

**As Introduced**

**135th General Assembly  
Regular Session  
2023-2024**

**H. B. No. 138**

**Representatives King, Young, T.**

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**A BILL**

To amend section 5747.01 of the Revised Code to 1  
classify certain guaranteed payments to pass- 2  
through entity investors as business income. 3

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

**Section 1.** That section 5747.01 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 5747.01.** Except as otherwise expressly provided or 6  
clearly appearing from the context, any term used in this 7  
chapter that is not otherwise defined in this section has the 8  
same meaning as when used in a comparable context in the laws of 9  
the United States relating to federal income taxes or if not 10  
used in a comparable context in those laws, has the same meaning 11  
as in section 5733.40 of the Revised Code. Any reference in this 12  
chapter to the Internal Revenue Code includes other laws of the 13  
United States relating to federal income taxes. 14

As used in this chapter: 15

(A) "Adjusted gross income" or "Ohio adjusted gross 16  
income" means federal adjusted gross income, as defined and used 17  
in the Internal Revenue Code, adjusted as provided in this 18  
section: 19

(1) Add interest or dividends on obligations or securities 20  
of any state or of any political subdivision or authority of any 21  
state, other than this state and its subdivisions and 22  
authorities. 23

(2) Add interest or dividends on obligations of any 24  
authority, commission, instrumentality, territory, or possession 25  
of the United States to the extent that the interest or 26  
dividends are exempt from federal income taxes but not from 27  
state income taxes. 28

(3) Deduct interest or dividends on obligations of the 29  
United States and its territories and possessions or of any 30  
authority, commission, or instrumentality of the United States 31  
to the extent that the interest or dividends are included in 32  
federal adjusted gross income but exempt from state income taxes 33  
under the laws of the United States. 34

(4) Deduct disability and survivor's benefits to the 35  
extent included in federal adjusted gross income. 36

(5) Deduct the following, to the extent not otherwise 37  
deducted or excluded in computing federal or Ohio adjusted gross 38  
income: 39

(a) Benefits under Title II of the Social Security Act and 40  
tier 1 railroad retirement; 41

(b) Railroad retirement benefits, other than tier 1 42  
railroad retirement benefits, to the extent such amounts are 43  
exempt from state taxation under federal law. 44

(6) Deduct the amount of wages and salaries, if any, not 45  
otherwise allowable as a deduction but that would have been 46  
allowable as a deduction in computing federal adjusted gross 47  
income for the taxable year, had the work opportunity tax credit 48

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

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

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

(9) Deduct or add amounts, as provided under section 5747.70 of the Revised Code, related to contributions made to or tuition units purchased under a qualified tuition program established pursuant to section 529 of the Internal Revenue Code.

(10) (a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division (A) (10) (a) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to, benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division (A) (10) (a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of

the plan's cost. The deduction allowed under division (A) (10) (a) 79  
of this section shall be the net of any related premium refunds, 80  
related premium reimbursements, or related insurance premium 81  
dividends received during the taxable year. 82

(b) Deduct, to the extent not otherwise deducted or 83  
excluded in computing federal or Ohio adjusted gross income 84  
during the taxable year, the amount the taxpayer paid during the 85  
taxable year, not compensated for by any insurance or otherwise, 86  
for medical care of the taxpayer, the taxpayer's spouse, and 87  
dependents, to the extent the expenses exceed seven and one-half 88  
per cent of the taxpayer's federal adjusted gross income. 89

(c) For purposes of division (A) (10) of this section, 90  
"medical care" has the meaning given in section 213 of the 91  
Internal Revenue Code, subject to the special rules, 92  
limitations, and exclusions set forth therein, and "qualified 93  
long-term care" has the same meaning given in section 7702B(c) 94  
of the Internal Revenue Code. Solely for purposes of division 95  
(A) (10) (a) of this section, "dependent" includes a person who 96  
otherwise would be a "qualifying relative" and thus a 97  
"dependent" under section 152 of the Internal Revenue Code but 98  
for the fact that the person fails to meet the income and 99  
support limitations under section 152(d) (1) (B) and (C) of the 100  
Internal Revenue Code. 101

(11) (a) Deduct any amount included in federal adjusted 102  
gross income solely because the amount represents a 103  
reimbursement or refund of expenses that in any year the 104  
taxpayer had deducted as an itemized deduction pursuant to 105  
section 63 of the Internal Revenue Code and applicable United 106  
States department of the treasury regulations. The deduction 107  
otherwise allowed under division (A) (11) (a) of this section 108

shall be reduced to the extent the reimbursement is attributable 109  
to an amount the taxpayer deducted under this section in any 110  
taxable year. 111

(b) Add any amount not otherwise included in Ohio adjusted 112  
gross income for any taxable year to the extent that the amount 113  
is attributable to the recovery during the taxable year of any 114  
amount deducted or excluded in computing federal or Ohio 115  
adjusted gross income in any taxable year. 116

(12) Deduct any portion of the deduction described in 117  
section 1341(a) (2) of the Internal Revenue Code, for repaying 118  
previously reported income received under a claim of right, that 119  
meets both of the following requirements: 120

(a) It is allowable for repayment of an item that was 121  
included in the taxpayer's adjusted gross income for a prior 122  
taxable year and did not qualify for a credit under division (A) 123  
or (B) of section 5747.05 of the Revised Code for that year; 124

(b) It does not otherwise reduce the taxpayer's adjusted 125  
gross income for the current or any other taxable year. 126

(13) Deduct an amount equal to the deposits made to, and 127  
net investment earnings of, a medical savings account during the 128  
taxable year, in accordance with section 3924.66 of the Revised 129  
Code. The deduction allowed by division (A) (13) of this section 130  
does not apply to medical savings account deposits and earnings 131  
otherwise deducted or excluded for the current or any other 132  
taxable year from the taxpayer's federal adjusted gross income. 133

