

**As Introduced**

**135th General Assembly**

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**H. B. No. 685**

**Representatives Fischer, Santucci**

**Cosponsors: Representatives Ferguson, Lear, Lorenz, Plummer, Williams, Willis,  
King, Barhorst, Creech, Swearingen, Gross**

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**A BILL**

To amend section 5747.01 of the Revised Code to 1  
allow a state income tax deduction for overtime 2  
wages. 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 49  
Internal Revenue Code not been in effect. 50

(7) Deduct any interest or interest equivalent on public 51  
obligations and purchase obligations to the extent that the 52  
interest or interest equivalent is included in federal adjusted 53  
gross income. 54

(8) Add any loss or deduct any gain resulting from the 55  
sale, exchange, or other disposition of public obligations to 56  
the extent that the loss has been deducted or the gain has been 57  
included in computing federal adjusted gross income. 58

(9) Deduct or add amounts, as provided under section 59  
5747.70 of the Revised Code, related to contributions made to or 60  
tuition units purchased under a qualified tuition program 61  
established pursuant to section 529 of the Internal Revenue 62  
Code. 63

(10) (a) Deduct, to the extent not otherwise allowable as a 64  
deduction or exclusion in computing federal or Ohio adjusted 65  
gross income for the taxable year, the amount the taxpayer paid 66  
during the taxable year for medical care insurance and qualified 67  
long-term care insurance for the taxpayer, the taxpayer's 68  
spouse, and dependents. No deduction for medical care insurance 69  
under division (A) (10) (a) of this section shall be allowed 70  
either to any taxpayer who is eligible to participate in any 71  
subsidized health plan maintained by any employer of the 72  
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 73  
entitled to, or on application would be entitled to, benefits 74  
under part A of Title XVIII of the "Social Security Act," 49 75

Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 76  
division (A) (10) (a) of this section, "subsidized health plan" 77  
means a health plan for which the employer pays any portion of 78  
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 States department of the treasury regulations. The deduction otherwise allowed under division (A) (11) (a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer deducted under this section in any taxable year.

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

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

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

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

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

(14) (a) Add an amount equal to the funds withdrawn from a

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 167  
ownership interest. 168

(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 operating loss for the taxable year for federal income tax purposes, to the extent such loss resulted from depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code and by qualifying section 179 depreciation expense, "the entire" shall be substituted for "five-sixths of the" for the purpose of divisions (A) (17) (a) (i) and (ii) of this section.	195 196 197 198 199 200 201
The tax commissioner, under procedures established by the commissioner, may waive the add-backs related to a pass-through entity if the taxpayer owns, directly or indirectly, less than five per cent of the pass-through entity.	202 203 204 205
(b) Nothing in division (A) (17) of this section shall be construed to adjust or modify the adjusted basis of any asset.	206 207
(c) To the extent the add-back required under division (A) (17) (a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be situated to the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.	208 209 210 211 212 213 214 215 216 217
(d) For the purposes of division (A) (17) (a) (v) of this section, net operating loss carryback and carryforward shall not include the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the	218 219 220 221 222



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 succeeding taxable years if the entire amount of such depreciation expense was so added.	253 254 255
(b) If the amount deducted under division (A) (18) (a) of this section is attributable to an add-back allocated under division (A) (17) (c) of this section, the amount deducted shall be situated to the same location. Otherwise, the add-back shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.	256 257 258 259 260 261 262 263
(c) No deduction is available under division (A) (18) (a) of this section with regard to any depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount to the extent that such depreciation results in or increases a federal net operating loss carryback or carryforward. If no such deduction is available for a taxable year, the taxpayer may carry forward the amount not deducted in such taxable year to the next taxable year and add that amount to any deduction otherwise available under division (A) (18) (a) of this section for that next taxable year. The carryforward of amounts not so deducted shall continue until the entire addition required by division (A) (17) (a) of this section has been deducted.	264 265 266 267 268 269 270 271 272 273 274 275 276
(19) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as reimbursement for life insurance premiums under section 5919.31 of the Revised Code.	277 278 279 280 281

(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



Notwithstanding any provision of the Revised Code to the 459  
contrary, the portion of the addition required by division (A) 460  
(36) of this section related to the apportioned business income 461  
of the pass-through entity shall be considered business income 462  
under division (B) of this section. Such addition is eligible 463  
for the deduction in division (A) (28) of this section, subject 464  
to the applicable dollar limitations, and the tax rate 465  
prescribed by division (A) (4) (a) of section 5747.02 of the 466  
Revised Code. The taxpayer shall provide, upon request of the 467  
tax commissioner, any documentation necessary to verify the 468  
portion of the addition that is business income under this 469  
division. 470

