified organ donation 543
expenses incurred by the taxpayer during the taxable year, not 544
to exceed ten thousand dollars. A taxpayer may deduct qualified 545

organ donation expenses only once for all taxable years	546
beginning with taxable years beginning in 2007.	547
For the purposes of division (A) (25) of this section:	548
(a) "Human organ" means all or any portion of a human	549
liver, pancreas, kidney, intestine, or lung, and any portion of	550
human bone marrow.	551
(b) "Qualified organ donation expenses" means travel	552
expenses, lodging expenses, and wages and salary forgone by a	553
taxpayer in connection with the taxpayer's donation, while	554
living, of one or more of the taxpayer's human organs to another	555
human being.	556
(26) Deduct, to the extent not otherwise deducted or	557
excluded in computing federal or Ohio adjusted gross income for	558
the taxable year, amounts received by the taxpayer as retired	559
personnel pay for service in the uniformed services or reserve	560
components thereof, or the national guard, or received by the	561
surviving spouse or former spouse of such a taxpayer under the	562
survivor benefit plan on account of such a taxpayer's death. If	563
the taxpayer receives income on account of retirement paid under	564
the federal civil service retirement system or federal employees	565
retirement system, or under any successor retirement program	566
enacted by the congress of the United States that is established	567
and maintained for retired employees of the United States	568
government, and such retirement income is based, in whole or in	569
part, on credit for the taxpayer's uniformed service, the	570
deduction allowed under this division shall include only that	571
portion of such retirement income that is attributable to the	572
taxpayer's uniformed service, to the extent that portion of such	573
retirement income is otherwise included in federal adjusted	574
gross income and is not otherwise deducted under this section.	575

Any amount deducted under division (A) (26) of this section is 576
not included in a taxpayer's adjusted gross income for the 577
purposes of section 5747.055 of the Revised Code. No amount may 578
be deducted under division (A) (26) of this section on the basis 579
of which a credit was claimed under section 5747.055 of the 580
Revised Code. 581

(27) Deduct, to the extent not otherwise deducted or 582
excluded in computing federal or Ohio adjusted gross income for 583
the taxable year, the amount the taxpayer received during the 584
taxable year from the military injury relief fund created in 585
section 5902.05 of the Revised Code. 586

(28) Deduct, to the extent not otherwise deducted or 587
excluded in computing federal or Ohio adjusted gross income for 588
the taxable year, the amount the taxpayer received as a veterans 589
bonus during the taxable year from the Ohio department of 590
veterans services as authorized by Section 2r of Article VIII, 591
Ohio Constitution. 592

(29) Deduct, to the extent not otherwise deducted or 593
excluded in computing federal or Ohio adjusted gross income for 594
the taxable year, any income derived from a transfer agreement 595
or from the enterprise transferred under that agreement under 596
section 4313.02 of the Revised Code. 597

(30) Deduct, to the extent not otherwise deducted or 598
excluded in computing federal or Ohio adjusted gross income for 599
the taxable year, Ohio college opportunity or federal Pell grant 600
amounts received by the taxpayer or the taxpayer's spouse or 601
dependent pursuant to section 3333.122 of the Revised Code or 20 602
U.S.C. 1070a, et seq., and used to pay room or board furnished 603
by the educational institution for which the grant was awarded 604
at the institution's facilities, including meal plans 605

administered by the institution. For the purposes of this 606
division, receipt of a grant includes the distribution of a 607
grant directly to an educational institution and the crediting 608
of the grant to the enrollee's account with the institution. 609

(31) (a) For taxable years beginning in 2015, deduct from 610
the portion of an individual's adjusted gross income that is 611
business income, to the extent not otherwise deducted or 612
excluded in computing federal or Ohio adjusted gross income for 613
the taxable year, the lesser of the following amounts: 614

(i) Seventy-five per cent of the individual's business 615
income; 616

(ii) Ninety-three thousand seven hundred fifty dollars for 617
each spouse if spouses file separate returns under section 618
5747.08 of the Revised Code or one hundred eighty-seven thousand 619
five hundred dollars for all other individuals. 620