(14) (a) Add an amount equal to the funds withdrawn from a 134  
medical savings account during the taxable year, and the net 135  
investment earnings on those funds, when the funds withdrawn 136  
were used for any purpose other than to reimburse an account 137

holder for, or to pay, eligible medical expenses, in accordance	138
with section 3924.66 of the Revised Code;	139
(b) Add the amounts distributed from a medical savings	140
account under division (A) (2) of section 3924.68 of the Revised	141
Code during the taxable year.	142
(15) Add any amount claimed as a credit under section	143
5747.059 of the Revised Code to the extent that such amount	144
satisfies either of the following:	145
(a) The amount was deducted or excluded from the	146
computation of the taxpayer's federal adjusted gross income as	147
required to be reported for the taxpayer's taxable year under	148
the Internal Revenue Code;	149
(b) The amount resulted in a reduction of the taxpayer's	150
federal adjusted gross income as required to be reported for any	151
of the taxpayer's taxable years under the Internal Revenue Code.	152
(16) Deduct the amount contributed by the taxpayer to an	153
individual development account program established by a county	154
department of job and family services pursuant to sections	155
329.11 to 329.14 of the Revised Code for the purpose of matching	156
funds deposited by program participants. On request of the tax	157
commissioner, the taxpayer shall provide any information that,	158
in the tax commissioner's opinion, is necessary to establish the	159
amount deducted under division (A) (16) of this section.	160
(17) (a) (i) Subject to divisions (A) (17) (a) (iii), (iv), and	161
(v) of this section, add five-sixths of the amount of	162
depreciation expense allowed by subsection (k) of section 168 of	163
the Internal Revenue Code, including the taxpayer's	164
proportionate or distributive share of the amount of	165
depreciation expense allowed by that subsection to a pass-	166

through entity in which the taxpayer has a direct or indirect ownership interest. 167  
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(ii) Subject to divisions (A) (17) (a) (iii), (iv), and (v) 169  
of this section, add five-sixths of the amount of qualifying 170  
section 179 depreciation expense, including the taxpayer's 171  
proportionate or distributive share of the amount of qualifying 172  
section 179 depreciation expense allowed to any pass-through 173  
entity in which the taxpayer has a direct or indirect ownership 174  
interest. 175

(iii) Subject to division (A) (17) (a) (v) of this section, 176  
for taxable years beginning in 2012 or thereafter, if the 177  
increase in income taxes withheld by the taxpayer is equal to or 178  
greater than ten per cent of income taxes withheld by the 179  
taxpayer during the taxpayer's immediately preceding taxable 180  
year, "two-thirds" shall be substituted for "five-sixths" for 181  
the purpose of divisions (A) (17) (a) (i) and (ii) of this section. 182

(iv) Subject to division (A) (17) (a) (v) of this section, 183  
for taxable years beginning in 2012 or thereafter, a taxpayer is 184  
not required to add an amount under division (A) (17) of this 185  
section if the increase in income taxes withheld by the taxpayer 186  
and by any pass-through entity in which the taxpayer has a 187  
direct or indirect ownership interest is equal to or greater 188  
than the sum of (I) the amount of qualifying section 179 189  
depreciation expense and (II) the amount of depreciation expense 190  
allowed to the taxpayer by subsection (k) of section 168 of the 191  
Internal Revenue Code, and including the taxpayer's 192  
proportionate or distributive shares of such amounts allowed to 193  
any such pass-through entities. 194

(v) If a taxpayer directly or indirectly incurs a net 195  
operating loss for the taxable year for federal income tax 196

purposes, to the extent such loss resulted from depreciation 197  
expense allowed by subsection (k) of section 168 of the Internal 198  
Revenue Code and by qualifying section 179 depreciation expense, 199  
"the entire" shall be substituted for "five-sixths of the" for 200  
the purpose of divisions (A)(17)(a)(i) and (ii) of this section. 201

The tax commissioner, under procedures established by the 202  
commissioner, may waive the add-backs related to a pass-through 203  
entity if the taxpayer owns, directly or indirectly, less than 204  
five per cent of the pass-through entity. 205

(b) Nothing in division (A)(17) of this section shall be 206  
construed to adjust or modify the adjusted basis of any asset. 207

(c) To the extent the add-back required under division (A) 208  
(17)(a) of this section is attributable to property generating 209  
nonbusiness income or loss allocated under section 5747.20 of 210  
the Revised Code, the add-back shall be situated to the same 211  
location as the nonbusiness income or loss generated by the 212  
property for the purpose of determining the credit under 213  
division (A) of section 5747.05 of the Revised Code. Otherwise, 214  
the add-back shall be apportioned, subject to one or more of the 215  
four alternative methods of apportionment enumerated in section 216  
5747.21 of the Revised Code. 217

(d) For the purposes of division (A)(17)(a)(v) of this 218  
section, net operating loss carryback and carryforward shall not 219  
include the allowance of any net operating loss deduction 220  
carryback or carryforward to the taxable year to the extent such 221  
loss resulted from depreciation allowed by section 168(k) of the 222  
Internal Revenue Code and by the qualifying section 179 223  
depreciation expense amount. 224

(e) For the purposes of divisions (A)(17) and (18) of this 225



section:	226
(i) "Income taxes withheld" means the total amount	227
withheld and remitted under sections 5747.06 and 5747.07 of the	228
Revised Code by an employer during the employer's taxable year.	229
(ii) "Increase in income taxes withheld" means the amount	230
by which the amount of income taxes withheld by an employer	231
during the employer's current taxable year exceeds the amount of	232
income taxes withheld by that employer during the employer's	233
immediately preceding taxable year.	234
(iii) "Qualifying section 179 depreciation expense" means	235
the difference between (I) the amount of depreciation expense	236
directly or indirectly allowed to a taxpayer under section 179	237
of the Internal Revised Code, and (II) the amount of	238
depreciation expense directly or indirectly allowed to the	239
taxpayer under section 179 of the Internal Revenue Code as that	240
section existed on December 31, 2002.	241
(18) (a) If the taxpayer was required to add an amount	242
under division (A) (17) (a) of this section for a taxable year,	243
deduct one of the following:	244
(i) One-fifth of the amount so added for each of the five	245
succeeding taxable years if the amount so added was five-sixths	246
of qualifying section 179 depreciation expense or depreciation	247
expense allowed by subsection (k) of section 168 of the Internal	248
Revenue Code;	249
(ii) One-half of the amount so added for each of the two	250
succeeding taxable years if the amount so added was two-thirds	251
of such depreciation expense;	252
(iii) One-sixth of the amount so added for each of the six	253
succeeding taxable years if the entire amount of such	254

depreciation expense was so added. 255

(b) If the amount deducted under division (A) (18) (a) of 256  
this section is attributable to an add-back allocated under 257  
division (A) (17) (c) of this section, the amount deducted shall 258  
be situated to the same location. Otherwise, the add-back shall 259  
be apportioned using the apportionment factors for the taxable 260  
year in which the deduction is taken, subject to one or more of 261  
the four alternative methods of apportionment enumerated in 262  
section 5747.21 of the Revised Code. 263

