

As Introduced

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S. B. No. 288

Senator Eklund

Cosponsors: Senators LaRose, Seitz, Patton

A BILL

To amend sections 901.13, 5733.01, 5733.04, 1
5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 2
5747.011, 5747.02, 5747.03, 5747.08, 5747.082, 3
5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 4
5747.20, 5747.21, 5747.212, 5747.22, 5747.231, 5
5747.28, 5747.30, 5747.331, 5747.44, 5747.65, 6
5747.98, and 5748.01 to enact new sections 7
5747.40, 5747.41, 5747.42, and 5747.43, and to 8
repeal sections 5733.0611, 5733.40, 5733.401, 9
5733.402, 5733.41, 5747.012, 5747.059, 5747.221, 10
5747.40, 5747.401, 5747.41, 5747.42, 5747.43, 11
5747.45, 5747.451, 5747.453, and 5747.75 of the 12
Revised Code to revise the law governing how 13
taxes on income from pass-through entities is to 14
be reported and paid by the entities and their 15
investors. 16

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

Section 1. That sections 901.13, 5733.01, 5733.04, 17
5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 5747.011, 5747.02, 18
5747.03, 5747.08, 5747.082, 5747.11, 5747.13, 5747.132, 5747.14, 19

5747.15, 5747.20, 5747.21, 5747.212, 5747.22, 5747.231, 5747.28, 20
5747.30, 5747.331, 5747.44, 5747.65, 5747.98, and 5748.01 be 21
amended and new sections 5747.40, 5747.41, 5747.42, and 5747.43 22
of the Revised Code be enacted to read as follows: 23

Sec. 901.13. (A) As used in this section: 24

(1) "Ethanol" has the same meaning as in section 5733.46 25
of the Revised Code. 26

(2) "Facility" means an ethanol production plant that will 27
be located in this state. 28

(B) There is hereby created the ethanol incentive board. 29
The board shall consist of the following five members: the 30
director of agriculture, who shall serve as chairperson of the 31
board, the director of development, the executive director of 32
the Ohio air quality development authority, one member appointed 33
by the speaker of the house of representatives, and one member 34
appointed by the president of the senate. Initial appointments 35
to the board shall be made within thirty days of ~~the effective~~ 36
~~date of this section~~ March 21, 2002. Vacancies shall be filled 37
in the same manner provided for original appointments. Members 38
of the board shall serve without compensation. The board shall 39
meet and conduct its business as directed by the chairperson. 40
The board shall cease to exist January 1, 2014. 41

(C) The board's sole duty is to review any application 42
that is submitted to it under this section. The board shall 43
approve an application only if it determines, by the affirmative 44
vote of all members of the board, that the applicant's business 45
plan for a facility meets the requirements established by 46
division (D) of this section. 47

(D) The owner of a facility may apply to the board, on an 48

application provided by the director of agriculture, for 49
approval of the facility's business plan under this section. 50
Within sixty days of receipt of an application, the board shall 51
determine whether the applicant's business plan meets the 52
following requirements: 53

(1) The business plan is for the construction and 54
operation of a facility. 55

(2) The business plan contains detailed information 56
regarding: 57

(a) The availability and price of corn in the area where 58
the facility will be located; 59

(b) The availability and cost of energy needed for 60
operation of the facility; 61

(c) The availability of water and waste disposal systems 62
in the area where the facility will be located; 63

(d) The availability of labor and a qualified site manager 64
for the facility. 65

(3) The business plan analyzes any proposed marketing 66
agreements for the products produced by the facility. 67

(4) The facility to be constructed and operated under the 68
business plan is majority-owned by Ohio farmers or will be prior 69
to the first day the facility commences production. 70

(5) The business plan meets any other requirements 71
established by the board under rules adopted in accordance with 72
division (G) of this section. 73

The board shall issue a certificate of approval for each 74
application approved under this section, and any taxpayer that 75

invests money in the facility for which a business plan has been 76
approved may claim a tax credit for such investment under 77
section 5733.46 or former section 5747.75 of the Revised Code. 78

(E) Any business plan submitted to the board under this 79
section is not a public record subject to section 149.43 of the 80
Revised Code. 81

(F) The board shall notify the tax commissioner of any 82
certificate of approval issued under this section, within ten 83
days of its issuance. 84

(G) The director of agriculture, in consultation with the 85
director of development and in accordance with Chapter 119. of 86
the Revised Code, shall adopt rules necessary to implement this 87
section, including rules prescribing procedures and forms for 88
administering this section. 89

(H) The ethanol incentive board created by this section is 90
not an agency for purposes of ~~section~~ sections 101.82 to 101.87 91
of the Revised Code. 92

Sec. 5733.01. (A) The tax provided by this chapter for 93
domestic corporations shall be the amount charged against each 94
corporation organized for profit under the laws of this state 95
and each nonprofit corporation organized pursuant to Chapter 96
1729. of the Revised Code, except as provided in sections 97
5733.09 and 5733.10 of the Revised Code, for the privilege of 98
exercising its franchise during the calendar year in which that 99
amount is payable, and the tax provided by this chapter for 100
foreign corporations shall be the amount charged against each 101
corporation organized for profit and each nonprofit corporation 102
organized or operating in the same or similar manner as 103
nonprofit corporations organized under Chapter 1729. of the 104

Revised Code, under the laws of any state or country other than 105
this state, except as provided in sections 5733.09 and 5733.10 106
of the Revised Code, for the privilege of doing business in this 107
state, owning or using a part or all of its capital or property 108
in this state, holding a certificate of compliance with the laws 109
of this state authorizing it to do business in this state, or 110
otherwise having nexus in or with this state under the 111
Constitution of the United States, during the calendar year in 112
which that amount is payable. 113

(B) A corporation is subject to the tax imposed by section 114
5733.06 of the Revised Code for each calendar year prior to 2014 115
that it is so organized, doing business, owning or using a part 116
or all of its capital or property, holding a certificate of 117
compliance, or otherwise having nexus in or with this state 118
under the Constitution of the United States, on the first day of 119
January of that calendar year. No credit authorized by this 120
chapter may be claimed for tax year 2014 or any tax year 121
thereafter. 122

(C) Any corporation subject to this chapter that is not 123
subject to the federal income tax shall file its returns and 124
compute its tax liability as required by this chapter in the 125
same manner as if that corporation were subject to the federal 126
income tax. 127

(D) For purposes of this chapter, a federally chartered 128
financial institution shall be deemed to be organized under the 129
laws of the state within which its principal office is located. 130

(E) For purposes of this chapter, any person, as defined 131
in section 5701.01 of the Revised Code, shall be treated as a 132
corporation if the person is classified for federal income tax 133
purposes as an association taxable as a corporation, and an 134

equity interest in the person shall be treated as capital stock	135
of the person.	136
(F) For the purposes of this chapter, "disregarded entity"	137
has the same meaning as in division (D) of section 5745.01 of	138
the Revised Code.	139
(1) A person's interest in a disregarded entity, whether	140
held directly or indirectly, shall be treated as the person's	141
ownership of the assets and liabilities of the disregarded	142
entity, and the income, including gain or loss, shall be	143
included in the person's net income under this chapter.	144
(2) Any sale, exchange, or other disposition of the	145
person's interest in the disregarded entity, whether held	146
directly or indirectly, shall be treated as a sale, exchange, or	147
other disposition of the person's share of the disregarded	148
entity's underlying assets or liabilities, and the gain or loss	149
from such sale, exchange, or disposition shall be included in	150
the person's net income under this chapter.	151
(3) The disregarded entity's payroll, property, and sales	152
factors shall be included in the person's factors.	153
(G) The tax a corporation is required to pay under this	154
chapter shall be as follows:	155
(1) (a) For financial institutions, the greater of the	156
minimum payment required under division (E) of section 5733.06	157
of the Revised Code or the difference between all taxes charged	158
the financial institution under this chapter, without regard to	159
division (G) (2) of this section, less any credits allowable	160
against such tax.	161
(b) A corporation satisfying the description in division	162
(E) (5), (6), (7), (8), or (10) of section 5751.01 of the Revised	163

Code, as that section existed before its amendment by H.B. 510 164
of the 129th general assembly, that is not a financial 165
institution, insurance company, or dealer in intangibles is 166
subject to the taxes imposed under this chapter as a corporation 167
and not subject to tax as a financial institution, and shall pay 168
the greater of the minimum payment required under division (E) 169
of section 5733.06 of the Revised Code or the difference between 170
all the taxes charged under this chapter, without regard to 171
division (G) (2) of this section, less any credits allowable 172
against such tax. 173

(2) For all corporations other than those persons 174
described in division (G) (1) (a) or (b) of this section, the 175
amount under division (G) (2) (a) of this section applicable to 176
the tax year specified less the amount under division (G) (2) (b) 177
of this section: 178

(a) (i) For tax year 2005, the greater of the minimum 179
payment required under division (E) of section 5733.06 of the 180
Revised Code or the difference between all taxes charged the 181
corporation under this chapter and any credits allowable against 182
such tax; 183