(b) For taxable years beginning in 2016 or thereafter, 621
deduct from the portion of an individual's adjusted gross income 622
that is business income, to the extent not otherwise deducted or 623
excluded in computing federal adjusted gross income for the 624
taxable year, one hundred twenty-five thousand dollars for each 625
spouse if spouses file separate returns under section 5747.08 of 626
the Revised Code or two hundred fifty thousand dollars for all 627
other individuals. 628

(32) Deduct, as provided under section 5747.78 of the 629
Revised Code, contributions to ABLE savings accounts made in 630
accordance with sections 113.50 to 113.56 of the Revised Code. 631

(33) Deduct an amount equal to the fair market value of 632
services provided free of charge by dentists and dental 633
hygienists under the hope for a smile program established under 634

section 3701.36 of the Revised Code. 635

(B) "Business income" means income, including gain or 636
loss, arising from transactions, activities, and sources in the 637
regular course of a trade or business and includes income, gain, 638
or loss from real property, tangible property, and intangible 639
property if the acquisition, rental, management, and disposition 640
of the property constitute integral parts of the regular course 641
of a trade or business operation. "Business income" includes 642
income, including gain or loss, from a partial or complete 643
liquidation of a business, including, but not limited to, gain 644
or loss from the sale or other disposition of goodwill. 645

(C) "Nonbusiness income" means all income other than 646
business income and may include, but is not limited to, 647
compensation, rents and royalties from real or tangible personal 648
property, capital gains, interest, dividends and distributions, 649
patent or copyright royalties, or lottery winnings, prizes, and 650
awards. 651

(D) "Compensation" means any form of remuneration paid to 652
an employee for personal services. 653

(E) "Fiduciary" means a guardian, trustee, executor, 654
administrator, receiver, conservator, or any other person acting 655
in any fiduciary capacity for any individual, trust, or estate. 656

(F) "Fiscal year" means an accounting period of twelve 657
months ending on the last day of any month other than December. 658

(G) "Individual" means any natural person. 659

(H) "Internal Revenue Code" means the "Internal Revenue 660
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 661

(I) "Resident" means any of the following, provided that 662

division (I) (3) of this section applies only to taxable years of 663
a trust beginning in 2002 or thereafter: 664

(1) An individual who is domiciled in this state, subject 665
to section 5747.24 of the Revised Code; 666

(2) The estate of a decedent who at the time of death was 667
domiciled in this state. The domicile tests of section 5747.24 668
of the Revised Code are not controlling for purposes of division 669
(I) (2) of this section. 670

(3) A trust that, in whole or part, resides in this state. 671
If only part of a trust resides in this state, the trust is a 672
resident only with respect to that part. 673

For the purposes of division (I) (3) of this section: 674

(a) A trust resides in this state for the trust's current 675
taxable year to the extent, as described in division (I) (3) (d) 676
of this section, that the trust consists directly or indirectly, 677
in whole or in part, of assets, net of any related liabilities, 678
that were transferred, or caused to be transferred, directly or 679
indirectly, to the trust by any of the following: 680

(i) A person, a court, or a governmental entity or 681
instrumentality on account of the death of a decedent, but only 682
if the trust is described in division (I) (3) (e) (i) or (ii) of 683
this section; 684

(ii) A person who was domiciled in this state for the 685
purposes of this chapter when the person directly or indirectly 686
transferred assets to an irrevocable trust, but only if at least 687
one of the trust's qualifying beneficiaries is domiciled in this 688
state for the purposes of this chapter during all or some 689
portion of the trust's current taxable year; 690

(iii) A person who was domiciled in this state for the 691
purposes of this chapter when the trust document or instrument 692
or part of the trust document or instrument became irrevocable, 693
but only if at least one of the trust's qualifying beneficiaries 694
is a resident domiciled in this state for the purposes of this 695
chapter during all or some portion of the trust's current 696
taxable year. If a trust document or instrument became 697
irrevocable upon the death of a person who at the time of death 698
was domiciled in this state for purposes of this chapter, that 699
person is a person described in division (I) (3) (a) (iii) of this 700
section. 701

(b) A trust is irrevocable to the extent that the 702
transferor is not considered to be the owner of the net assets 703
of the trust under sections 671 to 678 of the Internal Revenue 704
Code. 705