(c) No deduction is available under division (A) (18) (a) of 264  
this section with regard to any depreciation allowed by section 265  
168(k) of the Internal Revenue Code and by the qualifying 266  
section 179 depreciation expense amount to the extent that such 267  
depreciation results in or increases a federal net operating 268  
loss carryback or carryforward. If no such deduction is 269  
available for a taxable year, the taxpayer may carry forward the 270  
amount not deducted in such taxable year to the next taxable 271  
year and add that amount to any deduction otherwise available 272  
under division (A) (18) (a) of this section for that next taxable 273  
year. The carryforward of amounts not so deducted shall continue 274  
until the entire addition required by division (A) (17) (a) of 275  
this section has been deducted. 276

(19) Deduct, to the extent not otherwise deducted or 277  
excluded in computing federal or Ohio adjusted gross income for 278  
the taxable year, the amount the taxpayer received during the 279  
taxable year as reimbursement for life insurance premiums under 280  
section 5919.31 of the Revised Code. 281

(20) Deduct, to the extent not otherwise deducted or 282  
excluded in computing federal or Ohio adjusted gross income for 283  
the taxable year, the amount the taxpayer received during the 284

taxable year as a death benefit paid by the adjutant general 285  
under section 5919.33 of the Revised Code. 286

(21) Deduct, to the extent included in federal adjusted 287  
gross income and not otherwise allowable as a deduction or 288  
exclusion in computing federal or Ohio adjusted gross income for 289  
the taxable year, military pay and allowances received by the 290  
taxpayer during the taxable year for active duty service in the 291  
United States army, air force, navy, marine corps, or coast 292  
guard or reserve components thereof or the national guard. The 293  
deduction may not be claimed for military pay and allowances 294  
received by the taxpayer while the taxpayer is stationed in this 295  
state. 296

(22) Deduct, to the extent not otherwise allowable as a 297  
deduction or exclusion in computing federal or Ohio adjusted 298  
gross income for the taxable year and not otherwise compensated 299  
for by any other source, the amount of qualified organ donation 300  
expenses incurred by the taxpayer during the taxable year, not 301  
to exceed ten thousand dollars. A taxpayer may deduct qualified 302  
organ donation expenses only once for all taxable years 303  
beginning with taxable years beginning in 2007. 304

For the purposes of division (A) (22) of this section: 305

(a) "Human organ" means all or any portion of a human 306  
liver, pancreas, kidney, intestine, or lung, and any portion of 307  
human bone marrow. 308

(b) "Qualified organ donation expenses" means travel 309  
expenses, lodging expenses, and wages and salary forgone by a 310  
taxpayer in connection with the taxpayer's donation, while 311  
living, of one or more of the taxpayer's human organs to another 312  
human being. 313

(23) Deduct, to the extent not otherwise deducted or 314  
excluded in computing federal or Ohio adjusted gross income for 315  
the taxable year, amounts received by the taxpayer as retired 316  
personnel pay for service in the uniformed services or reserve 317  
components thereof, or the national guard, or received by the 318  
surviving spouse or former spouse of such a taxpayer under the 319  
survivor benefit plan on account of such a taxpayer's death. If 320  
the taxpayer receives income on account of retirement paid under 321  
the federal civil service retirement system or federal employees 322  
retirement system, or under any successor retirement program 323  
enacted by the congress of the United States that is established 324  
and maintained for retired employees of the United States 325  
government, and such retirement income is based, in whole or in 326  
part, on credit for the taxpayer's uniformed service, the 327  
deduction allowed under this division shall include only that 328  
portion of such retirement income that is attributable to the 329  
taxpayer's uniformed service, to the extent that portion of such 330  
retirement income is otherwise included in federal adjusted 331  
gross income and is not otherwise deducted under this section. 332  
Any amount deducted under division (A) (23) of this section is 333  
not included in a taxpayer's adjusted gross income for the 334  
purposes of section 5747.055 of the Revised Code. No amount may 335  
be deducted under division (A) (23) of this section on the basis 336  
of which a credit was claimed under section 5747.055 of the 337  
Revised Code. 338

(24) Deduct, to the extent not otherwise deducted or 339  
excluded in computing federal or Ohio adjusted gross income for 340  
the taxable year, the amount the taxpayer received during the 341  
taxable year from the military injury relief fund created in 342  
section 5902.05 of the Revised Code. 343

(25) Deduct, to the extent not otherwise deducted or 344

excluded in computing federal or Ohio adjusted gross income for 345  
the taxable year, the amount the taxpayer received as a veterans 346  
bonus during the taxable year from the Ohio department of 347  
veterans services as authorized by Section 2r of Article VIII, 348  
Ohio Constitution. 349

(26) Deduct, to the extent not otherwise deducted or 350  
excluded in computing federal or Ohio adjusted gross income for 351  
the taxable year, any income derived from a transfer agreement 352  
or from the enterprise transferred under that agreement under 353  
section 4313.02 of the Revised Code. 354

(27) Deduct, to the extent not otherwise deducted or 355  
excluded in computing federal or Ohio adjusted gross income for 356  
the taxable year, Ohio college opportunity or federal Pell grant 357  
amounts received by the taxpayer or the taxpayer's spouse or 358  
dependent pursuant to section 3333.122 of the Revised Code or 20 359  
U.S.C. 1070a, et seq., and used to pay room or board furnished 360  
by the educational institution for which the grant was awarded 361  
at the institution's facilities, including meal plans 362  
administered by the institution. For the purposes of this 363  
division, receipt of a grant includes the distribution of a 364  
grant directly to an educational institution and the crediting 365  
of the grant to the enrollee's account with the institution. 366

(28) Deduct from the portion of an individual's federal 367  
adjusted gross income that is business income, to the extent not 368  
otherwise deducted or excluded in computing federal adjusted 369  
gross income for the taxable year, one hundred twenty-five 370  
thousand dollars for each spouse if spouses file separate 371  
returns under section 5747.08 of the Revised Code or two hundred 372  
fifty thousand dollars for all other individuals. 373