(37) Deduct, to the extent not otherwise deducted or 471  
excluded in computing federal or Ohio adjusted gross income for 472  
the taxable year, amounts delivered to a qualifying institution 473  
pursuant to section 3333.128 of the Revised Code for the benefit 474  
of the taxpayer or the taxpayer's spouse or dependent. 475

(38) Deduct, to the extent not otherwise deducted or 476  
excluded in computing federal or Ohio adjusted gross income for 477  
the taxable year, amounts received under the Ohio adoption grant 478  
program pursuant to section 5101.191 of the Revised Code. 479

(39) Deduct, to the extent included in federal adjusted 480  
gross income, income attributable to amounts provided to a 481  
taxpayer for any of the purposes for which an exclusion would 482  
have been authorized under section 139 of the Internal Revenue 483  
Code if the train derailment near the city of East Palestine on 484  
February 3, 2023, had been a qualified disaster pursuant to that 485  
section, or to compensate for lost business resulting from that 486  
derailment, if such amounts are provided by any of the 487  
following: 488

(a) A federal, state, or local government agency;	489
(b) A railroad company, as that term is defined in section 5727.01 of the Revised Code;	490 491
(c) Any subsidiary, insurer, or agent of a railroad company or any related person.	492 493
Notwithstanding any provision to the contrary, the derailment is not required to meet the definition of a "qualified disaster" pursuant to section 139 of the Internal Revenue Code to qualify for the deduction under this section.	494 495 496 497
(40) Deduct, to the extent included in federal adjusted gross income, income attributable to loan repayments on behalf of the taxpayer under the rural practice incentive program under section 3333.135 of the Revised Code.	498 499 500 501
(41) Add any income taxes deducted in computing federal or Ohio adjusted gross income to the extent the income taxes were derived from income subject to a tax levied in another state or the District of Columbia when such tax was enacted for purposes of complying with internal revenue service notice 2020-75.	502 503 504 505 506
Notwithstanding any provision of the Revised Code to the contrary, the portion of the addition required by division (A) (41) of this section related to the apportioned business income of the pass-through entity shall be considered business income under division (B) of this section. Such addition is eligible for the deduction in division (A) (28) of this section, subject to the applicable dollar limitations, and the tax rate prescribed by division (A) (4) (a) of section 5747.02 of the Revised Code. The taxpayer shall provide, upon request of the tax commissioner, any documentation necessary to verify the portion of the addition that is business income under this	507 508 509 510 511 512 513 514 515 516 517

division. 518

(42) Deduct amounts contributed to a homeownership savings 519  
account and calculated pursuant to divisions (B) and (C) of 520  
section 5747.85 of the Revised Code. 521

(43) If the taxpayer is the account owner, add the amount 522  
of funds withdrawn from a homeownership savings account not used 523  
for eligible expenses, regardless of who deposited those funds. 524  
As used in division (A) (43) of this section, "homeownership 525  
savings account," "account owner," and "eligible expenses" have 526  
the same meanings as in section 5747.85 of the Revised Code. 527

(44) Deduct, to the extent not otherwise deducted or 528  
excluded in computing federal or Ohio adjusted gross income for 529  
the taxable year, overtime wages paid in accordance with section 530  
4111.03 of the Revised Code or 29 U.S.C. 207. 531

(B) "Business income" means income, including gain or 532  
loss, arising from transactions, activities, and sources in the 533  
regular course of a trade or business and includes income, gain, 534  
or loss from real property, tangible property, and intangible 535  
property if the acquisition, rental, management, and disposition 536  
of the property constitute integral parts of the regular course 537  
of a trade or business operation. "Business income" includes 538  
income, including gain or loss, from a partial or complete 539  
liquidation of a business, including, but not limited to, gain 540  
or loss from the sale or other disposition of goodwill or the 541  
sale of an equity or ownership interest in a business. 542

As used in this division, the "sale of an equity or 543  
ownership interest in a business" means sales to which either or 544  
both of the following apply: 545

(1) The sale is treated for federal income tax purposes as 546

the sale of assets.	547
(2) 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.	548 549 550 551
(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.	552 553 554 555 556 557
(D) "Compensation" means any form of remuneration paid to an employee for personal services.	558 559
(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.	560 561 562
(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	563 564
(G) "Individual" means any natural person.	565
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	566 567
(I) "Resident" means any of the following:	568
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	569 570
(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	571 572 573