(ii) For tax year 2006, the greater of the minimum payment 184
required under division (E) of section 5733.06 of the Revised 185
Code or four-fifths of the difference between all taxes charged 186
the corporation under this chapter and any credits allowable 187
against such tax, except the qualifying pass-through entity tax 188
credit described in division (A) (30) and the refundable credits 189
described in divisions (A) (31) to (35) of section 5733.98 of the 190
Revised Code; 191

(iii) For tax year 2007, the greater of the minimum 192
payment required under division (E) of section 5733.06 of the 193

Revised Code or three-fifths of the difference between all taxes 194
charged the corporation under this chapter and any credits 195
allowable against such tax, except the qualifying pass-through 196
entity tax credit described in division (A) (30) and the 197
refundable credits described in divisions (A) (31) to (35) of 198
section 5733.98 of the Revised Code; 199

(iv) For tax year 2008, the greater of the minimum payment 200
required under division (E) of section 5733.06 of the Revised 201
Code or two-fifths of the difference between all taxes charged 202
the corporation under this chapter and any credits allowable 203
against such tax, except the qualifying pass-through entity tax 204
credit described in division (A) (30) and the refundable credits 205
described in divisions (A) (31) to (35) of section 5733.98 of the 206
Revised Code; 207

(v) For tax year 2009, the greater of the minimum payment 208
required under division (E) of section 5733.06 of the Revised 209
Code or one-fifth of the difference between all taxes charged 210
the corporation under this chapter and any credits allowable 211
against such tax, except the qualifying pass-through entity tax 212
credit described in division (A) (30) and the refundable credits 213
described in divisions (A) (31), (32), (33), and (34) of section 214
5733.98 of the Revised Code; 215

(vi) For tax year 2010 and each tax year thereafter, no 216
tax. 217

(b) A corporation shall subtract from the amount 218
calculated under division (G) (2) (a) (ii), (iii), (iv), or (v) of 219
this section ~~any qualifying pass-through entity tax credit~~ 220
~~described in division (A) (30) and any refundable credits~~ 221
described in divisions (A) (31) to (35) of section 5733.98 of the 222
Revised Code to which the corporation is entitled. ~~Any unused~~ 223

qualifying pass-through entity tax credit is not refundable.	224
(c) For the purposes of computing the amount of a credit	225
that may be carried forward to a subsequent tax year under	226
division (G) (2) of this section, a credit is utilized against	227
the tax for a tax year to the extent the credit applies against	228
the tax for that tax year, even if the difference is then	229
multiplied by the applicable fraction under division (G) (2) (a)	230
of this section.	231
(d) References in division (G) (2) of this section to	232
section 5733.98 of the Revised Code is to that section before	233
its amendment by H.B. 59 of the 130th general assembly.	234
(3) Nothing in division (G) of this section eliminates or	235
reduces the tax imposed by section 5733.41 of the Revised Code	236
on a qualifying pass-through entity.	237
Sec. 5733.04. As used in this chapter:	238
(A) "Issued and outstanding shares of stock" applies to	239
nonprofit corporations, as provided in section 5733.01 of the	240
Revised Code, and includes, but is not limited to, membership	241
certificates and other instruments evidencing ownership of an	242
interest in such nonprofit corporations, and with respect to a	243
financial institution that does not have capital stock, "issued	244
and outstanding shares of stock" includes, but is not limited	245
to, ownership interests of depositors in the capital employed in	246
such an institution.	247
(B) "Taxpayer" means a corporation subject to the tax	248
imposed by section 5733.06 of the Revised Code.	249
(C) "Resident" means a corporation organized under the	250
laws of this state.	251

(D) "Commercial domicile" means the principal place from 252
which the trade or business of the taxpayer is directed or 253
managed. 254

(E) "Taxable year" means the period prescribed by division 255
(A) of section 5733.031 of the Revised Code upon the net income 256
of which the value of the taxpayer's issued and outstanding 257
shares of stock is determined under division (B) of section 258
5733.05 of the Revised Code or the period prescribed by division 259
(A) of section 5733.031 of the Revised Code that immediately 260
precedes the date as of which the total value of the corporation 261
is determined under division (A) or (C) of section 5733.05 of 262
the Revised Code. 263

(F) "Tax year" means the calendar year in and for which 264
the tax imposed by section 5733.06 of the Revised Code is 265
required to be paid. 266

(G) "Internal Revenue Code" means the "Internal Revenue 267
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 268

(H) "Federal income tax" means the income tax imposed by 269
the Internal Revenue Code. 270

(I) Except as provided in section 5733.058 of the Revised 271
Code, "net income" means the taxpayer's taxable income before 272
operating loss deduction and special deductions, as required to 273
be reported for the taxpayer's taxable year under the Internal 274
Revenue Code, subject to the following adjustments: 275

(1) (a) Deduct any net operating loss incurred in any 276
taxable years ending in 1971 or thereafter, but exclusive of any 277
net operating loss incurred in taxable years ending prior to 278
January 1, 1971. This deduction shall not be allowed in any tax 279
year commencing before December 31, 1973, but shall be carried 280

over and allowed in tax years commencing after December 31, 281
1973, until fully utilized in the next succeeding taxable year 282
or years in which the taxpayer has net income, but in no case 283
for more than the designated carryover period as described in 284
division (I)(1)(b) of this section. The amount of such net 285
operating loss, as determined under the allocation and 286
apportionment provisions of section 5733.051 and division (B) of 287
section 5733.05 of the Revised Code for the year in which the 288
net operating loss occurs, shall be deducted from net income, as 289
determined under the allocation and apportionment provisions of 290
section 5733.051 and division (B) of section 5733.05 of the 291
Revised Code, to the extent necessary to reduce net income to 292
zero with the remaining unused portion of the deduction, if any, 293
carried forward to the remaining years of the designated 294
carryover period as described in division (I)(1)(b) of this 295
section, or until fully utilized, whichever occurs first. 296

(b) For losses incurred in taxable years ending on or 297
before December 31, 1981, the designated carryover period shall 298
be the five consecutive taxable years after the taxable year in 299
which the net operating loss occurred. For losses incurred in 300
taxable years ending on or after January 1, 1982, and beginning 301
before August 6, 1997, the designated carryover period shall be 302
the fifteen consecutive taxable years after the taxable year in 303
which the net operating loss occurs. For losses incurred in 304
taxable years beginning on or after August 6, 1997, the 305
designated carryover period shall be the twenty consecutive 306
taxable years after the taxable year in which the net operating 307
loss occurs. 308

(c) The tax commissioner may require a taxpayer to furnish 309
any information necessary to support a claim for deduction under 310
division (I)(1)(a) of this section and no deduction shall be 311

allowed unless the information is furnished. 312

(2) Deduct any amount included in net income by 313
application of section 78 or 951 of the Internal Revenue Code, 314
amounts received for royalties, technical or other services 315
derived from sources outside the United States, and dividends 316
received from a subsidiary, associate, or affiliated corporation 317
that neither transacts any substantial portion of its business 318
nor regularly maintains any substantial portion of its assets 319
within the United States. For purposes of determining net 320
foreign source income deductible under division (I) (2) of this 321
section, the amount of gross income from all such sources other 322
than dividend income and income derived by application of 323
section 78 or 951 of the Internal Revenue Code shall be reduced 324
by: 325

(a) The amount of any reimbursed expenses for personal 326
services performed by employees of the taxpayer for the 327
subsidiary, associate, or affiliated corporation; 328

(b) Ten per cent of the amount of royalty income and 329
technical assistance fees; 330

(c) Fifteen per cent of the amount of all other income. 331

The amounts described in divisions (I) (2) (a) to (c) of 332
this section are deemed to be the expenses attributable to the 333
production of deductible foreign source income unless the 334
taxpayer shows, by clear and convincing evidence, less actual 335
expenses, or the tax commissioner shows, by clear and convincing 336
evidence, more actual expenses. 337

(3) Add any loss or deduct any gain resulting from the 338
sale, exchange, or other disposition of a capital asset, or an 339
asset described in section 1231 of the Internal Revenue Code, to 340

the extent that such loss or gain occurred prior to the first 341
taxable year on which the tax provided for in section 5733.06 of 342
the Revised Code is computed on the corporation's net income. 343
For purposes of division (I) (3) of this section, the amount of 344
the prior loss or gain shall be measured by the difference 345
between the original cost or other basis of the asset and the 346
fair market value as of the beginning of the first taxable year 347
on which the tax provided for in section 5733.06 of the Revised 348
Code is computed on the corporation's net income. At the option 349
of the taxpayer, the amount of the prior loss or gain may be a 350
percentage of the gain or loss, which percentage shall be 351
determined by multiplying the gain or loss by a fraction, the 352
numerator of which is the number of months from the acquisition 353
of the asset to the beginning of the first taxable year on which 354
the fee provided in section 5733.06 of the Revised Code is 355
computed on the corporation's net income, and the denominator of 356
which is the number of months from the acquisition of the asset 357
to the sale, exchange, or other disposition of the asset. The 358
adjustments described in this division do not apply to any gain 359
or loss where the gain or loss is recognized by a qualifying 360
taxpayer, as defined in section 5733.0510 of the Revised Code, 361
with respect to a qualifying taxable event, as defined in that 362
section. 363