(c) With respect to a trust other than a charitable lead 706
trust, "qualifying beneficiary" has the same meaning as 707
"potential current beneficiary" as defined in section 1361(e) (2) 708
of the Internal Revenue Code, and with respect to a charitable 709
lead trust "qualifying beneficiary" is any current, future, or 710
contingent beneficiary, but with respect to any trust 711
"qualifying beneficiary" excludes a person or a governmental 712
entity or instrumentality to any of which a contribution would 713
qualify for the charitable deduction under section 170 of the 714
Internal Revenue Code. 715

(d) For the purposes of division (I) (3) (a) of this 716
section, the extent to which a trust consists directly or 717
indirectly, in whole or in part, of assets, net of any related 718
liabilities, that were transferred directly or indirectly, in 719
whole or part, to the trust by any of the sources enumerated in 720

that division shall be ascertained by multiplying the fair 721
market value of the trust's assets, net of related liabilities, 722
by the qualifying ratio, which shall be computed as follows: 723

(i) The first time the trust receives assets, the 724
numerator of the qualifying ratio is the fair market value of 725
those assets at that time, net of any related liabilities, from 726
sources enumerated in division (I) (3) (a) of this section. The 727
denominator of the qualifying ratio is the fair market value of 728
all the trust's assets at that time, net of any related 729
liabilities. 730

(ii) Each subsequent time the trust receives assets, a 731
revised qualifying ratio shall be computed. The numerator of the 732
revised qualifying ratio is the sum of (1) the fair market value 733
of the trust's assets immediately prior to the subsequent 734
transfer, net of any related liabilities, multiplied by the 735
qualifying ratio last computed without regard to the subsequent 736
transfer, and (2) the fair market value of the subsequently 737
transferred assets at the time transferred, net of any related 738
liabilities, from sources enumerated in division (I) (3) (a) of 739
this section. The denominator of the revised qualifying ratio is 740
the fair market value of all the trust's assets immediately 741
after the subsequent transfer, net of any related liabilities. 742

(iii) Whether a transfer to the trust is by or from any of 743
the sources enumerated in division (I) (3) (a) of this section 744
shall be ascertained without regard to the domicile of the 745
trust's beneficiaries. 746

(e) For the purposes of division (I) (3) (a) (i) of this 747
section: 748

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

section if the trust is a testamentary trust and the testator of 750
that testamentary trust was domiciled in this state at the time 751
of the testator's death for purposes of the taxes levied under 752
Chapter 5731. of the Revised Code. 753

(ii) A trust is described in division (I) (3) (e) (ii) of 754
this section if the transfer is a qualifying transfer described 755
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 756
trust is an irrevocable inter vivos trust, and at least one of 757
the trust's qualifying beneficiaries is domiciled in this state 758
for purposes of this chapter during all or some portion of the 759
trust's current taxable year. 760

(f) For the purposes of division (I) (3) (e) (ii) of this 761
section, a "qualifying transfer" is a transfer of assets, net of 762
any related liabilities, directly or indirectly to a trust, if 763
the transfer is described in any of the following: 764

(i) The transfer is made to a trust, created by the 765
decedent before the decedent's death and while the decedent was 766
domiciled in this state for the purposes of this chapter, and, 767
prior to the death of the decedent, the trust became irrevocable 768
while the decedent was domiciled in this state for the purposes 769
of this chapter. 770

(ii) The transfer is made to a trust to which the 771
decedent, prior to the decedent's death, had directly or 772
indirectly transferred assets, net of any related liabilities, 773
while the decedent was domiciled in this state for the purposes 774
of this chapter, and prior to the death of the decedent the 775
trust became irrevocable while the decedent was domiciled in 776
this state for the purposes of this chapter. 777

(iii) The transfer is made on account of a contractual 778

relationship existing directly or indirectly between the 779
transferor and either the decedent or the estate of the decedent 780
at any time prior to the date of the decedent's death, and the 781
decedent was domiciled in this state at the time of death for 782
purposes of the taxes levied under Chapter 5731. of the Revised 783
Code. 784

(iv) The transfer is made to a trust on account of a 785
contractual relationship existing directly or indirectly between 786
the transferor and another person who at the time of the 787
decedent's death was domiciled in this state for purposes of 788
this chapter. 789