(I) (2) of this section.	574
(3) A trust that, in whole or part, resides in this state.	575
If only part of a trust resides in this state, the trust is a	576
resident only with respect to that part.	577
For the purposes of division (I) (3) of this section:	578
(a) A trust resides in this state for the trust's current	579
taxable year to the extent, as described in division (I) (3) (d)	580
of this section, that the trust consists directly or indirectly,	581
in whole or in part, of assets, net of any related liabilities,	582
that were transferred, or caused to be transferred, directly or	583
indirectly, to the trust by any of the following:	584
(i) A person, a court, or a governmental entity or	585
instrumentality on account of the death of a decedent, but only	586
if the trust is described in division (I) (3) (e) (i) or (ii) of	587
this section;	588
(ii) A person who was domiciled in this state for the	589
purposes of this chapter when the person directly or indirectly	590
transferred assets to an irrevocable trust, but only if at least	591
one of the trust's qualifying beneficiaries is domiciled in this	592
state for the purposes of this chapter during all or some	593
portion of the trust's current taxable year;	594
(iii) A person who was domiciled in this state for the	595
purposes of this chapter when the trust document or instrument	596
or part of the trust document or instrument became irrevocable,	597
but only if at least one of the trust's qualifying beneficiaries	598
is a resident domiciled in this state for the purposes of this	599
chapter during all or some portion of the trust's current	600
taxable year. If a trust document or instrument became	601
irrevocable upon the death of a person who at the time of death	602

was domiciled in this state for purposes of this chapter, that 603  
person is a person described in division (I) (3) (a) (iii) of this 604  
section. 605

(b) A trust is irrevocable to the extent that the 606  
transferor is not considered to be the owner of the net assets 607  
of the trust under sections 671 to 678 of the Internal Revenue 608  
Code. 609

(c) With respect to a trust other than a charitable lead 610  
trust, "qualifying beneficiary" has the same meaning as 611  
"potential current beneficiary" as defined in section 1361(e) (2) 612  
of the Internal Revenue Code, and with respect to a charitable 613  
lead trust "qualifying beneficiary" is any current, future, or 614  
contingent beneficiary, but with respect to any trust 615  
"qualifying beneficiary" excludes a person or a governmental 616  
entity or instrumentality to any of which a contribution would 617  
qualify for the charitable deduction under section 170 of the 618  
Internal Revenue Code. 619

(d) For the purposes of division (I) (3) (a) of this 620  
section, the extent to which a trust consists directly or 621  
indirectly, in whole or in part, of assets, net of any related 622  
liabilities, that were transferred directly or indirectly, in 623  
whole or part, to the trust by any of the sources enumerated in 624  
that division shall be ascertained by multiplying the fair 625  
market value of the trust's assets, net of related liabilities, 626  
by the qualifying ratio, which shall be computed as follows: 627

(i) The first time the trust receives assets, the 628  
numerator of the qualifying ratio is the fair market value of 629  
those assets at that time, net of any related liabilities, from 630  
sources enumerated in division (I) (3) (a) of this section. The 631  
denominator of the qualifying ratio is the fair market value of 632

all the trust's assets at that time, net of any related 633  
liabilities. 634

(ii) Each subsequent time the trust receives assets, a 635  
revised qualifying ratio shall be computed. The numerator of the 636  
revised qualifying ratio is the sum of (1) the fair market value 637  
of the trust's assets immediately prior to the subsequent 638  
transfer, net of any related liabilities, multiplied by the 639  
qualifying ratio last computed without regard to the subsequent 640  
transfer, and (2) the fair market value of the subsequently 641  
transferred assets at the time transferred, net of any related 642  
liabilities, from sources enumerated in division (I) (3) (a) of 643  
this section. The denominator of the revised qualifying ratio is 644  
the fair market value of all the trust's assets immediately 645  
after the subsequent transfer, net of any related liabilities. 646

(iii) Whether a transfer to the trust is by or from any of 647  
the sources enumerated in division (I) (3) (a) of this section 648  
shall be ascertained without regard to the domicile of the 649  
trust's beneficiaries. 650

(e) For the purposes of division (I) (3) (a) (i) of this 651  
section: 652

(i) A trust is described in division (I) (3) (e) (i) of this 653  
section if the trust is a testamentary trust and the testator of 654  
that testamentary trust was domiciled in this state at the time 655  
of the testator's death for purposes of the taxes levied under 656  
Chapter 5731. of the Revised Code. 657