(4) Deduct the dividend received deduction provided by 364
section 243 of the Internal Revenue Code. 365

(5) Deduct any interest or interest equivalent on public 366
obligations and purchase obligations to the extent included in 367
federal taxable income. As used in divisions (I) (5) and (6) of 368
this section, "public obligations," "purchase obligations," and 369
"interest or interest equivalent" have the same meanings as in 370
section 5709.76 of the Revised Code. 371

(6) Add any loss or deduct any gain resulting from the 372
sale, exchange, or other disposition of public obligations to 373
the extent included in federal taxable income. 374

(7) To the extent not otherwise allowed, deduct any 375
dividends or distributions received by a taxpayer from a public 376
utility, excluding an electric company and a combined company, 377
and, for tax years 2005 and thereafter, a telephone company, if 378
the taxpayer owns at least eighty per cent of the issued and 379
outstanding common stock of the public utility. As used in 380
division (I)(7) of this section, "public utility" means a public 381
utility as defined in Chapter 5727. of the Revised Code, whether 382
or not the public utility is doing business in the state. 383

(8) To the extent not otherwise allowed, deduct any 384
dividends received by a taxpayer from an insurance company, if 385
the taxpayer owns at least eighty per cent of the issued and 386
outstanding common stock of the insurance company. As used in 387
division (I)(8) of this section, "insurance company" means an 388
insurance company that is taxable under Chapter 5725. or 5729. 389
of the Revised Code. 390

(9) Deduct expenditures for modifying existing buildings 391
or structures to meet American national standards institute 392
standard A-117.1-1961 (R-1971), as amended; provided, that no 393
deduction shall be allowed to the extent that such deduction is 394
not permitted under federal law or under rules of the tax 395
commissioner. Those deductions as are allowed may be taken over 396
a period of five years. The tax commissioner shall adopt rules 397
under Chapter 119. of the Revised Code establishing reasonable 398
limitations on the extent that expenditures for modifying 399
existing buildings or structures are attributable to the purpose 400
of making the buildings or structures accessible to and usable 401

by physically handicapped persons. 402

(10) Deduct the amount of wages and salaries, if any, not 403
otherwise allowable as a deduction but that would have been 404
allowable as a deduction in computing federal taxable income 405
before operating loss deduction and special deductions for the 406
taxable year, had the targeted jobs credit allowed and 407
determined under sections 38, 51, and 52 of the Internal Revenue 408
Code not been in effect. 409

(11) Deduct net interest income on obligations of the 410
United States and its territories and possessions or of any 411
authority, commission, or instrumentality of the United States 412
to the extent the laws of the United States prohibit inclusion 413
of the net interest for purposes of determining the value of the 414
taxpayer's issued and outstanding shares of stock under division 415
(B) of section 5733.05 of the Revised Code. As used in division 416
(I)(11) of this section, "net interest" means interest net of 417
any expenses taken on the federal income tax return that would 418
not have been allowed under section 265 of the Internal Revenue 419
Code if the interest were exempt from federal income tax. 420

(12) (a) Except as set forth in division (I)(12)(d) of this 421
section, to the extent not included in computing the taxpayer's 422
federal taxable income before operating loss deduction and 423
special deductions, add gains and deduct losses from direct or 424
indirect sales, exchanges, or other dispositions, made by a 425
related entity who is not a taxpayer, of the taxpayer's 426
indirect, beneficial, or constructive investment in the stock or 427
debt of another entity, unless the gain or loss has been 428
included in computing the federal taxable income before 429
operating loss deduction and special deductions of another 430
taxpayer with a more closely related investment in the stock or 431

debt of the other entity. The amount of gain added or loss 432
deducted shall not exceed the product obtained by multiplying 433
such gain or loss by the taxpayer's proportionate share, 434
directly, indirectly, beneficially, or constructively, of the 435
outstanding stock of the related entity immediately prior to the 436
direct or indirect sale, exchange, or other disposition. 437

(b) Except as set forth in division (I)(12)(e) of this 438
section, to the extent not included in computing the taxpayer's 439
federal taxable income before operating loss deduction and 440
special deductions, add gains and deduct losses from direct or 441
indirect sales, exchanges, or other dispositions made by a 442
related entity who is not a taxpayer, of intangible property 443
other than stock, securities, and debt, if such property was 444
owned, or used in whole or in part, at any time prior to or at 445
the time of the sale, exchange, or disposition by either the 446
taxpayer or by a related entity that was a taxpayer at any time 447
during the related entity's ownership or use of such property, 448
unless the gain or loss has been included in computing the 449
federal taxable income before operating loss deduction and 450
special deductions of another taxpayer with a more closely 451
related ownership or use of such intangible property. The amount 452
of gain added or loss deducted shall not exceed the product 453
obtained by multiplying such gain or loss by the taxpayer's 454
proportionate share, directly, indirectly, beneficially, or 455
constructively, of the outstanding stock of the related entity 456
immediately prior to the direct or indirect sale, exchange, or 457
other disposition. 458

(c) As used in division (I)(12) of this section, "related 459
entity" means those entities described in divisions (I)(12)(c) 460
(i) to (iii) of this section: 461

(i) An individual stockholder, or a member of the 462
stockholder's family enumerated in section 318 of the Internal 463
Revenue Code, if the stockholder and the members of the 464
stockholder's family own, directly, indirectly, beneficially, or 465
constructively, in the aggregate, at least fifty per cent of the 466
value of the taxpayer's outstanding stock; 467

(ii) A stockholder, or a stockholder's partnership, 468
estate, trust, or corporation, if the stockholder and the 469
stockholder's partnerships, estates, trusts, and corporations 470
own directly, indirectly, beneficially, or constructively, in 471
the aggregate, at least fifty per cent of the value of the 472
taxpayer's outstanding stock; 473

(iii) A corporation, or a party related to the corporation 474
in a manner that would require an attribution of stock from the 475
corporation to the party or from the party to the corporation 476
under division (I) (12) (c) (iv) of this section, if the taxpayer 477
owns, directly, indirectly, beneficially, or constructively, at 478
least fifty per cent of the value of the corporation's 479
outstanding stock. 480

(iv) The attribution rules of section 318 of the Internal 481
Revenue Code apply for purposes of determining whether the 482
ownership requirements in divisions (I) (12) (c) (i) to (iii) of 483
this section have been met. 484

(d) For purposes of the adjustments required by division 485
(I) (12) (a) of this section, the term "investment in the stock or 486
debt of another entity" means only those investments where the 487
taxpayer and the taxpayer's related entities directly, 488
indirectly, beneficially, or constructively own, in the 489
aggregate, at any time during the twenty-four month period 490
commencing one year prior to the direct or indirect sale, 491

exchange, or other disposition of such investment at least fifty 492
per cent or more of the value of either the outstanding stock or 493
such debt of such other entity. 494

(e) For purposes of the adjustments required by division 495
(I) (12) (b) of this section, the term "related entity" excludes 496
all of the following: 497

(i) Foreign corporations as defined in section 7701 of the 498
Internal Revenue Code; 499

(ii) Foreign partnerships as defined in section 7701 of 500
the Internal Revenue Code; 501

(iii) Corporations, partnerships, estates, and trusts 502
created or organized in or under the laws of the Commonwealth of 503
Puerto Rico or any possession of the United States; 504

(iv) Foreign estates and foreign trusts as defined in 505
section 7701 of the Internal Revenue Code. 506

The exclusions described in divisions (I) (12) (e) (i) to 507
(iv) of this section do not apply if the corporation, 508
partnership, estate, or trust is described in any one of 509
divisions (C) (1) to (5) of section 5733.042 of the Revised Code. 510

(f) Nothing in division (I) (12) of this section shall 511
require or permit a taxpayer to add any gains or deduct any 512
losses described in divisions (I) (12) (f) (i) and (ii) of this 513
section: 514

(i) Gains or losses recognized for federal income tax 515
purposes by an individual, estate, or trust without regard to 516
the attribution rules described in division (I) (12) (c) of this 517
section; 518

(ii) A related entity's gains or losses described in 519

division (I) (12) (b) of this section if the taxpayer's ownership 520
of or use of such intangible property was limited to a period 521
not exceeding nine months and was attributable to a transaction 522
or a series of transactions executed in accordance with the 523
election or elections made by the taxpayer or a related entity 524
pursuant to section 338 of the Internal Revenue Code. 525

(13) Any adjustment required by section 5733.042 of the 526
Revised Code. 527

~~(14) Add any amount claimed as a credit under section 528
5733.0611 of the Revised Code to the extent that such amount 529
satisfies either of the following: 530~~