(v) The transfer is made to a trust on account of the will 790
of a testator who was domiciled in this state at the time of the 791
testator's death for purposes of the taxes levied under Chapter 792
5731. of the Revised Code. 793

(vi) The transfer is made to a trust created by or caused 794
to be created by a court, and the trust was directly or 795
indirectly created in connection with or as a result of the 796
death of an individual who, for purposes of the taxes levied 797
under Chapter 5731. of the Revised Code, was domiciled in this 798
state at the time of the individual's death. 799

(g) The tax commissioner may adopt rules to ascertain the 800
part of a trust residing in this state. 801

(J) "Nonresident" means an individual or estate that is 802
not a resident. An individual who is a resident for only part of 803
a taxable year is a nonresident for the remainder of that 804
taxable year. 805

(K) "Pass-through entity" has the same meaning as in 806
section 5733.04 of the Revised Code. 807

(L) "Return" means the notifications and reports required 808
to be filed pursuant to this chapter for the purpose of 809
reporting the tax due and includes declarations of estimated tax 810
when so required. 811

(M) "Taxable year" means the calendar year or the 812
taxpayer's fiscal year ending during the calendar year, or 813
fractional part thereof, upon which the adjusted gross income is 814
calculated pursuant to this chapter. 815

(N) "Taxpayer" means any person subject to the tax imposed 816
by section 5747.02 of the Revised Code or any pass-through 817
entity that makes the election under division (D) of section 818
5747.08 of the Revised Code. 819

(O) "Dependents" means dependents as defined in the 820
Internal Revenue Code and as claimed in the taxpayer's federal 821
income tax return for the taxable year or which the taxpayer 822
would have been permitted to claim had the taxpayer filed a 823
federal income tax return. 824

(P) "Principal county of employment" means, in the case of 825
a nonresident, the county within the state in which a taxpayer 826
performs services for an employer or, if those services are 827
performed in more than one county, the county in which the major 828
portion of the services are performed. 829

(Q) As used in sections 5747.50 to 5747.55 of the Revised 830
Code: 831

(1) "Subdivision" means any county, municipal corporation, 832
park district, or township. 833

(2) "Essential local government purposes" includes all 834
functions that any subdivision is required by general law to 835
exercise, including like functions that are exercised under a 836

charter adopted pursuant to the Ohio Constitution. 837

(R) "Overpayment" means any amount already paid that 838
exceeds the figure determined to be the correct amount of the 839
tax. 840

(S) "Taxable income" or "Ohio taxable income" applies only 841
to estates and trusts, and means federal taxable income, as 842
defined and used in the Internal Revenue Code, adjusted as 843
follows: 844

(1) Add interest or dividends, net of ordinary, necessary, 845
and reasonable expenses not deducted in computing federal 846
taxable income, on obligations or securities of any state or of 847
any political subdivision or authority of any state, other than 848
this state and its subdivisions and authorities, but only to the 849
extent that such net amount is not otherwise includible in Ohio 850
taxable income and is described in either division (S) (1) (a) or 851
(b) of this section: 852

(a) The net amount is not attributable to the S portion of 853
an electing small business trust and has not been distributed to 854
beneficiaries for the taxable year; 855

(b) The net amount is attributable to the S portion of an 856
electing small business trust for the taxable year. 857

(2) Add interest or dividends, net of ordinary, necessary, 858
and reasonable expenses not deducted in computing federal 859
taxable income, on obligations of any authority, commission, 860
instrumentality, territory, or possession of the United States 861
to the extent that the interest or dividends are exempt from 862
federal income taxes but not from state income taxes, but only 863
to the extent that such net amount is not otherwise includible 864
in Ohio taxable income and is described in either division (S) 865