(ii) A trust is described in division (I) (3) (e) (ii) of 658  
this section if the transfer is a qualifying transfer described 659  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 660  
trust is an irrevocable inter vivos trust, and at least one of 661

the trust's qualifying beneficiaries is domiciled in this state 662  
for purposes of this chapter during all or some portion of the 663  
trust's current taxable year. 664

(f) For the purposes of division (I)(3)(e)(ii) of this 665  
section, a "qualifying transfer" is a transfer of assets, net of 666  
any related liabilities, directly or indirectly to a trust, if 667  
the transfer is described in any of the following: 668

(i) The transfer is made to a trust, created by the 669  
decedent before the decedent's death and while the decedent was 670  
domiciled in this state for the purposes of this chapter, and, 671  
prior to the death of the decedent, the trust became irrevocable 672  
while the decedent was domiciled in this state for the purposes 673  
of this chapter. 674

(ii) The transfer is made to a trust to which the 675  
decedent, prior to the decedent's death, had directly or 676  
indirectly transferred assets, net of any related liabilities, 677  
while the decedent was domiciled in this state for the purposes 678  
of this chapter, and prior to the death of the decedent the 679  
trust became irrevocable while the decedent was domiciled in 680  
this state for the purposes of this chapter. 681

(iii) The transfer is made on account of a contractual 682  
relationship existing directly or indirectly between the 683  
transferor and either the decedent or the estate of the decedent 684  
at any time prior to the date of the decedent's death, and the 685  
decedent was domiciled in this state at the time of death for 686  
purposes of the taxes levied under Chapter 5731. of the Revised 687  
Code. 688

(iv) The transfer is made to a trust on account of a 689  
contractual relationship existing directly or indirectly between 690



the transferor and another person who at the time of the 691  
decedent's death was domiciled in this state for purposes of 692  
this chapter. 693

(v) The transfer is made to a trust on account of the will 694  
of a testator who was domiciled in this state at the time of the 695  
testator's death for purposes of the taxes levied under Chapter 696  
5731. of the Revised Code. 697

(vi) The transfer is made to a trust created by or caused 698  
to be created by a court, and the trust was directly or 699  
indirectly created in connection with or as a result of the 700  
death of an individual who, for purposes of the taxes levied 701  
under Chapter 5731. of the Revised Code, was domiciled in this 702  
state at the time of the individual's death. 703

(g) The tax commissioner may adopt rules to ascertain the 704  
part of a trust residing in this state. 705

(J) "Nonresident" means an individual or estate that is 706  
not a resident. An individual who is a resident for only part of 707  
a taxable year is a nonresident for the remainder of that 708  
taxable year. 709

(K) "Pass-through entity" has the same meaning as in 710  
section 5733.04 of the Revised Code. 711

(L) "Return" means the notifications and reports required 712  
to be filed pursuant to this chapter for the purpose of 713  
reporting the tax due and includes declarations of estimated tax 714  
when so required. 715

(M) "Taxable year" means the calendar year or the 716  
taxpayer's fiscal year ending during the calendar year, or 717  
fractional part thereof, upon which the adjusted gross income is 718  
calculated pursuant to this chapter. 719

(N) "Taxpayer" means any person subject to the tax imposed	720
by section 5747.02 of the Revised Code or any pass-through	721
entity that makes the election under division (D) of section	722
5747.08 of the Revised Code.	723
(O) "Dependents" means one of the following:	724
(1) For taxable years beginning on or after January 1,	725
2018, and before January 1, 2026, dependents as defined in the	726
Internal Revenue Code;	727
(2) For all other taxable years, dependents as defined in	728
the Internal Revenue Code and as claimed in the taxpayer's	729
federal income tax return for the taxable year or which the	730
taxpayer would have been permitted to claim had the taxpayer	731
filed a federal income tax return.	732
(P) "Principal county of employment" means, in the case of	733
a nonresident, the county within the state in which a taxpayer	734
performs services for an employer or, if those services are	735
performed in more than one county, the county in which the major	736
portion of the services are performed.	737
(Q) As used in sections 5747.50 to 5747.55 of the Revised	738
Code:	739
(1) "Subdivision" means any county, municipal corporation,	740
park district, or township.	741
(2) "Essential local government purposes" includes all	742
functions that any subdivision is required by general law to	743
exercise, including like functions that are exercised under a	744
charter adopted pursuant to the Ohio Constitution.	745
(R) "Overpayment" means any amount already paid that	746
exceeds the figure determined to be the correct amount of the	747