~~(a) It was deducted or excluded from the computation of 531
the corporation's taxable income before operating loss deduction 532
and special deductions as required to be reported for the 533
corporation's taxable year under the Internal Revenue Code; 534~~

~~(b) It resulted in a reduction of the corporation's 535
taxable income before operating loss deduction and special 536
deductions as required to be reported for any of the 537
corporation's taxable years under the Internal Revenue Code. 538~~

~~(15) Deduct the amount contributed by the taxpayer to an 539
individual development account program established by a county 540
department of job and family services pursuant to sections 541
329.11 to 329.14 of the Revised Code for the purpose of matching 542
funds deposited by program participants. On request of the tax 543
commissioner, the taxpayer shall provide any information that, 544
in the tax commissioner's opinion, is necessary to establish the 545
amount deducted under division (I) ~~(15)~~ (14) of this section. 546~~

~~(16)~~ (15) Any adjustment required by section 5733.0510 or 547
5733.0511 of the Revised Code. 548

~~(17)~~(16) (a) (i) Add five-sixths of the amount of 549
depreciation expense allowed under subsection (k) of section 168 550
of the Internal Revenue Code, including a person's proportionate 551
or distributive share of the amount of depreciation expense 552
allowed by that subsection to any pass-through entity in which 553
the person has direct or indirect ownership. 554

(ii) Add five-sixths of the amount of qualifying section 555
179 depreciation expense, including a person's proportionate or 556
distributive share of the amount of qualifying section 179 557
depreciation expense allowed to any pass-through entity in which 558
the person has a direct or indirect ownership. For the purposes 559
of this division, "qualifying section 179 depreciation expense" 560
means the difference between (I) the amount of depreciation 561
expense directly or indirectly allowed to the taxpayer under 562
section 179 of the Internal Revenue Code, and (II) the amount of 563
depreciation expense directly or indirectly allowed to the 564
taxpayer under section 179 of the Internal Revenue Code as that 565
section existed on December 31, 2002. 566

The tax commissioner, under procedures established by the 567
commissioner, may waive the add-backs related to a pass-through 568
entity if the person owns, directly or indirectly, less than 569
five per cent of the pass-through entity. 570

(b) Nothing in division (I) ~~(17)~~(16) of this section shall 571
be construed to adjust or modify the adjusted basis of any 572
asset. 573

(c) To the extent the add-back is attributable to property 574
generating income or loss allocable under section 5733.051 of 575
the Revised Code, the add-back shall be allocated to the same 576
location as the income or loss generated by that property. 577
Otherwise, the add-back shall be apportioned, subject to 578

division (B) (2) (d) of section 5733.05 of the Revised Code.	579
(18) <u>(17)</u> (a) If a person is required to make the add-back	580
under division (I) (17) <u>(16)</u> (a) of this section for a tax year,	581
the person shall deduct one-fifth of the amount added back for	582
each of the succeeding five tax years.	583
(b) If the amount deducted under division (I) (18) <u>(17)</u> (a)	584
of this section is attributable to an add-back allocated under	585
division (I) (17) <u>(16)</u> (c) of this section, the amount deducted	586
shall be allocated to the same location. Otherwise, the amount	587
shall be apportioned using the apportionment factors for the	588
taxable year in which the deduction is taken, subject to	589
division (B) (2) (d) of section 5733.05 of the Revised Code.	590
(J) Except as otherwise expressly provided or clearly	591
appearing from the context, any term used in this chapter has	592
the same meaning as when used in a comparable context in the	593
laws of the United States relating to federal income taxes. Any	594
reference in this chapter to the Internal Revenue Code includes	595
other laws of the United States relating to federal income	596
taxes.	597
(K) "Financial institution" has the meaning given by	598
section 5725.01 of the Revised Code but does not include a	599
production credit association as described in 85 Stat. 597, 12	600
U.S.C.A. 2091.	601
(L) (1) A "qualifying holding company" is any corporation	602
satisfying all of the following requirements:	603
(a) Subject to divisions (L) (2) and (3) of this section,	604
the net book value of the corporation's intangible assets is	605
greater than or equal to ninety per cent of the net book value	606
of all of its assets and at least fifty per cent of the net book	607

value of all of its assets represents direct or indirect 608
investments in the equity of, loans and advances to, and 609
accounts receivable due from related members; 610

(b) At least ninety per cent of the corporation's gross 611
income for the taxable year is attributable to the following: 612

(i) The maintenance, management, ownership, acquisition, 613
use, and disposition of its intangible property, its aircraft 614
the use of which is not subject to regulation under 14 C.F.R. 615
part 121 or part 135, and any real property described in 616
division (L) (2) (c) of this section; 617

(ii) The collection and distribution of income from such 618
property. 619

(c) The corporation is not a financial institution on the 620
last day of the taxable year ending prior to the first day of 621
the tax year; 622

(d) The corporation's related members make a good faith 623
and reasonable effort to make timely and fully the adjustments 624
required by division (D) of section 5733.05 of the Revised Code 625
and to pay timely and fully all uncontested taxes, interest, 626
penalties, and other fees and charges imposed under this 627
chapter; 628

(e) Subject to division (L) (4) of this section, the 629
corporation elects to be treated as a qualifying holding company 630
for the tax year. 631

A corporation otherwise satisfying divisions (L) (1) (a) to 632
(e) of this section that does not elect to be a qualifying 633
holding company is not a qualifying holding company for the 634
purposes of this chapter. 635

(2) (a) (i) For purposes of making the ninety per cent 636
computation under division (L) (1) (a) of this section, the net 637
book value of the corporation's assets shall not include the net 638
book value of aircraft or real property described in division 639
(L) (1) (b) (i) of this section. 640

(ii) For purposes of making the fifty per cent computation 641
under division (L) (1) (a) of this section, the net book value of 642
assets shall include the net book value of aircraft or real 643
property described in division (L) (1) (b) (i) of this section. 644

(b) (i) As used in division (L) of this section, 645
"intangible asset" includes, but is not limited to, the 646
corporation's direct interest in each pass-through entity only 647
if at all times during the corporation's taxable year ending 648
prior to the first day of the tax year the corporation's and the 649
corporation's related members' combined direct and indirect 650
interests in the capital or profits of such pass-through entity 651
do not exceed fifty per cent. If the corporation's interest in 652
the pass-through entity is an intangible asset for that taxable 653
year, then the distributive share of any income from the pass- 654
through entity shall be income from an intangible asset for that 655
taxable year. 656

(ii) If a corporation's and the corporation's related 657
members' combined direct and indirect interests in the capital 658
or profits of a pass-through entity exceed fifty per cent at any 659
time during the corporation's taxable year ending prior to the 660
first day of the tax year, "intangible asset" does not include 661
the corporation's direct interest in the pass-through entity, 662
and the corporation shall include in its assets its 663
proportionate share of the assets of any such pass-through 664
entity and shall include in its gross income its distributive 665

share of the gross income of such pass-through entity in the 666
same form as was earned by the pass-through entity. 667

(iii) A pass-through entity's direct or indirect 668
proportionate share of any other pass-through entity's assets 669
shall be included for the purpose of computing the corporation's 670
proportionate share of the pass-through entity's assets under 671
division (L) (2) (b) (ii) of this section, and such pass-through 672
entity's distributive share of any other pass-through entity's 673
gross income shall be included for purposes of computing the 674
corporation's distributive share of the pass-through entity's 675
gross income under division (L) (2) (b) (ii) of this section. 676

(c) For the purposes of divisions (L) (1) (b) (i), (1) (b) 677
(ii), (2) (a) (i), and (2) (a) (ii) of this section, real property 678
is described in division (L) (2) (c) of this section only if all 679
of the following conditions are present at all times during the 680
taxable year ending prior to the first day of the tax year: 681

(i) The real property serves as the headquarters of the 682
corporation's trade or business, or is the place from which the 683
corporation's trade or business is principally managed or 684
directed; 685

(ii) Not more than ten per cent of the value of the real 686
property and not more than ten per cent of the square footage of 687
the building or buildings that are part of the real property is 688
used, made available, or occupied for the purpose of providing, 689
acquiring, transferring, selling, or disposing of tangible 690
property or services in the normal course of business to persons 691
other than related members, the corporation's employees and 692
their families, and such related members' employees and their 693
families. 694

(d) As used in division (L) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(3) The percentages described in division (L)(1)(a) of this section shall be equal to the quarterly average of those percentages as calculated during the corporation's taxable year ending prior to the first day of the tax year.

(4) With respect to the election described in division (L)(1)(e) of this section:

(a) The election need not accompany a timely filed report;

(b) The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund and timely amended report, or a subsequently filed but timely petition for reassessment;

(c) The election is not irrevocable;

(d) The election applies only to the tax year specified by the corporation;

(e) The corporation's related members comply with division (L)(1)(d) of this section.

Nothing in division (L)(4) of this section shall be construed to extend any statute of limitations set forth in this chapter.