(29) Deduct, as provided under section 5747.78 of the 374

Revised Code, contributions to ABLE savings accounts made in	375
accordance with sections 113.50 to 113.56 of the Revised Code.	376
(30) (a) Deduct, to the extent not otherwise deducted or	377
excluded in computing federal or Ohio adjusted gross income	378
during the taxable year, all of the following:	379
(i) Compensation paid to a qualifying employee described	380
in division (A) (14) (a) of section 5703.94 of the Revised Code to	381
the extent such compensation is for disaster work conducted in	382
this state during a disaster response period pursuant to a	383
qualifying solicitation received by the employee's employer;	384
(ii) Compensation paid to a qualifying employee described	385
in division (A) (14) (b) of section 5703.94 of the Revised Code to	386
the extent such compensation is for disaster work conducted in	387
this state by the employee during the disaster response period	388
on critical infrastructure owned or used by the employee's	389
employer;	390
(iii) Income received by an out-of-state disaster business	391
for disaster work conducted in this state during a disaster	392
response period, or, if the out-of-state disaster business is a	393
pass-through entity, a taxpayer's distributive share of the	394
pass-through entity's income from the business conducting	395
disaster work in this state during a disaster response period,	396
if, in either case, the disaster work is conducted pursuant to a	397
qualifying solicitation received by the business.	398
(b) All terms used in division (A) (30) of this section	399
have the same meanings as in section 5703.94 of the Revised	400
Code.	401
(31) For a taxpayer who is a qualifying Ohio educator,	402
deduct, to the extent not otherwise deducted or excluded in	403

computing federal or Ohio adjusted gross income for the taxable 404  
year, the lesser of two hundred fifty dollars or the amount of 405  
expenses described in subsections (a) (2) (D) (i) and (ii) of 406  
section 62 of the Internal Revenue Code paid or incurred by the 407  
taxpayer during the taxpayer's taxable year in excess of the 408  
amount the taxpayer is authorized to deduct for that taxable 409  
year under subsection (a) (2) (D) of that section. 410

(32) Deduct, to the extent not otherwise deducted or 411  
excluded in computing federal or Ohio adjusted gross income for 412  
the taxable year, amounts received by the taxpayer as a 413  
disability severance payment, computed under 10 U.S.C. 1212, 414  
following discharge or release under honorable conditions from 415  
the armed forces, as defined by 10 U.S.C. 101. 416

(33) Deduct, to the extent not otherwise deducted or 417  
excluded in computing federal adjusted gross income or Ohio 418  
adjusted gross income, amounts not subject to tax due to an 419  
agreement entered into under division (A) (2) of section 5747.05 420  
of the Revised Code. 421

(34) Deduct amounts as provided under section 5747.79 of 422  
the Revised Code related to the taxpayer's qualifying capital 423  
gains and deductible payroll. 424

To the extent a qualifying capital gain described under 425  
division (A) (34) of this section is business income, the 426  
taxpayer shall deduct those gains under this division before 427  
deducting any such gains under division (A) (28) of this section. 428

(35) (a) For taxable years beginning in or after 2026, 429  
deduct, to the extent not otherwise deducted or excluded in 430  
computing federal or Ohio adjusted gross income for the taxable 431  
year: 432

(i) One hundred per cent of the capital gain received by 433  
the taxpayer in the taxable year from a qualifying interest in 434  
an Ohio venture capital operating company attributable to the 435  
company's investments in Ohio businesses during the period for 436  
which the company was an Ohio venture operating company; and 437

(ii) Fifty per cent of the capital gain received by the 438  
taxpayer in the taxable year from a qualifying interest in an 439  
Ohio venture capital operating company attributable to the 440  
company's investments in all other businesses during the period 441  
for which the company was an Ohio venture operating company. 442

(b) Add amounts previously deducted by the taxpayer under 443  
division (A) (35) (a) of this section if the director of 444  
development certifies to the tax commissioner that the 445  
requirements for the deduction were not met. 446

(c) All terms used in division (A) (35) of this section 447  
have the same meanings as in section 122.851 of the Revised 448  
Code. 449

(d) To the extent a capital gain described in division (A) 450  
(35) (a) of this section is business income, the taxpayer shall 451  
apply that division before applying division (A) (28) of this 452  
section. 453

(36) Add, to the extent not otherwise included in 454  
computing federal or Ohio adjusted gross income for any taxable 455  
year, the taxpayer's proportionate share of the amount of the 456  
tax levied under section 5747.38 of the Revised Code and paid by 457  
an electing pass-through entity for the taxable year. 458

(37) Deduct, to the extent not otherwise deducted or 459  
excluded in computing federal or Ohio adjusted gross income for 460  
the taxable year, amounts delivered to a qualifying institution 461



pursuant to section 3333.128 of the Revised Code for the benefit 462  
of the taxpayer or the taxpayer's spouse or dependent. 463

(38) Deduct, to the extent not otherwise deducted or 464  
excluded in computing federal or Ohio adjusted gross income for 465  
the taxable year, amounts received under the Ohio adoption grant 466  
program pursuant to section 5101.191 of the Revised Code. 467

(39) Deduct, to the extent included in federal adjusted 468  
gross income, income attributable to loan repayments on behalf 469  
of the taxpayer under the rural practice incentive program under 470  
section 3333.135 of the Revised Code. 471

~~(B)~~ (B) (1) "Business income" means income, including gain 472  
or loss, arising from transactions, activities, and sources in 473  
the regular course of a trade or business and includes income, 474  
gain, or loss from real property, tangible property, and 475  
intangible property if the acquisition, rental, management, and 476  
disposition of the property constitute integral parts of the 477  
regular course of a trade or business operation. 478

(2) Notwithstanding division (A) (7) of section 5733.40 of 479  
the Revised Code, "business income" includes guaranteed payments 480  
that an individual receives from a pass-through entity for 481  
services the individual renders to the entity, regardless of the 482  
percentage of the individual's direct or indirect ownership 483  
interest in the entity, provided (a) the entity is engaged in a 484  
trade or business, (b) the guaranteed payment is treated as net 485  
earnings from self-employment under section 1402 of the Internal 486  
Revenue Code and the United States department of the treasury 487  
regulations issued thereunder, and (c) the individual reports 488  
the guaranteed payment as self-employment income for federal 489  
income tax purposes. 490

As used in division (B) (2) of this section, "guaranteed payments" means payments described in section 707(c) of the Internal Revenue Code and the United States department of the treasury regulations issued thereunder. 491  
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(3) "Business income" includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill or the sale of an equity or ownership interest in a business. 495  
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As used in ~~this~~ division (B) (3) of this section, the "sale of an equity or ownership interest in a business" means sales to which either or both of the following apply: 500  
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~~(1)~~ (a) The sale is treated for federal income tax purposes as the sale of assets. 503  
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~~(2)~~ (b) The seller materially participated, as described in 26 C.F.R. 1.469-5T, in the activities of the business during the taxable year in which the sale occurs or during any of the five preceding taxable years. 505  
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(C) "Nonbusiness income" means all income other than business income and may include, but is not limited to, compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards. 509  
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(D) "Compensation" means any form of remuneration paid to an employee for personal services. 515  
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(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate. 517  
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(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	520 521
(G) "Individual" means any natural person.	522
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	523 524
(I) "Resident" means any of the following:	525
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	526 527
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I) (2) of this section.	528 529 530 531
(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.	532 533 534
For the purposes of division (I) (3) of this section:	535
(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I) (3) (d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:	536 537 538 539 540 541
(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I) (3) (e) (i) or (ii) of this section;	542 543 544 545
(ii) A person who was domiciled in this state for the	546

purposes of this chapter when the person directly or indirectly 547  
transferred assets to an irrevocable trust, but only if at least 548  
one of the trust's qualifying beneficiaries is domiciled in this 549  
state for the purposes of this chapter during all or some 550  
portion of the trust's current taxable year; 551