tax.	748
(S) "Taxable income" or "Ohio taxable income" applies only	749
to estates and trusts, and means federal taxable income, as	750
defined and used in the Internal Revenue Code, adjusted as	751
follows:	752
(1) Add interest or dividends, net of ordinary, necessary,	753
and reasonable expenses not deducted in computing federal	754
taxable income, on obligations or securities of any state or of	755
any political subdivision or authority of any state, other than	756
this state and its subdivisions and authorities, but only to the	757
extent that such net amount is not otherwise includible in Ohio	758
taxable income and is described in either division (S) (1) (a) or	759
(b) of this section:	760
(a) The net amount is not attributable to the S portion of	761
an electing small business trust and has not been distributed to	762
beneficiaries for the taxable year;	763
(b) The net amount is attributable to the S portion of an	764
electing small business trust for the taxable year.	765
(2) Add interest or dividends, net of ordinary, necessary,	766
and reasonable expenses not deducted in computing federal	767
taxable income, on obligations of any authority, commission,	768
instrumentality, territory, or possession of the United States	769
to the extent that the interest or dividends are exempt from	770
federal income taxes but not from state income taxes, but only	771
to the extent that such net amount is not otherwise includible	772
in Ohio taxable income and is described in either division (S)	773
(1) (a) or (b) of this section;	774
(3) Add the amount of personal exemption allowed to the	775
estate pursuant to section 642(b) of the Internal Revenue Code;	776

(4) Deduct interest or dividends, net of related expenses	777
deducted in computing federal taxable income, on obligations of	778
the United States and its territories and possessions or of any	779
authority, commission, or instrumentality of the United States	780
to the extent that the interest or dividends are exempt from	781
state taxes under the laws of the United States, but only to the	782
extent that such amount is included in federal taxable income	783
and is described in either division (S)(1)(a) or (b) of this	784
section;	785
(5) Deduct the amount of wages and salaries, if any, not	786
otherwise allowable as a deduction but that would have been	787
allowable as a deduction in computing federal taxable income for	788
the taxable year, had the work opportunity tax credit allowed	789
under sections 38, 51, and 52 of the Internal Revenue Code not	790
been in effect, but only to the extent such amount relates	791
either to income included in federal taxable income for the	792
taxable year or to income of the S portion of an electing small	793
business trust for the taxable year;	794
(6) Deduct any interest or interest equivalent, net of	795
related expenses deducted in computing federal taxable income,	796
on public obligations and purchase obligations, but only to the	797
extent that such net amount relates either to income included in	798
federal taxable income for the taxable year or to income of the	799
S portion of an electing small business trust for the taxable	800
year;	801
(7) Add any loss or deduct any gain resulting from sale,	802
exchange, or other disposition of public obligations to the	803
extent that such loss has been deducted or such gain has been	804
included in computing either federal taxable income or income of	805
the S portion of an electing small business trust for the	806

taxable year; 807

(8) Except in the case of the final return of an estate, 808  
add any amount deducted by the taxpayer on both its Ohio estate 809  
tax return pursuant to section 5731.14 of the Revised Code, and 810  
on its federal income tax return in determining federal taxable 811  
income; 812

(9) (a) Deduct any amount included in federal taxable 813  
income solely because the amount represents a reimbursement or 814  
refund of expenses that in a previous year the decedent had 815  
deducted as an itemized deduction pursuant to section 63 of the 816  
Internal Revenue Code and applicable treasury regulations. The 817  
deduction otherwise allowed under division (S) (9) (a) of this 818  
section shall be reduced to the extent the reimbursement is 819  
attributable to an amount the taxpayer or decedent deducted 820  
under this section in any taxable year. 821

(b) Add any amount not otherwise included in Ohio taxable 822  
income for any taxable year to the extent that the amount is 823  
attributable to the recovery during the taxable year of any 824  
amount deducted or excluded in computing federal or Ohio taxable 825  
income in any taxable year, but only to the extent such amount 826  
has not been distributed to beneficiaries for the taxable year. 827

(10) Deduct any portion of the deduction described in 828  
section 1341(a) (2) of the Internal Revenue Code, for repaying 829  
previously reported income received under a claim of right, that 830  
meets both of the following requirements: 831

(a) It is allowable for repayment of an item that was 832  
included in the taxpayer's taxable income or the decedent's 833  
adjusted gross income for a prior taxable year and did not 834  
qualify for a credit under division (A) or (B) of section 835