(M) "Qualifying controlled group" means two or more corporations that satisfy the ownership and control requirements of division (A) of section 5733.052 of the Revised Code.

(N) "Limited liability company" means any limited

liability company formed under Chapter 1705. of the Revised Code 722
or under the laws of any other state. 723

(O) "Pass-through entity" means a corporation that has 724
made an election under subchapter S of Chapter 1 of Subtitle A 725
of the Internal Revenue Code for its taxable year under that 726
code, or a partnership, limited liability company, or any other 727
person, other than an individual, trust, or estate, if the 728
partnership, limited liability company, or other person is not 729
classified for federal income tax purposes as an association 730
taxed as a corporation. 731

(P) "Electric company," "combined company," and "telephone 732
company" have the same meanings as in section 5727.01 of the 733
Revised Code. 734

(Q) "Business income" means income arising from 735
transactions, activities, and sources in the regular course of a 736
trade or business and includes income from real property, 737
tangible personal property, and intangible personal property if 738
the acquisition, rental, management, and disposition of the 739
property constitute integral parts of the regular course of a 740
trade or business operation. "Business income" includes income, 741
including gain or loss, from a partial or complete liquidation 742
of a business, including, but not limited to, gain or loss from 743
the sale or other disposition of goodwill. 744

(R) "Nonbusiness income" means all income other than 745
business income. 746

~~Sec. 5733.057. As used in this section, "adjusted-~~ 747
~~qualifying amount" has the same meaning as in section 5733.40 of~~ 748
~~the Revised Code.~~ 749

This section does not apply to divisions (E) and (F) of 750

section 5733.051 of the Revised Code. 751

Except as otherwise provided in ~~divisions (A) and (B) of~~ 752
~~section 5733.401 and in sections~~ section 5733.058 and 5747.401 753
of the Revised Code, in making all apportionment, allocation, 754
income, gain, loss, deduction, tax, and credit computations 755
under this chapter ~~and under sections 5747.41 and 5747.43 of the~~ 756
~~Revised Code~~, each person shall include in that person's items 757
of business income, nonbusiness income, ~~adjusted qualifying~~ 758
~~amounts~~, allocable income or loss, if any, apportionable income 759
or loss, property, compensation, and sales, the person's entire 760
distributive share or proportionate share of the items of 761
business income, nonbusiness income, ~~adjusted qualifying~~ 762
~~amounts~~, allocable income or loss, apportionable income or loss, 763
property, compensation, and sales of any pass-through entity in 764
which the person has a direct or indirect ownership interest at 765
any time during the pass-through entity's calendar or fiscal 766
year ending within, or with the last day of the person's taxable 767
year. A pass-through entity's direct or indirect distributive 768
share or proportionate share of any other pass-through entity's 769
items of business income, nonbusiness income, ~~adjusted~~ 770
~~qualifying amounts~~, allocable income or loss, apportionable 771
income or loss, property, compensation, and sales shall be 772
included for the purposes of computing the person's distributive 773
share or proportionate share of the pass-through entity's items 774
of business income, nonbusiness income, ~~adjusted qualifying~~ 775
~~amounts~~, allocable income or loss, apportionable income or loss, 776
property, compensation, and sales under this section. Those 777
items shall be in the same form as was recognized by the pass- 778
through entity. 779

Sec. 5733.09. (A) (1) Except as provided in divisions (A) 780
(2) and (3) of this section, an incorporated company, whether 781

foreign or domestic, owning and operating a public utility in 782
this state, and required by law to file reports with the tax 783
commissioner and to pay an excise tax upon its gross receipts, 784
and insurance, fraternal, beneficial, bond investment, and other 785
corporations required by law to file annual reports with the 786
superintendent of insurance and dealers in intangibles, the 787
shares of which are, or the capital or ownership in capital 788
employed by such dealer is, subject to the taxes imposed by 789
section 5707.03 of the Revised Code, shall not be subject to 790
this chapter, except for sections 5733.031, 5733.042, 5733.05, 791
5733.052, 5733.053, 5733.069, ~~5733.0611, 5733.40, 5733.41,~~ and 792
sections 5747.40 to ~~5747.453~~ 5747.44 of the Revised Code. 793
However, for reports required to be filed under section 5725.14 794
of the Revised Code in 2003 and thereafter, nothing in this 795
section shall be construed to exempt the property of any dealer 796
in intangibles under section 5725.13 of the Revised Code from 797
the tax imposed under section 5707.03 of the Revised Code. 798

(2) An electric company subject to the filing requirements 799
of section 5727.08 of the Revised Code or otherwise having nexus 800
with or in this state under the Constitution of the United 801
States, or any other corporation having any gross receipts 802
directly attributable to providing public utility service as an 803
electric company or having any property directly attributable to 804
providing public utility service as an electric company, is 805
subject to this chapter. 806

(3) A telephone company that no longer pays an excise tax 807
under section 5727.30 of the Revised Code on its gross receipts 808
billed after June 30, 2004, is first subject to taxation under 809
this chapter for tax year 2005. For that tax year, a telephone 810
company with a taxable year ending in 2004 shall compute the tax 811
imposed under this chapter, and shall compute the net operating 812

loss carry forward for tax year 2005, by multiplying the tax 813
owed under this chapter, net of all nonrefundable credits, or 814
the loss for the taxable year, by fifty per cent. 815

(B) A corporation that has made an election under 816
subchapter S, chapter one, subtitle A, of the Internal Revenue 817
Code for its taxable year under such code is exempt from the tax 818
imposed by section 5733.06 of the Revised Code that is based on 819
that taxable year. 820

A corporation that makes such an election shall file a 821
notice of such election with the tax commissioner between the 822
first day of January and the thirty-first day of March of each 823
tax year that the election is in effect. 824

(C) An entity defined to be a "real estate investment 825
trust" by section 856 of the Internal Revenue Code, a "regulated 826
investment company" by section 851 of the Internal Revenue Code, 827
or a "real estate mortgage investment conduit" by section 860D 828
of the Internal Revenue Code, is exempt from taxation for a tax 829
year as a corporation under this chapter and is exempt from 830
taxation for a return year as a dealer in intangibles under 831
Chapter 5725. of the Revised Code if it provides the report 832
required by this division. By the last day of March of the tax 833
or return year the entity shall submit to the tax commissioner 834
the name of the entity with a list of the names, addresses, and 835
social security or federal identification numbers of all 836
investors, shareholders, and other similar investors who owned 837
any interest or invested in the entity during the preceding 838
calendar year. The commissioner may extend the date by which the 839
report must be submitted for reasonable cause shown by the 840
entity. The commissioner may prescribe the form of the report 841
required for exemption under this division. 842

(D) (1) As used in this division:	843
(a) "Commercial printer" means a person primarily engaged in the business of commercial printing. However, "commercial printer" does not include a person primarily engaged in the business of providing duplicating services using photocopy machines or other xerographic processes.	844 845 846 847 848
(b) "Commercial printing" means printing by one or more common processes such as letterpress, lithography, gravure, screen, or digital imaging, and includes related activities such as binding, platemaking, prepress operation, cartographic composition, and typesetting.	849 850 851 852 853
(c) "Contract for printing" means an oral or written agreement for the purchase of printed materials produced by a commercial printer.	854 855 856
(d) "Intangible property located at the premises of a commercial printer" means intangible property of any kind owned or licensed by a customer of the commercial printer and furnished to the commercial printer for use in commercial printing.	857 858 859 860 861
(e) "Printed material" means any tangible personal property produced or processed by a commercial printer pursuant to a contract for printing.	862 863 864
(f) "Related member" has the same meaning as in section 5733.042 of the Revised Code without regard to division (B) of that section.	865 866 867
(2) Except as provided in divisions (D) (3) and (4) of this section, a corporation not otherwise subject to the tax imposed by section 5733.06 of the Revised Code for a tax year does not become subject to that tax for the tax year solely by reason of	868 869 870 871

any one or more of the following occurring in this state during 872
the taxable year that ends immediately prior to the tax year: 873

(a) Ownership by the corporation or a related member of 874
the corporation of tangible personal property or intangible 875
property located during all or any portion of the taxable year 876
or on the first day of the tax year at the premises of a 877
commercial printer with which the corporation or the 878
corporation's related member has a contract for printing with 879
respect to such property or the premises of a commercial 880
printer's related member with which the corporation or the 881
corporation's related member has a contract for printing with 882
respect to such property; 883

(b) Sales by the corporation or a related member of the 884
corporation of property produced at and shipped or distributed 885
from the premises of a commercial printer with which the 886
corporation or the corporation's related member has a contract 887
for printing with respect to such property or the premises of a 888
commercial printer's related member with which the corporation 889
or the corporation's related member has a contract for printing 890
with respect to such property; 891