(iii) A person who was domiciled in this state for the 552  
purposes of this chapter when the trust document or instrument 553  
or part of the trust document or instrument became irrevocable, 554  
but only if at least one of the trust's qualifying beneficiaries 555  
is a resident domiciled in this state for the purposes of this 556  
chapter during all or some portion of the trust's current 557  
taxable year. If a trust document or instrument became 558  
irrevocable upon the death of a person who at the time of death 559  
was domiciled in this state for purposes of this chapter, that 560  
person is a person described in division (I) (3) (a) (iii) of this 561  
section. 562

(b) A trust is irrevocable to the extent that the 563  
transferor is not considered to be the owner of the net assets 564  
of the trust under sections 671 to 678 of the Internal Revenue 565  
Code. 566

(c) With respect to a trust other than a charitable lead 567  
trust, "qualifying beneficiary" has the same meaning as 568  
"potential current beneficiary" as defined in section 1361(e) (2) 569  
of the Internal Revenue Code, and with respect to a charitable 570  
lead trust "qualifying beneficiary" is any current, future, or 571  
contingent beneficiary, but with respect to any trust 572  
"qualifying beneficiary" excludes a person or a governmental 573  
entity or instrumentality to any of which a contribution would 574  
qualify for the charitable deduction under section 170 of the 575  
Internal Revenue Code. 576

(d) For the purposes of division (I) (3) (a) of this 577  
section, the extent to which a trust consists directly or 578  
indirectly, in whole or in part, of assets, net of any related 579  
liabilities, that were transferred directly or indirectly, in 580  
whole or part, to the trust by any of the sources enumerated in 581  
that division shall be ascertained by multiplying the fair 582  
market value of the trust's assets, net of related liabilities, 583  
by the qualifying ratio, which shall be computed as follows: 584

(i) The first time the trust receives assets, the 585  
numerator of the qualifying ratio is the fair market value of 586  
those assets at that time, net of any related liabilities, from 587  
sources enumerated in division (I) (3) (a) of this section. The 588  
denominator of the qualifying ratio is the fair market value of 589  
all the trust's assets at that time, net of any related 590  
liabilities. 591

(ii) Each subsequent time the trust receives assets, a 592  
revised qualifying ratio shall be computed. The numerator of the 593  
revised qualifying ratio is the sum of (1) the fair market value 594  
of the trust's assets immediately prior to the subsequent 595  
transfer, net of any related liabilities, multiplied by the 596  
qualifying ratio last computed without regard to the subsequent 597  
transfer, and (2) the fair market value of the subsequently 598  
transferred assets at the time transferred, net of any related 599  
liabilities, from sources enumerated in division (I) (3) (a) of 600  
this section. The denominator of the revised qualifying ratio is 601  
the fair market value of all the trust's assets immediately 602  
after the subsequent transfer, net of any related liabilities. 603

(iii) Whether a transfer to the trust is by or from any of 604  
the sources enumerated in division (I) (3) (a) of this section 605  
shall be ascertained without regard to the domicile of the 606

trust's beneficiaries. 607

(e) For the purposes of division (I) (3) (a) (i) of this 608  
section: 609

(i) A trust is described in division (I) (3) (e) (i) of this 610  
section if the trust is a testamentary trust and the testator of 611  
that testamentary trust was domiciled in this state at the time 612  
of the testator's death for purposes of the taxes levied under 613  
Chapter 5731. of the Revised Code. 614

(ii) A trust is described in division (I) (3) (e) (ii) of 615  
this section if the transfer is a qualifying transfer described 616  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 617  
trust is an irrevocable inter vivos trust, and at least one of 618  
the trust's qualifying beneficiaries is domiciled in this state 619  
for purposes of this chapter during all or some portion of the 620  
trust's current taxable year. 621

(f) For the purposes of division (I) (3) (e) (ii) of this 622  
section, a "qualifying transfer" is a transfer of assets, net of 623  
any related liabilities, directly or indirectly to a trust, if 624  
the transfer is described in any of the following: 625

(i) The transfer is made to a trust, created by the 626  
decedent before the decedent's death and while the decedent was 627  
domiciled in this state for the purposes of this chapter, and, 628  
prior to the death of the decedent, the trust became irrevocable 629  
while the decedent was domiciled in this state for the purposes 630  
of this chapter. 631

(ii) The transfer is made to a trust to which the 632  
decedent, prior to the decedent's death, had directly or 633  
indirectly transferred assets, net of any related liabilities, 634  
while the decedent was domiciled in this state for the purposes 635

of this chapter, and prior to the death of the decedent the 636  
trust became irrevocable while the decedent was domiciled in 637  
this state for the purposes of this chapter. 638

(iii) The transfer is made on account of a contractual 639  
relationship existing directly or indirectly between the 640  
transferor and either the decedent or the estate of the decedent 641  
at any time prior to the date of the decedent's death, and the 642  
decedent was domiciled in this state at the time of death for 643  
purposes of the taxes levied under Chapter 5731. of the Revised 644  
Code. 645

(iv) The transfer is made to a trust on account of a 646  
contractual relationship existing directly or indirectly between 647  
the transferor and another person who at the time of the 648  
decedent's death was domiciled in this state for purposes of 649  
this chapter. 650

(v) The transfer is made to a trust on account of the will 651  
of a testator who was domiciled in this state at the time of the 652  
testator's death for purposes of the taxes levied under Chapter 653  
5731. of the Revised Code. 654

(vi) The transfer is made to a trust created by or caused 655  
to be created by a court, and the trust was directly or 656  
indirectly created in connection with or as a result of the 657  
death of an individual who, for purposes of the taxes levied 658  
under Chapter 5731. of the Revised Code, was domiciled in this 659  
state at the time of the individual's death. 660