5747.05 of the Revised Code for that year.	836
(b) It does not otherwise reduce the taxpayer's taxable income or the decedent's adjusted gross income for the current or any other taxable year.	837 838 839
(11) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that the amount satisfies either of the following:	840 841 842
(a) The amount was deducted or excluded from the computation of the taxpayer's federal taxable income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;	843 844 845 846
(b) The amount resulted in a reduction in the taxpayer's federal taxable income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.	847 848 849
(12) Deduct any amount, net of related expenses deducted in computing federal taxable income, that a trust is required to report as farm income on its federal income tax return, but only if the assets of the trust include at least ten acres of land satisfying the definition of "land devoted exclusively to agricultural use" under section 5713.30 of the Revised Code, regardless of whether the land is valued for tax purposes as such land under sections 5713.30 to 5713.38 of the Revised Code. If the trust is a pass-through entity investor, section 5747.231 of the Revised Code applies in ascertaining if the trust is eligible to claim the deduction provided by division (S)(12) of this section in connection with the pass-through entity's farm income.	850 851 852 853 854 855 856 857 858 859 860 861 862
Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by	863 864

division (S) (12) of this section is allowed only to the extent 865  
that the trust has not distributed such farm income. 866

(13) Add the net amount of income described in section 867  
641(c) of the Internal Revenue Code to the extent that amount is 868  
not included in federal taxable income. 869

(14) Deduct the amount the taxpayer would be required to 870  
deduct under division (A) (18) of this section if the taxpayer's 871  
Ohio taxable income ~~were~~ was computed in the same manner as an 872  
individual's Ohio adjusted gross income is computed under this 873  
section. 874

(15) Add, to the extent not otherwise included in 875  
computing taxable income or Ohio taxable income for any taxable 876  
year, the taxpayer's proportionate share of the amount of the 877  
tax levied under section 5747.38 of the Revised Code and paid by 878  
an electing pass-through entity for the taxable year. 879

(16) Add any income taxes deducted in computing federal 880  
taxable income or Ohio taxable income to the extent the income 881  
taxes were derived from income subject to a tax levied in 882  
another state or the District of Columbia when such tax was 883  
enacted for purposes of complying with internal revenue service 884  
notice 2020-75. 885

(T) "School district income" and "school district income 886  
tax" have the same meanings as in section 5748.01 of the Revised 887  
Code. 888

(U) As used in divisions (A) (7), (A) (8), (S) (6), and (S) 889  
(7) of this section, "public obligations," "purchase 890  
obligations," and "interest or interest equivalent" have the 891  
same meanings as in section 5709.76 of the Revised Code. 892

(V) "Limited liability company" means any limited 893

liability company formed under former Chapter 1705. of the 894  
Revised Code as that chapter existed prior to February 11, 2022, 895  
Chapter 1706. of the Revised Code, or the laws of any other 896  
state. 897

(W) "Pass-through entity investor" means any person who, 898  
during any portion of a taxable year of a pass-through entity, 899  
is a partner, member, shareholder, or equity investor in that 900  
pass-through entity. 901

(X) "Banking day" has the same meaning as in section 902  
1304.01 of the Revised Code. 903

(Y) "Month" means a calendar month. 904

(Z) "Quarter" means the first three months, the second 905  
three months, the third three months, or the last three months 906  
of the taxpayer's taxable year. 907

(AA) (1) "Modified business income" means the business 908  
income included in a trust's Ohio taxable income after such 909  
taxable income is first reduced by the qualifying trust amount, 910  
if any. 911

(2) "Qualifying trust amount" of a trust means capital 912  
gains and losses from the sale, exchange, or other disposition 913  
of equity or ownership interests in, or debt obligations of, a 914  
qualifying investee to the extent included in the trust's Ohio 915  
taxable income, but only if the following requirements are 916  
satisfied: 917

(a) The book value of the qualifying investee's physical 918  
assets in this state and everywhere, as of the last day of the 919  
qualifying investee's fiscal or calendar year ending immediately 920  
prior to the date on which the trust recognizes the gain or 921  
loss, is available to the trust. 922



(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.

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.