(c) Activities of employees, officers, agents, or 892
contractors of the corporation or a related member of the 893
corporation on the premises of a commercial printer with which 894
the corporation or the corporation's related member has a 895
contract for printing or the premises of a commercial printer's 896
related member with which the corporation or the corporation's 897
related member has a contract for printing, where the activities 898
are directly and solely related to quality control, 899
distribution, or printing services, or any combination thereof, 900
performed by or at the direction of the commercial printer or 901

the commercial printer's related member. 902

(3) The exemption under this division does not apply for a 903
taxable year to any corporation having on the first day of 904
January of the tax year or at any time during the taxable year 905
ending immediately preceding the first day of January of the tax 906
year a related member which, on the first day of January of the 907
tax year or during any portion of such taxable year of the 908
corporation, has nexus in or with this state under the 909
Constitution of the United States or holds a certificate of 910
compliance with the laws of this state authorizing it to do 911
business in this state. 912

(4) With respect to allowing the exemption under this 913
division, the tax commissioner shall be guided by the doctrines 914
of "economic reality," "sham transaction," "step transaction," 915
and "substance over form." A corporation shall bear the burden 916
of establishing by a preponderance of the evidence that any 917
transaction giving rise to an exemption claimed under this 918
division did not have as a principal purpose the avoidance of 919
any portion of the tax imposed by section 5733.06 of the Revised 920
Code. 921

Application of the doctrines listed in division (D) (4) of 922
this section is not limited to this division. 923

Sec. 5733.12. (A) All payments received from the taxes 924
imposed under ~~sections~~ section 5733.06 and ~~5733.41~~ of the 925
Revised Code shall be credited to the general revenue fund. 926

(B) Except as otherwise provided under divisions (C) and 927
(D) of this section, an application to refund to the corporation 928
the amount of taxes imposed under section 5733.06 of the Revised 929
Code that are overpaid, paid illegally or erroneously, or paid 930

on any illegal, erroneous, or excessive assessment, with 931
interest thereon as provided by section 5733.26 of the Revised 932
Code, shall be filed with the tax commissioner, on the form 933
prescribed by the commissioner, within three years from the date 934
of the illegal, erroneous, or excessive payment of the tax, or 935
within any additional period allowed by division (C) (2) of 936
section 5733.031, division (D) (2) of section 5733.067, or 937
division (A) of section 5733.11 of the Revised Code. For 938
purposes of division (B) of this section, any payment that the 939
applicant made before the due date or extended due date for 940
filing the report to which the payment relates shall be deemed 941
to have been made on the due date or extended due date. 942

On the filing of the refund application, the commissioner 943
shall determine the amount of refund to which the applicant is 944
entitled. If the amount is not less than that claimed the 945
commissioner shall certify the amount to the director of budget 946
and management and treasurer of state for payment from the tax 947
refund fund created by section 5703.052 of the Revised Code. If 948
the amount is less than that claimed, the commissioner shall 949
proceed in accordance with section 5703.70 of the Revised Code. 950

~~(C) "Ninety days" shall be substituted for "three years" 951
in division (B) of this section if the taxpayer satisfies both 952
of the following: 953~~

~~(1) The taxpayer has applied for a refund based in whole 954
or in part upon section 5733.0611 of the Revised Code; 955~~

~~(2) The taxpayer asserts that the imposition or collection 956
of the tax imposed or charged by section 5733.06 of the Revised 957
Code or any portion of such tax violates the Constitution of the 958
United States or the Constitution of this state. 959~~

~~(D) (1) Division (D) (2) of this section applies only if all of the following conditions are satisfied;~~ 960
961

~~(a) A qualifying pass-through entity pays an amount of the tax imposed by section 5733.41 of the Revised Code;~~ 962
963

~~(b) The taxpayer is a qualifying investor as to that qualifying pass-through entity;~~ 964
965

~~(c) The taxpayer did not claim the credit provided for in section 5733.0611 of the Revised Code as to the tax described in division (D) (1) (a) of this section;~~ 966
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968

~~(d) The three year period described in division (B) of this section has ended as to the taxable year for which the taxpayer otherwise would have claimed that credit.~~ 969
970
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~~(2) A taxpayer shall file an application for refund pursuant to this division within one year after the date the payment described in division (D) (1) (a) of this section is made. An application filed under this division shall only claim refund of overpayments resulting from the taxpayer's failure to claim the credit described in division (D) (1) (c) of this section. Nothing in this division shall be construed to relieve a taxpayer from complying with the provisions of division (I) (14) of section 5733.04 of the Revised Code.~~ 972
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Sec. 5733.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5733.06 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits to which it is entitled in the following order, except as otherwise provided in section 5733.058 of the Revised Code: 981
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~~(1) For tax year 2005, the credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611-~~ 987
988

of the Revised Code;	989
(2) —The credit allowed for financial institutions under section 5733.45 of the Revised Code;	990 991
(3) — <u>(2)</u> The credit for qualifying affiliated groups under section 5733.068 of the Revised Code;	992 993
(4) — <u>(3)</u> The subsidiary corporation credit under section 5733.067 of the Revised Code;	994 995
(5) — <u>(4)</u> The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;	996 997
(6) — <u>(5)</u> The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;	998 999 1000
(7) — <u>(6)</u> The credit for employers that reimburse employee child care expenses under section 5733.38 of the Revised Code;	1001 1002
(8) — <u>(7)</u> The credit for maintaining railroad active grade crossing warning devices under section 5733.43 of the Revised Code;	1003 1004 1005
(9) — <u>(8)</u> The credit for purchases of lights and reflectors under section 5733.44 of the Revised Code;	1006 1007
(10) — <u>(9)</u> The nonrefundable job retention credit under division (B) of section 5733.0610 of the Revised Code;	1008 1009
(11) — <u>(10)</u> The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	1010 1011 1012
(12) — <u>(11)</u> The job training credit under section 5733.42 of the Revised Code;	1013 1014
(13) — <u>(12)</u> The credit for qualified research expenses under	1015

section 5733.351 of the Revised Code;	1016
(14) <u>(13)</u> The enterprise zone credit under section 5709.66 of the Revised Code;	1017 1018
(15) <u>(14)</u> The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	1019 1020 1021
(16) <u>(15)</u> The credit for employers that establish on-site child day-care centers under section 5733.37 of the Revised Code;	1022 1023 1024
(17) <u>(16)</u> The ethanol plant investment credit under section 5733.46 of the Revised Code;	1025 1026
(18) <u>(17)</u> The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	1027 1028
(19) <u>(18)</u> The export sales credit under section 5733.069 of the Revised Code;	1029 1030
(20) <u>(19)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	1031 1032
(21) <u>(20)</u> The credit for using Ohio coal under section 5733.39 of the Revised Code;	1033 1034
(22) <u>(21)</u> The credit for purchases of qualified low-income community investments under section 5733.58 of the Revised Code;	1035 1036
(23) <u>(22)</u> The credit for small telephone companies under section 5733.57 of the Revised Code;	1037 1038
(24) <u>(23)</u> The credit for eligible nonrecurring 9-1-1 charges under section 5733.55 of the Revised Code;	1039 1040
(25) <u>(24)</u> For tax year 2005, the credit for providing programs to aid the communicatively impaired under division (A)	1041 1042

of section 5733.56 of the Revised Code;	1043
(26) <u>(25)</u> The research and development credit under	1044
section 5733.352 of the Revised Code;	1045
(27) For tax years 2006 and subsequent tax years, the	1046
credit for taxes paid by a qualifying pass-through entity	1047
allowed under section 5733.0611 of the Revised Code;	1048
(28) <u>(26)</u> The refundable credit for rehabilitating a	1049
historic building under section 5733.47 of the Revised Code;	1050
(29) <u>(27)</u> The refundable jobs creation credit or job	1051
retention credit under division (A) of section 5733.0610 of the	1052
Revised Code;	1053
(30) <u>(28)</u> The refundable credit for tax withheld under	1054
division (B) (2) of section 5747.062 of the Revised Code;	1055
(31) <u>(29)</u> The refundable credit under section 5733.49 of	1056
the Revised Code for losses on loans made to the Ohio venture	1057
capital program under sections 150.01 to 150.10 of the Revised	1058
Code;	1059
(32) <u>(30)</u> For tax years 2006, 2007, and 2008, the	1060
refundable credit allowable under division (B) of section	1061
5733.56 of the Revised Code;	1062
(33) <u>(31)</u> The refundable motion picture production credit	1063
under section 5733.59 of the Revised Code.	1064
(B) For any credit except the refundable credits	1065
enumerated in this section, the amount of the credit for a tax	1066
year shall not exceed the tax due after allowing for any other	1067
credit that precedes it in the order required under this	1068
section. Any excess amount of a particular credit may be carried	1069
forward if authorized under the section creating that credit.	1070

Sec. 5747.01. Except as otherwise expressly provided or 1071
clearly appearing from the context, any term used in this 1072
chapter that is not otherwise defined in this section has the 1073
same meaning as when used in a comparable context in the laws of 1074
the United States relating to federal income taxes ~~or if not~~ 1075
~~used in a comparable context in those laws, has the same meaning~~ 1076
~~as in section 5733.40 of the Revised Code.~~ Any reference in this 1077
chapter to the Internal Revenue Code includes other laws of the 1078
United States relating to federal income taxes. 1079