(g) The tax commissioner may adopt rules to ascertain the 661  
part of a trust residing in this state. 662

(J) "Nonresident" means an individual or estate that is 663  
not a resident. An individual who is a resident for only part of 664

a taxable year is a nonresident for the remainder of that taxable year. 665  
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(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code. 667  
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(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required. 669  
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(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter. 673  
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(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code. 677  
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(O) "Dependents" means one of the following: 681

(1) For taxable years beginning on or after January 1, 2018, and before January 1, 2026, dependents as defined in the Internal Revenue Code; 682  
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(2) For all other taxable years, dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been permitted to claim had the taxpayer filed a federal income tax return. 685  
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(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are 690  
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performed in more than one county, the county in which the major 693  
portion of the services are performed. 694

(Q) As used in sections 5747.50 to 5747.55 of the Revised 695  
Code: 696

(1) "Subdivision" means any county, municipal corporation, 697  
park district, or township. 698

(2) "Essential local government purposes" includes all 699  
functions that any subdivision is required by general law to 700  
exercise, including like functions that are exercised under a 701  
charter adopted pursuant to the Ohio Constitution. 702

(R) "Overpayment" means any amount already paid that 703  
exceeds the figure determined to be the correct amount of the 704  
tax. 705

(S) "Taxable income" or "Ohio taxable income" applies only 706  
to estates and trusts, and means federal taxable income, as 707  
defined and used in the Internal Revenue Code, adjusted as 708  
follows: 709

(1) Add interest or dividends, net of ordinary, necessary, 710  
and reasonable expenses not deducted in computing federal 711  
taxable income, on obligations or securities of any state or of 712  
any political subdivision or authority of any state, other than 713  
this state and its subdivisions and authorities, but only to the 714  
extent that such net amount is not otherwise includible in Ohio 715  
taxable income and is described in either division (S) (1) (a) or 716  
(b) of this section: 717

(a) The net amount is not attributable to the S portion of 718  
an electing small business trust and has not been distributed to 719  
beneficiaries for the taxable year; 720

(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.	721 722
(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;	723 724 725 726 727 728 729 730 731
(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;	732 733
(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;	734 735 736 737 738 739 740 741 742
(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 the taxable year, had the work opportunity tax credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small	743 744 745 746 747 748 749 750

business trust for the taxable year;	751
(6) Deduct any interest or interest equivalent, net of	752
related expenses deducted in computing federal taxable income,	753
on public obligations and purchase obligations, but only to the	754
extent that such net amount relates either to income included in	755
federal taxable income for the taxable year or to income of the	756
S portion of an electing small business trust for the taxable	757
year;	758
(7) Add any loss or deduct any gain resulting from sale,	759
exchange, or other disposition of public obligations to the	760
extent that such loss has been deducted or such gain has been	761
included in computing either federal taxable income or income of	762
the S portion of an electing small business trust for the	763
taxable year;	764
(8) Except in the case of the final return of an estate,	765
add any amount deducted by the taxpayer on both its Ohio estate	766
tax return pursuant to section 5731.14 of the Revised Code, and	767
on its federal income tax return in determining federal taxable	768
income;	769
(9) (a) Deduct any amount included in federal taxable	770
income solely because the amount represents a reimbursement or	771
refund of expenses that in a previous year the decedent had	772
deducted as an itemized deduction pursuant to section 63 of the	773
Internal Revenue Code and applicable treasury regulations. The	774
deduction otherwise allowed under division (S) (9) (a) of this	775
section shall be reduced to the extent the reimbursement is	776
attributable to an amount the taxpayer or decedent deducted	777
under this section in any taxable year.	778
(b) Add any amount not otherwise included in Ohio taxable	779

income for any taxable year to the extent that the amount is 780  
attributable to the recovery during the taxable year of any 781  
amount deducted or excluded in computing federal or Ohio taxable 782  
income in any taxable year, but only to the extent such amount 783  
has not been distributed to beneficiaries for the taxable year. 784

(10) Deduct any portion of the deduction described in 785  
section 1341(a)(2) of the Internal Revenue Code, for repaying 786  
previously reported income received under a claim of right, that 787  
meets both of the following requirements: 788

(a) It is allowable for repayment of an item that was 789  
included in the taxpayer's taxable income or the decedent's 790  
adjusted gross income for a prior taxable year and did not 791  
qualify for a credit under division (A) or (B) of section 792  
5747.05 of the Revised Code for that year. 793

(b) It does not otherwise reduce the taxpayer's taxable 794  
income or the decedent's adjusted gross income for the current 795  
or any other taxable year. 796

(11) Add any amount claimed as a credit under section 797  
5747.059 of the Revised Code to the extent that the amount 798  
satisfies either of the following: 799

(a) The amount was deducted or excluded from the 800  
computation of the taxpayer's federal taxable income as required 801  
to be reported for the taxpayer's taxable year under the 802  
Internal Revenue Code; 803

(b) The amount resulted in a reduction in the taxpayer's 804  
federal taxable income as required to be reported for any of the 805  
taxpayer's taxable years under the Internal Revenue Code. 806

(12) Deduct any amount, net of related expenses deducted 807  
in computing federal taxable income, that a trust is required to 808

report as farm income on its federal income tax return, but only 809  
if the assets of the trust include at least ten acres of land 810  
satisfying the definition of "land devoted exclusively to 811  
agricultural use" under section 5713.30 of the Revised Code, 812  
regardless of whether the land is valued for tax purposes as 813  
such land under sections 5713.30 to 5713.38 of the Revised Code. 814  
If the trust is a pass-through entity investor, section 5747.231 815  
of the Revised Code applies in ascertaining if the trust is 816  
eligible to claim the deduction provided by division (S)(12) of 817  
this section in connection with the pass-through entity's farm 818  
income. 819

Except for farm income attributable to the S portion of an 820  
electing small business trust, the deduction provided by 821  
division (S)(12) of this section is allowed only to the extent 822  
that the trust has not distributed such farm income. 823

(13) Add the net amount of income described in section 824  
641(c) of the Internal Revenue Code to the extent that amount is 825  
not included in federal taxable income. 826

(14) Add or deduct the amount the taxpayer would be 827  
required to add or deduct under division (A)(17) or (18) of this 828  
section if the taxpayer's Ohio taxable income were computed in 829  
the same manner as an individual's Ohio adjusted gross income is 830  
computed under this section. 831

(15) Add, to the extent not otherwise included in 832  
computing taxable income or Ohio taxable income for any taxable 833  
year, the taxpayer's proportionate share of the amount of the 834  
tax levied under section 5747.38 of the Revised Code and paid by 835  
an electing pass-through entity for the taxable year. 836