- (1) (a) or (b) of this section; 866
- (3) Add the amount of personal exemption allowed to the 867
estate pursuant to section 642(b) of the Internal Revenue Code; 868
- (4) Deduct interest or dividends, net of related expenses 869
deducted in computing federal taxable income, on obligations of 870
the United States and its territories and possessions or of any 871
authority, commission, or instrumentality of the United States 872
to the extent that the interest or dividends are exempt from 873
state taxes under the laws of the United States, but only to the 874
extent that such amount is included in federal taxable income 875
and is described in either division (S) (1) (a) or (b) of this 876
section; 877
- (5) Deduct the amount of wages and salaries, if any, not 878
otherwise allowable as a deduction but that would have been 879
allowable as a deduction in computing federal taxable income for 880
the taxable year, had the targeted jobs credit allowed under 881
sections 38, 51, and 52 of the Internal Revenue Code not been in 882
effect, but only to the extent such amount relates either to 883
income included in federal taxable income for the taxable year 884
or to income of the S portion of an electing small business 885
trust for the taxable year; 886
- (6) Deduct any interest or interest equivalent, net of 887
related expenses deducted in computing federal taxable income, 888
on public obligations and purchase obligations, but only to the 889
extent that such net amount relates either to income included in 890
federal taxable income for the taxable year or to income of the 891
S portion of an electing small business trust for the taxable 892
year; 893
- (7) Add any loss or deduct any gain resulting from sale, 894

exchange, or other disposition of public obligations to the 895
extent that such loss has been deducted or such gain has been 896
included in computing either federal taxable income or income of 897
the S portion of an electing small business trust for the 898
taxable year; 899

(8) Except in the case of the final return of an estate, 900
add any amount deducted by the taxpayer on both its Ohio estate 901
tax return pursuant to section 5731.14 of the Revised Code, and 902
on its federal income tax return in determining federal taxable 903
income; 904

(9) (a) Deduct any amount included in federal taxable 905
income solely because the amount represents a reimbursement or 906
refund of expenses that in a previous year the decedent had 907
deducted as an itemized deduction pursuant to section 63 of the 908
Internal Revenue Code and applicable treasury regulations. The 909
deduction otherwise allowed under division (S) (9) (a) of this 910
section shall be reduced to the extent the reimbursement is 911
attributable to an amount the taxpayer or decedent deducted 912
under this section in any taxable year. 913

(b) Add any amount not otherwise included in Ohio taxable 914
income for any taxable year to the extent that the amount is 915
attributable to the recovery during the taxable year of any 916
amount deducted or excluded in computing federal or Ohio taxable 917
income in any taxable year, but only to the extent such amount 918
has not been distributed to beneficiaries for the taxable year. 919

(10) Deduct any portion of the deduction described in 920
section 1341(a) (2) of the Internal Revenue Code, for repaying 921
previously reported income received under a claim of right, that 922
meets both of the following requirements: 923

(a) It is allowable for repayment of an item that was 924
included in the taxpayer's taxable income or the decedent's 925
adjusted gross income for a prior taxable year and did not 926
qualify for a credit under division (A) or (B) of section 927
5747.05 of the Revised Code for that year. 928

(b) It does not otherwise reduce the taxpayer's taxable 929
income or the decedent's adjusted gross income for the current 930
or any other taxable year. 931

(11) Add any amount claimed as a credit under section 932
5747.059 or 5747.65 of the Revised Code to the extent that the 933
amount satisfies either of the following: 934

(a) The amount was deducted or excluded from the 935
computation of the taxpayer's federal taxable income as required 936
to be reported for the taxpayer's taxable year under the 937
Internal Revenue Code; 938

(b) The amount resulted in a reduction in the taxpayer's 939
federal taxable income as required to be reported for any of the 940
taxpayer's taxable years under the Internal Revenue Code. 941

(12) Deduct any amount, net of related expenses deducted 942
in computing federal taxable income, that a trust is required to 943
report as farm income on its federal income tax return, but only 944
if the assets of the trust include at least ten acres of land 945
satisfying the definition of "land devoted exclusively to 946
agricultural use" under section 5713.30 of the Revised Code, 947
regardless of whether the land is valued for tax purposes as 948
such land under sections 5713.30 to 5713.38 of the Revised Code. 949
If the trust is a pass-through entity investor, section 5747.231 950
of the Revised Code applies in ascertaining if the trust is 951
eligible to claim the deduction provided by division (S)(12) of 952

this section in connection with the pass-through entity's farm 953
income. 954

Except for farm income attributable to the S portion of an 955
electing small business trust, the deduction provided by 956
division (S) (12) of this section is allowed only to the extent 957
that the trust has not distributed such farm income. Division 958
(S) (12) of this section applies only to taxable years of a trust 959
beginning in 2002 or thereafter. 960