(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 (AA) (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 952  
of the book value of the qualifying investee's total physical 953  
assets everywhere on the last day of the qualifying investee's 954  
fiscal or calendar year ending immediately prior to the day on 955  
which the trust recognizes the qualifying trust amount. If, for 956  
a taxable year, the trust recognizes a qualifying trust amount 957  
with respect to more than one qualifying investee, the amount 958  
described in division (AA) (4) (b) of this section shall equal the 959  
sum of the products so computed for each such qualifying 960  
investee. 961

(c) (i) With respect to a trust or portion of a trust that 962  
is a resident as ascertained in accordance with division (I) (3) 963  
(d) of this section, its modified nonbusiness income. 964

(ii) With respect to a trust or portion of a trust that is 965  
not a resident as ascertained in accordance with division (I) (3) 966  
(d) of this section, the amount of its modified nonbusiness 967  
income satisfying the descriptions in divisions (B) (2) to (5) of 968  
section 5747.20 of the Revised Code, except as otherwise 969  
provided in division (AA) (4) (c) (ii) of this section. With 970  
respect to a trust or portion of a trust that is not a resident 971  
as ascertained in accordance with division (I) (3) (d) of this 972  
section, the trust's portion of modified nonbusiness income 973  
recognized from the sale, exchange, or other disposition of a 974  
debt interest in or equity interest in a section 5747.212 975  
entity, as defined in section 5747.212 of the Revised Code, 976  
without regard to division (A) of that section, shall not be 977  
allocated to this state in accordance with section 5747.20 of 978  
the Revised Code but shall be apportioned to this state in 979  
accordance with division (B) of section 5747.212 of the Revised 980  
Code without regard to division (A) of that section. 981

If the allocation and apportionment of a trust's income 982  
under divisions (AA) (4) (a) and (c) of this section do not fairly 983  
represent the modified Ohio taxable income of the trust in this 984  
state, the alternative methods described in division (C) of 985  
section 5747.21 of the Revised Code may be applied in the manner 986  
and to the same extent provided in that section. 987

(5) (a) Except as set forth in division (AA) (5) (b) of this 988  
section, "qualifying investee" means a person in which a trust 989  
has an equity or ownership interest, or a person or unit of 990  
government the debt obligations of either of which are owned by 991  
a trust. For the purposes of division (AA) (2) (a) of this section 992  
and for the purpose of computing the fraction described in 993  
division (AA) (4) (b) of this section, all of the following apply: 994

(i) If the qualifying investee is a member of a qualifying 995  
controlled group on the last day of the qualifying investee's 996  
fiscal or calendar year ending immediately prior to the date on 997  
which the trust recognizes the gain or loss, then "qualifying 998  
investee" includes all persons in the qualifying controlled 999  
group on such last day. 1000

(ii) If the qualifying investee, or if the qualifying 1001  
investee and any members of the qualifying controlled group of 1002  
which the qualifying investee is a member on the last day of the 1003  
qualifying investee's fiscal or calendar year ending immediately 1004  
prior to the date on which the trust recognizes the gain or 1005  
loss, separately or cumulatively own, directly or indirectly, on 1006  
the last day of the qualifying investee's fiscal or calendar 1007  
year ending immediately prior to the date on which the trust 1008  
recognizes the qualifying trust amount, more than fifty per cent 1009  
of the equity of a pass-through entity, then the qualifying 1010  
investee and the other members are deemed to own the 1011

proportionate share of the pass-through entity's physical assets 1012  
which the pass-through entity directly or indirectly owns on the 1013  
last day of the pass-through entity's calendar or fiscal year 1014  
ending within or with the last day of the qualifying investee's 1015  
fiscal or calendar year ending immediately prior to the date on 1016  
which the trust recognizes the qualifying trust amount. 1017

(iii) For the purposes of division (AA) (5) (a) (iii) of this 1018  
section, "upper level pass-through entity" means a pass-through 1019  
entity directly or indirectly owning any equity of another pass- 1020  
through entity, and "lower level pass-through entity" means that 1021  
other pass-through entity. 1022

An upper level pass-through entity, whether or not it is 1023  
also a qualifying investee, is deemed to own, on the last day of 1024  
the upper level pass-through entity's calendar or fiscal year, 1025  
the proportionate share of the lower level pass-through entity's 1026  
physical assets that the lower level pass-through entity 1027  
directly or indirectly owns on the last day of the lower level 1028  
pass-through entity's calendar or fiscal year ending within or 1029  
with the last day of the upper level pass-through entity's 1030  
fiscal or calendar year. If the upper level pass-through entity 1031  
directly and indirectly owns less than fifty per cent of the 1032  
equity of the lower level pass-through entity on each day of the 1033  
upper level pass-through entity's calendar or fiscal year in 1034  
which or with which ends the calendar or fiscal year of the 1035  
lower level pass-through entity and if, based upon clear and 1036  
convincing evidence, complete information about the location and 1037  
cost of the physical assets of the lower pass-through entity is 1038  
not available to the upper level pass-through entity, then 1039  
solely for purposes of ascertaining if a gain or loss 1040  
constitutes a qualifying trust amount, the upper level pass- 1041  
through entity shall be deemed as owning no equity of the lower 1042