(T) "School district income" and "school district income 837

tax" have the same meanings as in section 5748.01 of the Revised Code. 838  
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(U) As used in divisions (A) (7), (A) (8), (S) (6), and (S) (7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code. 840  
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(V) "Limited liability company" means any limited liability company formed under Chapter 1705. or 1706. of the Revised Code or under the laws of any other state. 844  
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(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity. 847  
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(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code. 851  
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(Y) "Month" means a calendar month. 853

(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year. 854  
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(AA) (1) "Modified business income" means the business income included in a trust's Ohio taxable income after such taxable income is first reduced by the qualifying trust amount, if any. 857  
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(2) "Qualifying trust amount" of a trust means capital gains and losses from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, a qualifying investee to the extent included in the trust's Ohio taxable income, but only if the following requirements are 861  
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satisfied:	866
(a) The book value of the qualifying investee's physical assets in this state and everywhere, as of the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, is available to the trust.	867 868 869 870 871
(b) The requirements of section 5747.011 of the Revised Code are satisfied for the trust's taxable year in which the trust recognizes the gain or loss.	872 873 874
Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be.	875 876 877
(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.	878 879 880 881 882 883
(4) "Modified Ohio taxable income" applies only to trusts, and means the sum of the amounts described in divisions (AA) (4) (a) to (c) of this section:	884 885 886
(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:	887 888 889
(i) The trust's modified business income;	890
(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	891 892 893

modified business income and does not otherwise constitute a 894  
qualifying trust amount. 895

(b) The qualifying trust amount multiplied by a fraction, 896  
the numerator of which is the sum of the book value of the 897  
qualifying investee's physical assets in this state on the last 898  
day of the qualifying investee's fiscal or calendar year ending 899  
immediately prior to the day on which the trust recognizes the 900  
qualifying trust amount, and the denominator of which is the sum 901  
of the book value of the qualifying investee's total physical 902  
assets everywhere on the last day of the qualifying investee's 903  
fiscal or calendar year ending immediately prior to the day on 904  
which the trust recognizes the qualifying trust amount. If, for 905  
a taxable year, the trust recognizes a qualifying trust amount 906  
with respect to more than one qualifying investee, the amount 907  
described in division (AA) (4) (b) of this section shall equal the 908  
sum of the products so computed for each such qualifying 909  
investee. 910

(c) (i) With respect to a trust or portion of a trust that 911  
is a resident as ascertained in accordance with division (I) (3) 912  
(d) of this section, its modified nonbusiness income. 913

(ii) With respect to a trust or portion of a trust that is 914  
not a resident as ascertained in accordance with division (I) (3) 915  
(d) of this section, the amount of its modified nonbusiness 916  
income satisfying the descriptions in divisions (B) (2) to (5) of 917  
section 5747.20 of the Revised Code, except as otherwise 918  
provided in division (AA) (4) (c) (ii) of this section. With 919  
respect to a trust or portion of a trust that is not a resident 920  
as ascertained in accordance with division (I) (3) (d) of this 921  
section, the trust's portion of modified nonbusiness income 922  
recognized from the sale, exchange, or other disposition of a 923



debt interest in or equity interest in a section 5747.212 924  
entity, as defined in section 5747.212 of the Revised Code, 925  
without regard to division (A) of that section, shall not be 926  
allocated to this state in accordance with section 5747.20 of 927  
the Revised Code but shall be apportioned to this state in 928  
accordance with division (B) of section 5747.212 of the Revised 929  
Code without regard to division (A) of that section. 930

If the allocation and apportionment of a trust's income 931  
under divisions (AA) (4) (a) and (c) of this section do not fairly 932  
represent the modified Ohio taxable income of the trust in this 933  
state, the alternative methods described in division (C) of 934  
section 5747.21 of the Revised Code may be applied in the manner 935  
and to the same extent provided in that section. 936

(5) (a) Except as set forth in division (AA) (5) (b) of this 937  
section, "qualifying investee" means a person in which a trust 938  
has an equity or ownership interest, or a person or unit of 939  
government the debt obligations of either of which are owned by 940  
a trust. For the purposes of division (AA) (2) (a) of this section 941  
and for the purpose of computing the fraction described in 942  
division (AA) (4) (b) of this section, all of the following apply: 943

(i) If the qualifying investee is a member of a qualifying 944  
controlled group on the last day of the qualifying investee's 945  
fiscal or calendar year ending immediately prior to the date on 946  
which the trust recognizes the gain or loss, then "qualifying 947  
investee" includes all persons in the qualifying controlled 948  
group on such last day. 949

(ii) If the qualifying investee, or if the qualifying 950  
investee and any members of the qualifying controlled group of 951  
which the qualifying investee is a member on the last day of the 952  
qualifying investee's fiscal or calendar year ending immediately 953

prior to the date on which the trust recognizes the gain or 954  
loss, separately or cumulatively own, directly or indirectly, on 955  
the last day of the qualifying investee's fiscal or calendar 956  
year ending immediately prior to the date on which the trust 957  
recognizes the qualifying trust amount, more than fifty per cent 958  
of the equity of a pass-through entity, then the qualifying 959  
investee and the other members are deemed to own the 960  
proportionate share of the pass-through entity's physical assets 961  
which the pass-through entity directly or indirectly owns on the 962  
last day of the pass-through entity's calendar or fiscal year 963  
ending within or with the last day of the qualifying investee's 964  
fiscal or calendar year ending immediately prior to the date on 965  
which the trust recognizes the qualifying trust amount. 966

(iii) For the purposes of division (AA) (5) (a) (iii) of this 967  
section, "upper level pass-through entity" means a pass-through 968  
entity directly or indirectly owning any equity of another pass- 969  
through entity, and "lower level pass-through entity" means that 970  
other pass-through entity. 971