As used in this chapter: 1080

(A) "Adjusted gross income" or "Ohio adjusted gross 1081
income" means federal adjusted gross income, as defined and used 1082
in the Internal Revenue Code, adjusted as provided in this 1083
section: 1084

(1) Add interest or dividends on obligations or securities 1085
of any state or of any political subdivision or authority of any 1086
state, other than this state and its subdivisions and 1087
authorities. 1088

(2) Add interest or dividends on obligations of any 1089
authority, commission, instrumentality, territory, or possession 1090
of the United States to the extent that the interest or 1091
dividends are exempt from federal income taxes but not from 1092
state income taxes. 1093

(3) Deduct interest or dividends on obligations of the 1094
United States and its territories and possessions or of any 1095
authority, commission, or instrumentality of the United States 1096
to the extent that the interest or dividends are included in 1097
federal adjusted gross income but exempt from state income taxes 1098
under the laws of the United States. 1099

(4) Deduct disability and survivor's benefits to the 1100
extent included in federal adjusted gross income. 1101

(5) Deduct benefits under Title II of the Social Security 1102
Act and tier 1 railroad retirement benefits to the extent 1103
included in federal adjusted gross income under section 86 of 1104
the Internal Revenue Code. 1105

~~(6) In the case of a taxpayer who is a beneficiary of a 1106
trust that makes an accumulation distribution as defined in 1107
section 665 of the Internal Revenue Code, add, for the 1108
beneficiary's taxable years beginning before 2002, the portion, 1109
if any, of such distribution that does not exceed the 1110
undistributed net income of the trust for the three taxable 1111
years preceding the taxable year in which the distribution is 1112
made to the extent that the portion was not included in the 1113
trust's taxable income for any of the trust's taxable years 1114
beginning in 2002 or thereafter. "Undistributed net income of a 1115
trust" means the taxable income of the trust increased by (a) (i) 1116
the additions to adjusted gross income required under division 1117
(A) of this section and (ii) the personal exemptions allowed to 1118
the trust pursuant to section 642(b) of the Internal Revenue 1119
Code, and decreased by (b) (i) the deductions to adjusted gross 1120
income required under division (A) of this section, (ii) the 1121
amount of federal income taxes attributable to such income, and 1122
(iii) the amount of taxable income that has been included in the 1123
adjusted gross income of a beneficiary by reason of a prior 1124
accumulation distribution. Any undistributed net income included 1125
in the adjusted gross income of a beneficiary shall reduce the 1126
undistributed net income of the trust commencing with the 1127
earliest years of the accumulation period. 1128~~

~~(7) Deduct the amount of wages and salaries, if any, not 1129~~

otherwise allowable as a deduction but that would have been 1130
allowable as a deduction in computing federal adjusted gross 1131
income for the taxable year, had the targeted jobs credit 1132
allowed and determined under sections 38, 51, and 52 of the 1133
Internal Revenue Code not been in effect. 1134

~~(8)~~(7) Deduct any interest or interest equivalent on 1135
public obligations and purchase obligations to the extent that 1136
the interest or interest equivalent is included in federal 1137
adjusted gross income. 1138

~~(9)~~(8) Add any loss or deduct any gain resulting from the 1139
sale, exchange, or other disposition of public obligations to 1140
the extent that the loss has been deducted or the gain has been 1141
included in computing federal adjusted gross income. 1142

~~(10)~~(9) Deduct or add amounts, as provided under section 1143
5747.70 of the Revised Code, related to contributions to 1144
variable college savings program accounts made or tuition units 1145
purchased pursuant to Chapter 3334. of the Revised Code. 1146

~~(11)~~(10)(a) Deduct, to the extent not otherwise allowable 1147
as a deduction or exclusion in computing federal or Ohio 1148
adjusted gross income for the taxable year, the amount the 1149
taxpayer paid during the taxable year for medical care insurance 1150
and qualified long-term care insurance for the taxpayer, the 1151
taxpayer's spouse, and dependents. No deduction for medical care 1152
insurance under division (A) ~~(11)~~(10) of this section shall be 1153
allowed either to any taxpayer who is eligible to participate in 1154
any subsidized health plan maintained by any employer of the 1155
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 1156
entitled to, or on application would be entitled to, benefits 1157
under part A of Title XVIII of the "Social Security Act," 49 1158
Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 1159

division (A) ~~(11)~~ (10) (a) of this section, "subsidized health 1160
plan" means a health plan for which the employer pays any 1161
portion of the plan's cost. The deduction allowed under division 1162
(A) ~~(11)~~ (10) (a) of this section shall be the net of any related 1163
premium refunds, related premium reimbursements, or related 1164
insurance premium dividends received during the taxable year. 1165

(b) Deduct, to the extent not otherwise deducted or 1166
excluded in computing federal or Ohio adjusted gross income 1167
during the taxable year, the amount the taxpayer paid during the 1168
taxable year, not compensated for by any insurance or otherwise, 1169
for medical care of the taxpayer, the taxpayer's spouse, and 1170
dependents, to the extent the expenses exceed seven and one-half 1171
per cent of the taxpayer's federal adjusted gross income. 1172

(c) Deduct, to the extent not otherwise deducted or 1173
excluded in computing federal or Ohio adjusted gross income, any 1174
amount included in federal adjusted gross income under section 1175
105 or not excluded under section 106 of the Internal Revenue 1176
Code solely because it relates to an accident and health plan 1177
for a person who otherwise would be a "qualifying relative" and 1178
thus a "dependent" under section 152 of the Internal Revenue 1179
Code but for the fact that the person fails to meet the income 1180
and support limitations under section 152(d)(1)(B) and (C) of 1181
the Internal Revenue Code. 1182

(d) For purposes of division (A) ~~(11)~~ (10) of this section, 1183
"medical care" has the meaning given in section 213 of the 1184
Internal Revenue Code, subject to the special rules, 1185
limitations, and exclusions set forth therein, and "qualified 1186
long-term care" has the same meaning given in section 7702B(c) 1187
of the Internal Revenue Code. Solely for purposes of divisions 1188
(A) ~~(11)~~ (10) (a) and (c) of this section, "dependent" includes a 1189

person who otherwise would be a "qualifying relative" and thus a 1190
"dependent" under section 152 of the Internal Revenue Code but 1191
for the fact that the person fails to meet the income and 1192
support limitations under section 152(d)(1)(B) and (C) of the 1193
Internal Revenue Code. 1194

~~(12)~~(11)(a) Deduct any amount included in federal adjusted 1195
gross income solely because the amount represents a 1196
reimbursement or refund of expenses that in any year the 1197
taxpayer had deducted as an itemized deduction pursuant to 1198
section 63 of the Internal Revenue Code and applicable United 1199
States department of the treasury regulations. The deduction 1200
otherwise allowed under division (A)~~(12)~~(11)(a) of this section 1201
shall be reduced to the extent the reimbursement is attributable 1202
to an amount the taxpayer deducted under this section in any 1203
taxable year. 1204

(b) Add any amount not otherwise included in Ohio adjusted 1205
gross income for any taxable year to the extent that the amount 1206
is attributable to the recovery during the taxable year of any 1207
amount deducted or excluded in computing federal or Ohio 1208
adjusted gross income in any taxable year. 1209

~~(13)~~(12) Deduct any portion of the deduction described in 1210
section 1341(a)(2) of the Internal Revenue Code, for repaying 1211
previously reported income received under a claim of right, that 1212
meets both of the following requirements: 1213

(a) It is allowable for repayment of an item that was 1214
included in the taxpayer's adjusted gross income for a prior 1215
taxable year and did not qualify for a credit under division (A) 1216
or (B) of section 5747.05 of the Revised Code for that year; 1217

(b) It does not otherwise reduce the taxpayer's adjusted 1218

gross income for the current or any other taxable year. 1219

~~(14)~~ (13) Deduct an amount equal to the deposits made to, 1220
and net investment earnings of, a medical savings account during 1221
the taxable year, in accordance with section 3924.66 of the 1222
Revised Code. The deduction allowed by division (A) ~~(14)~~ (13) of 1223
this section does not apply to medical savings account deposits 1224
and earnings otherwise deducted or excluded for the current or 1225
any other taxable year from the taxpayer's federal adjusted 1226
gross income. 1227

~~(15)~~ (14) (a) Add an amount equal to the funds withdrawn 1228
from a medical savings account during the taxable year, and the 1229
net investment earnings on those funds, when the funds withdrawn 1230
were used for any purpose other than to reimburse an account 1231
holder for, or to pay, eligible medical expenses, in accordance 1232
with section 3924.66 of the Revised Code; 1233

(b) Add the amounts distributed from a medical savings 1234
account under division (A) (2) of section 3924.68 of the Revised 1235
Code during the taxable year. 1236