(13) Add the net amount of income described in section 961
641(c) of the Internal Revenue Code to the extent that amount is 962
not included in federal taxable income. 963

(14) Add or deduct the amount the taxpayer would be 964
required to add or deduct under division (A) (20) or (21) of this 965
section if the taxpayer's Ohio taxable income were computed in 966
the same manner as an individual's Ohio adjusted gross income is 967
computed under this section. In the case of a trust, division 968
(S) (14) of this section applies only to any of the trust's 969
taxable years beginning in 2002 or thereafter. 970

(T) "School district income" and "school district income 971
tax" have the same meanings as in section 5748.01 of the Revised 972
Code. 973

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 974
(7) of this section, "public obligations," "purchase 975
obligations," and "interest or interest equivalent" have the 976
same meanings as in section 5709.76 of the Revised Code. 977

(V) "Limited liability company" means any limited 978
liability company formed under Chapter 1705. of the Revised Code 979
or under the laws of any other state. 980

(W) "Pass-through entity investor" means any person who, 981

during any portion of a taxable year of a pass-through entity, 982
is a partner, member, shareholder, or equity investor in that 983
pass-through entity. 984

(X) "Banking day" has the same meaning as in section 985
1304.01 of the Revised Code. 986

(Y) "Month" means a calendar month. 987

(Z) "Quarter" means the first three months, the second 988
three months, the third three months, or the last three months 989
of the taxpayer's taxable year. 990

(AA) (1) "Eligible institution" means a state university or 991
state institution of higher education as defined in section 992
3345.011 of the Revised Code, or a private, nonprofit college, 993
university, or other post-secondary institution located in this 994
state that possesses a certificate of authorization issued by 995
the chancellor of higher education pursuant to Chapter 1713. of 996
the Revised Code or a certificate of registration issued by the 997
state board of career colleges and schools under Chapter 3332. 998
of the Revised Code. 999

(2) "Qualified tuition and fees" means tuition and fees 1000
imposed by an eligible institution as a condition of enrollment 1001
or attendance, not exceeding two thousand five hundred dollars 1002
in each of the individual's first two years of post-secondary 1003
education. If the individual is a part-time student, "qualified 1004
tuition and fees" includes tuition and fees paid for the 1005
academic equivalent of the first two years of post-secondary 1006
education during a maximum of five taxable years, not exceeding 1007
a total of five thousand dollars. "Qualified tuition and fees" 1008
does not include: 1009

(a) Expenses for any course or activity involving sports, 1010

games, or hobbies unless the course or activity is part of the 1011
individual's degree or diploma program; 1012

(b) The cost of books, room and board, student activity 1013
fees, athletic fees, insurance expenses, or other expenses 1014
unrelated to the individual's academic course of instruction; 1015

(c) Tuition, fees, or other expenses paid or reimbursed 1016
through an employer, scholarship, grant in aid, or other 1017
educational benefit program. 1018

(BB) (1) "Modified business income" means the business 1019
income included in a trust's Ohio taxable income after such 1020
taxable income is first reduced by the qualifying trust amount, 1021
if any. 1022

(2) "Qualifying trust amount" of a trust means capital 1023
gains and losses from the sale, exchange, or other disposition 1024
of equity or ownership interests in, or debt obligations of, a 1025
qualifying investee to the extent included in the trust's Ohio 1026
taxable income, but only if the following requirements are 1027
satisfied: 1028

(a) The book value of the qualifying investee's physical 1029
assets in this state and everywhere, as of the last day of the 1030
qualifying investee's fiscal or calendar year ending immediately 1031
prior to the date on which the trust recognizes the gain or 1032
loss, is available to the trust. 1033

(b) The requirements of section 5747.011 of the Revised 1034
Code are satisfied for the trust's taxable year in which the 1035
trust recognizes the gain or loss. 1036

Any gain or loss that is not a qualifying trust amount is 1037
modified business income, qualifying investment income, or 1038
modified nonbusiness income, as the case may be. 1039

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

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

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

(i) The trust's modified business income;

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

(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount, and the denominator of which is the sum of the book value of the qualifying investee's total physical assets everywhere on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount. If, for a taxable year, the trust recognizes a qualifying trust amount

with respect to more than one qualifying investee, the amount 1069
described in division (BB) (4) (b) of this section shall equal the 1070
sum of the products so computed for each such qualifying 1071
investee. 1072