An upper level pass-through entity, whether or not it is 972  
also a qualifying investee, is deemed to own, on the last day of 973  
the upper level pass-through entity's calendar or fiscal year, 974  
the proportionate share of the lower level pass-through entity's 975  
physical assets that the lower level pass-through entity 976  
directly or indirectly owns on the last day of the lower level 977  
pass-through entity's calendar or fiscal year ending within or 978  
with the last day of the upper level pass-through entity's 979  
fiscal or calendar year. If the upper level pass-through entity 980  
directly and indirectly owns less than fifty per cent of the 981  
equity of the lower level pass-through entity on each day of the 982  
upper level pass-through entity's calendar or fiscal year in 983  
which or with which ends the calendar or fiscal year of the 984

lower level pass-through entity and if, based upon clear and 985  
convincing evidence, complete information about the location and 986  
cost of the physical assets of the lower pass-through entity is 987  
not available to the upper level pass-through entity, then 988  
solely for purposes of ascertaining if a gain or loss 989  
constitutes a qualifying trust amount, the upper level pass- 990  
through entity shall be deemed as owning no equity of the lower 991  
level pass-through entity for each day during the upper level 992  
pass-through entity's calendar or fiscal year in which or with 993  
which ends the lower level pass-through entity's calendar or 994  
fiscal year. Nothing in division (AA) (5) (a) (iii) of this section 995  
shall be construed to provide for any deduction or exclusion in 996  
computing any trust's Ohio taxable income. 997

(b) With respect to a trust that is not a resident for the 998  
taxable year and with respect to a part of a trust that is not a 999  
resident for the taxable year, "qualifying investee" for that 1000  
taxable year does not include a C corporation if both of the 1001  
following apply: 1002

(i) During the taxable year the trust or part of the trust 1003  
recognizes a gain or loss from the sale, exchange, or other 1004  
disposition of equity or ownership interests in, or debt 1005  
obligations of, the C corporation. 1006

(ii) Such gain or loss constitutes nonbusiness income. 1007

(6) "Available" means information is such that a person is 1008  
able to learn of the information by the due date plus 1009  
extensions, if any, for filing the return for the taxable year 1010  
in which the trust recognizes the gain or loss. 1011

(BB) "Qualifying controlled group" has the same meaning as 1012  
in section 5733.04 of the Revised Code. 1013

(CC) "Related member" has the same meaning as in section	1014
5733.042 of the Revised Code.	1015
(DD) (1) For the purposes of division (DD) of this section:	1016
(a) "Qualifying person" means any person other than a	1017
qualifying corporation.	1018
(b) "Qualifying corporation" means any person classified	1019
for federal income tax purposes as an association taxable as a	1020
corporation, except either of the following:	1021
(i) A corporation that has made an election under	1022
subchapter S, chapter one, subtitle A, of the Internal Revenue	1023
Code for its taxable year ending within, or on the last day of,	1024
the investor's taxable year;	1025
(ii) A subsidiary that is wholly owned by any corporation	1026
that has made an election under subchapter S, chapter one,	1027
subtitle A of the Internal Revenue Code for its taxable year	1028
ending within, or on the last day of, the investor's taxable	1029
year.	1030
(2) For the purposes of this chapter, unless expressly	1031
stated otherwise, no qualifying person indirectly owns any asset	1032
directly or indirectly owned by any qualifying corporation.	1033
(EE) For purposes of this chapter and Chapter 5751. of the	1034
Revised Code:	1035
(1) "Trust" does not include a qualified pre-income tax	1036
trust.	1037
(2) A "qualified pre-income tax trust" is any pre-income	1038
tax trust that makes a qualifying pre-income tax trust election	1039
as described in division (EE) (3) of this section.	1040

(3) A "qualifying pre-income tax trust election" is an 1041  
election by a pre-income tax trust to subject to the tax imposed 1042  
by section 5751.02 of the Revised Code the pre-income tax trust 1043  
and all pass-through entities of which the trust owns or 1044  
controls, directly, indirectly, or constructively through 1045  
related interests, five per cent or more of the ownership or 1046  
equity interests. The trustee shall notify the tax commissioner 1047  
in writing of the election on or before April 15, 2006. The 1048  
election, if timely made, shall be effective on and after 1049  
January 1, 2006, and shall apply for all tax periods and tax 1050  
years until revoked by the trustee of the trust. 1051

(4) A "pre-income tax trust" is a trust that satisfies all 1052  
of the following requirements: 1053

(a) The document or instrument creating the trust was 1054  
executed by the grantor before January 1, 1972; 1055

(b) The trust became irrevocable upon the creation of the 1056  
trust; and 1057

(c) The grantor was domiciled in this state at the time 1058  
the trust was created. 1059

(FF) "Uniformed services" has the same meaning as in 10  
U.S.C. 101. 1060  
1061

(GG) "Taxable business income" means the amount by which 1062  
an individual's business income that is included in federal 1063  
adjusted gross income exceeds the amount of business income the 1064  
individual is authorized to deduct under division (A) (28) of 1065  
this section for the taxable year. 1066

(HH) "Employer" does not include a franchisor with respect 1067  
to the franchisor's relationship with a franchisee or an 1068  
employee of a franchisee, unless the franchisor agrees to assume 1069

that role in writing or a court of competent jurisdiction 1070  
determines that the franchisor exercises a type or degree of 1071  
control over the franchisee or the franchisee's employees that 1072  
is not customarily exercised by a franchisor for the purpose of 1073  
protecting the franchisor's trademark, brand, or both. For 1074  
purposes of this division, "franchisor" and "franchisee" have 1075  
the same meanings as in 16 C.F.R. 436.1. 1076

(II) "Modified adjusted gross income" means Ohio adjusted 1077  
gross income plus any amount deducted under divisions (A) (28) 1078  
and (34) of this section for the taxable year. 1079

(JJ) "Qualifying Ohio educator" means an individual who, 1080  
for a taxable year, qualifies as an eligible educator, as that 1081  
term is defined in section 62 of the Internal Revenue Code, and 1082  
who holds a certificate, license, or permit described in Chapter 1083  
3319. or section 3301.071 of the Revised Code. 1084

**Section 2.** That existing section 5747.01 of the Revised 1085  
Code is hereby repealed. 1086

**Section 3.** The amendment by this act of section 5747.01 of 1087  
the Revised Code is a remedial measure intended to clarify 1088  
existing law and applies to any petition for reassessment or any 1089  
appeal thereof and to any application for refund or any appeal 1090  
thereof pending on or after the effective date of this section 1091  
and to any transaction that is subject to an audit by the 1092  
Department of Taxation on or after that date. 1093

**Section 4.** Section 5747.01 of the Revised Code is 1094  
presented in this act as a composite of the section as amended 1095  
by H.B. 45, H.B. 110, H.B. 150, H.B. 515, S.B. 33, and S.B. 246, 1096  
all of the 134th General Assembly. The General Assembly, 1097  
applying the principle stated in division (B) of section 1.52 of 1098

the Revised Code that amendments are to be harmonized and	1099
reconciled if reasonably capable of simultaneous operation,	1100
finds that the composite is the resulting version of the section	1101
in effect prior to the effective date of the section as	1102
presented in this act.	1103