level pass-through entity for each day during the upper level 1043  
pass-through entity's calendar or fiscal year in which or with 1044  
which ends the lower level pass-through entity's calendar or 1045  
fiscal year. Nothing in division (AA) (5) (a) (iii) of this section 1046  
shall be construed to provide for any deduction or exclusion in 1047  
computing any trust's Ohio taxable income. 1048

(b) With respect to a trust that is not a resident for the 1049  
taxable year and with respect to a part of a trust that is not a 1050  
resident for the taxable year, "qualifying investee" for that 1051  
taxable year does not include a C corporation if both of the 1052  
following apply: 1053

(i) During the taxable year the trust or part of the trust 1054  
recognizes a gain or loss from the sale, exchange, or other 1055  
disposition of equity or ownership interests in, or debt 1056  
obligations of, the C corporation. 1057

(ii) Such gain or loss constitutes nonbusiness income. 1058

(6) "Available" means information is such that a person is 1059  
able to learn of the information by the due date plus 1060  
extensions, if any, for filing the return for the taxable year 1061  
in which the trust recognizes the gain or loss. 1062

(BB) "Qualifying controlled group" has the same meaning as 1063  
in section 5733.04 of the Revised Code. 1064

(CC) "Related member" has the same meaning as in section 1065  
5733.042 of the Revised Code. 1066

(DD) (1) For the purposes of division (DD) of this section: 1067

(a) "Qualifying person" means any person other than a 1068  
qualifying corporation. 1069

(b) "Qualifying corporation" means any person classified 1070

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 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.

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

(EE) For purposes of this chapter and Chapter 5751. of the Revised Code:

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

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

(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, directly, indirectly, or constructively through related interests, five per cent or more of the ownership or equity interests. The trustee shall notify the tax commissioner in writing of the election on or before April 15, 2006. The

election, if timely made, shall be effective on and after 1100  
January 1, 2006, and shall apply for all tax periods and tax 1101  
years until revoked by the trustee of the trust. 1102

(4) A "pre-income tax trust" is a trust that satisfies all 1103  
of the following requirements: 1104

(a) The document or instrument creating the trust was 1105  
executed by the grantor before January 1, 1972; 1106

(b) The trust became irrevocable upon the creation of the 1107  
trust; and 1108

(c) The grantor was domiciled in this state at the time 1109  
the trust was created. 1110

(FF) "Uniformed services" has the same meaning as in 10 1111  
U.S.C. 101. 1112

(GG) "Taxable business income" means the amount by which 1113  
an individual's business income that is included in federal 1114  
adjusted gross income exceeds the amount of business income the 1115  
individual is authorized to deduct under division (A) (28) of 1116  
this section for the taxable year. 1117

(HH) "Employer" does not include a franchisor with respect 1118  
to the franchisor's relationship with a franchisee or an 1119  
employee of a franchisee, unless the franchisor agrees to assume 1120  
that role in writing or a court of competent jurisdiction 1121  
determines that the franchisor exercises a type or degree of 1122  
control over the franchisee or the franchisee's employees that 1123  
is not customarily exercised by a franchisor for the purpose of 1124  
protecting the franchisor's trademark, brand, or both. For 1125  
purposes of this division, "franchisor" and "franchisee" have 1126  
the same meanings as in 16 C.F.R. 436.1. 1127

(II) "Modified adjusted gross income" means Ohio adjusted 1128  
gross income plus any amount deducted under divisions (A) (28),      1129  
~~and (34), and (44)~~ of this section for the taxable year. 1130

(JJ) "Qualifying Ohio educator" means an individual who, 1131  
for a taxable year, qualifies as an eligible educator, as that 1132  
term is defined in section 62 of the Internal Revenue Code, and 1133  
who holds a certificate, license, or permit described in Chapter 1134  
3319. or section 3301.071 of the Revised Code. 1135

**Section 2.** That existing section 5747.01 of the Revised 1136  
Code is hereby repealed. 1137

**Section 3.** The amendment by this act of section 5747.01 of 1138  
the Revised Code applies to taxable years ending on or after the 1139  
effective date of this section. 1140