(c) (i) With respect to a trust or portion of a trust that 1073
is a resident as ascertained in accordance with division (I) (3) 1074
(d) of this section, its modified nonbusiness income. 1075

(ii) With respect to a trust or portion of a trust that is 1076
not a resident as ascertained in accordance with division (I) (3) 1077
(d) of this section, the amount of its modified nonbusiness 1078
income satisfying the descriptions in divisions (B) (2) to (5) of 1079
section 5747.20 of the Revised Code, except as otherwise 1080
provided in division (BB) (4) (c) (ii) of this section. With 1081
respect to a trust or portion of a trust that is not a resident 1082
as ascertained in accordance with division (I) (3) (d) of this 1083
section, the trust's portion of modified nonbusiness income 1084
recognized from the sale, exchange, or other disposition of a 1085
debt interest in or equity interest in a section 5747.212 1086
entity, as defined in section 5747.212 of the Revised Code, 1087
without regard to division (A) of that section, shall not be 1088
allocated to this state in accordance with section 5747.20 of 1089
the Revised Code but shall be apportioned to this state in 1090
accordance with division (B) of section 5747.212 of the Revised 1091
Code without regard to division (A) of that section. 1092

If the allocation and apportionment of a trust's income 1093
under divisions (BB) (4) (a) and (c) of this section do not fairly 1094
represent the modified Ohio taxable income of the trust in this 1095
state, the alternative methods described in division (C) of 1096
section 5747.21 of the Revised Code may be applied in the manner 1097
and to the same extent provided in that section. 1098

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

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

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

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

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

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

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

(ii) Such gain or loss constitutes nonbusiness income.

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

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

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

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

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

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

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

(ii) A subsidiary that is wholly owned by any corporation 1188
that has made an election under subchapter S, chapter one, 1189
subtitle A of the Internal Revenue Code for its taxable year 1190
ending within, or on the last day of, the investor's taxable 1191
year. 1192

(2) For the purposes of this chapter, unless expressly 1193
stated otherwise, no qualifying person indirectly owns any asset 1194
directly or indirectly owned by any qualifying corporation. 1195

(FF) For purposes of this chapter and Chapter 5751. of the 1196
Revised Code: 1197

(1) "Trust" does not include a qualified pre-income tax 1198
trust. 1199

(2) A "qualified pre-income tax trust" is any pre-income 1200
tax trust that makes a qualifying pre-income tax trust election 1201
as described in division (FF)(3) of this section. 1202

(3) A "qualifying pre-income tax trust election" is an 1203
election by a pre-income tax trust to subject to the tax imposed 1204
by section 5751.02 of the Revised Code the pre-income tax trust 1205
and all pass-through entities of which the trust owns or 1206
controls, directly, indirectly, or constructively through 1207
related interests, five per cent or more of the ownership or 1208
equity interests. The trustee shall notify the tax commissioner 1209
in writing of the election on or before April 15, 2006. The 1210
election, if timely made, shall be effective on and after 1211
January 1, 2006, and shall apply for all tax periods and tax 1212
years until revoked by the trustee of the trust. 1213

(4) A "pre-income tax trust" is a trust that satisfies all 1214
of the following requirements: 1215

(a) The document or instrument creating the trust was 1216

executed by the grantor before January 1, 1972; 1217

(b) The trust became irrevocable upon the creation of the 1218
trust; and 1219

(c) The grantor was domiciled in this state at the time 1220
the trust was created. 1221

(GG) "Uniformed services" has the same meaning as in 10 1222
U.S.C. 101. 1223

(HH) "Taxable business income" means the amount by which 1224
an individual's business income that is included in federal 1225
adjusted gross income exceeds the amount of business income the 1226
individual is authorized to deduct under division (A) (31) of 1227
this section for the taxable year. 1228

Section 2. That existing sections 5743.02, 5743.51, and 1229
5747.01 of the Revised Code are hereby repealed. 1230

Section 3. The amendment by this act of section 5747.01 of 1231
the Revised Code applies to taxable years ending on or after the 1232
effective date of this act. 1233