~~(16) Add any amount claimed as a credit under section~~ 1237
~~5747.059 or 5747.65 of the Revised Code to the extent that such~~ 1238
~~amount satisfies either of the following:—~~ 1239

~~(a) The amount was deducted or excluded from the~~ 1240
~~computation of the taxpayer's federal adjusted gross income as~~ 1241
~~required to be reported for the taxpayer's taxable year under~~ 1242
~~the Internal Revenue Code;—~~ 1243

~~(b) The amount resulted in a reduction of the taxpayer's~~ 1244
~~federal adjusted gross income as required to be reported for any~~ 1245
~~of the taxpayer's taxable years under the Internal Revenue Code.—~~ 1246

~~(17)~~ (15) Deduct the amount contributed by the taxpayer to 1247

an individual development account program established by a 1248
county department of job and family services pursuant to 1249
sections 329.11 to 329.14 of the Revised Code for the purpose of 1250
matching funds deposited by program participants. On request of 1251
the tax commissioner, the taxpayer shall provide any information 1252
that, in the tax commissioner's opinion, is necessary to 1253
establish the amount deducted under division (A) ~~(17)~~ (15) of 1254
this section. 1255

~~(18)~~ (16) Beginning in taxable year 2001 but not for any 1256
taxable year beginning after December 31, 2005, if the taxpayer 1257
is married and files a joint return and the combined federal 1258
adjusted gross income of the taxpayer and the taxpayer's spouse 1259
for the taxable year does not exceed one hundred thousand 1260
dollars, or if the taxpayer is single and has a federal adjusted 1261
gross income for the taxable year not exceeding fifty thousand 1262
dollars, deduct amounts paid during the taxable year for 1263
qualified tuition and fees paid to an eligible institution for 1264
the taxpayer, the taxpayer's spouse, or any dependent of the 1265
taxpayer, who is a resident of this state and is enrolled in or 1266
attending a program that culminates in a degree or diploma at an 1267
eligible institution. The deduction may be claimed only to the 1268
extent that qualified tuition and fees are not otherwise 1269
deducted or excluded for any taxable year from federal or Ohio 1270
adjusted gross income. The deduction may not be claimed for 1271
educational expenses for which the taxpayer claims a credit 1272
under section 5747.27 of the Revised Code. 1273

~~(19)~~ (17) Add any reimbursement received during the 1274
taxable year of any amount the taxpayer deducted under division 1275
(A) ~~(18)~~ (16) of this section in any previous taxable year to the 1276
extent the amount is not otherwise included in Ohio adjusted 1277
gross income. 1278

~~(20)~~(18)(a)(i) Subject to divisions (A)~~(20)~~(18)(a)(iii), 1279
(iv), and (v) of this section, add five-sixths of the amount of 1280
depreciation expense allowed by subsection (k) of section 168 of 1281
the Internal Revenue Code, including the taxpayer's 1282
proportionate or distributive share of the amount of 1283
depreciation expense allowed by that subsection to a pass- 1284
through entity in which the taxpayer has a direct or indirect 1285
ownership interest. 1286

(ii) Subject to divisions (A)~~(20)~~(18)(a)(iii), (iv), and 1287
(v) of this section, add five-sixths of the amount of qualifying 1288
section 179 depreciation expense, including the taxpayer's 1289
proportionate or distributive share of the amount of qualifying 1290
section 179 depreciation expense allowed to any pass-through 1291
entity in which the taxpayer has a direct or indirect ownership 1292
interest. 1293

(iii) Subject to division (A)~~(20)~~(18)(a)(v) of this 1294
section, for taxable years beginning in 2012 or thereafter, if 1295
the increase in income taxes withheld by the taxpayer is equal 1296
to or greater than ten per cent of income taxes withheld by the 1297
taxpayer during the taxpayer's immediately preceding taxable 1298
year, "two-thirds" shall be substituted for "five-sixths" for 1299
the purpose of divisions (A)~~(20)~~(18)(a)(i) and (ii) of this 1300
section. 1301

(iv) Subject to division (A)~~(20)~~(18)(a)(v) of this 1302
section, for taxable years beginning in 2012 or thereafter, a 1303
taxpayer is not required to add an amount under division (A)~~(20)~~- 1304
(18) of this section if the increase in income taxes withheld by 1305
the taxpayer and by any pass-through entity in which the 1306
taxpayer has a direct or indirect ownership interest is equal to 1307
or greater than the sum of (I) the amount of qualifying section 1308

179 depreciation expense and (II) the amount of depreciation 1309
expense allowed to the taxpayer by subsection (k) of section 168 1310
of the Internal Revenue Code, and including the taxpayer's 1311
proportionate or distributive shares of such amounts allowed to 1312
any such pass-through entities. 1313

(v) If a taxpayer directly or indirectly incurs a net 1314
operating loss for the taxable year for federal income tax 1315
purposes, to the extent such loss resulted from depreciation 1316
expense allowed by subsection (k) of section 168 of the Internal 1317
Revenue Code and by qualifying section 179 depreciation expense, 1318
"the entire" shall be substituted for "five-sixths of the" for 1319
the purpose of divisions (A) ~~(20)~~ (18) (a) (i) and (ii) of this 1320
section. 1321

The tax commissioner, under procedures established by the 1322
commissioner, may waive the add-backs related to a pass-through 1323
entity if the taxpayer owns, directly or indirectly, less than 1324
five per cent of the pass-through entity. 1325

(b) Nothing in division (A) ~~(20)~~ (18) of this section shall 1326
be construed to adjust or modify the adjusted basis of any 1327
asset. 1328

(c) To the extent the add-back required under division (A) 1329
~~(20)~~ (18) (a) of this section is attributable to property 1330
generating nonbusiness income or loss allocated under section 1331
5747.20 of the Revised Code, the add-back shall be situated to 1332
the same location as the nonbusiness income or loss generated by 1333
the property for the purpose of determining the credit under 1334
division (A) of section 5747.05 of the Revised Code. Otherwise, 1335
the add-back shall be apportioned, subject to one or more of the 1336
four alternative methods of apportionment enumerated in section 1337
5747.21 of the Revised Code. 1338

(d) For the purposes of division (A) ~~(20)~~ (18) (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 Internal Revenue Code and by the qualifying section 179 depreciation expense amount.

(e) For the purposes of divisions (A) ~~(20)~~ (18) and ~~(21)~~ (19) of this section:

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

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

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

~~(21)~~ (19) (a) If the taxpayer was required to add an amount under division (A) ~~(20)~~ (18) (a) of this section for a taxable year, deduct one of the following:

(i) One-fifth of the amount so added for each of the five succeeding taxable years if the amount so added was five-sixths

of qualifying section 179 depreciation expense or depreciation 1368
expense allowed by subsection (k) of section 168 of the Internal 1369
Revenue Code; 1370

(ii) One-half of the amount so added for each of the two 1371
succeeding taxable years if the amount so added was two-thirds 1372
of such depreciation expense; 1373

(iii) One-sixth of the amount so added for each of the six 1374
succeeding taxable years if the entire amount of such 1375
depreciation expense was so added. 1376

(b) If the amount deducted under division (A) ~~(21)~~ (19) (a) 1377
of this section is attributable to an add-back allocated under 1378
division (A) ~~(20)~~ (18) (c) of this section, the amount deducted 1379
shall be situated to the same location. Otherwise, the add-back 1380
shall be apportioned using the apportionment factors for the 1381
taxable year in which the deduction is taken, subject to one or 1382
more of the four alternative methods of apportionment enumerated 1383
in section 5747.21 of the Revised Code. 1384

(c) No deduction is available under division (A) ~~(21)~~ (19) 1385
(a) of this section with regard to any depreciation allowed by 1386
section 168(k) of the Internal Revenue Code and by the 1387
qualifying section 179 depreciation expense amount to the extent 1388
that such depreciation results in or increases a federal net 1389
operating loss carryback or carryforward. If no such deduction 1390
is available for a taxable year, the taxpayer may carry forward 1391
the amount not deducted in such taxable year to the next taxable 1392
year and add that amount to any deduction otherwise available 1393
under division (A) ~~(21)~~ (19) (a) of this section for that next 1394
taxable year. The carryforward of amounts not so deducted shall 1395
continue until the entire addition required by division (A) ~~(20)~~ 1396
(18) (a) of this section has been deducted. 1397

(d) No refund shall be allowed as a result of adjustments 1398
made by division (A) ~~(21)~~ (19) of this section. 1399

~~(22)~~ (20) Deduct, to the extent not otherwise deducted or 1400
excluded in computing federal or Ohio adjusted gross income for 1401
the taxable year, the amount the taxpayer received during the 1402
taxable year as reimbursement for life insurance premiums under 1403
section 5919.31 of the Revised Code. 1404

~~(23)~~ (21) Deduct, to the extent not otherwise deducted or 1405
excluded in computing federal or Ohio adjusted gross income for 1406
the taxable year, the amount the taxpayer received during the 1407
taxable year as a death benefit paid by the adjutant general 1408
under section 5919.33 of the Revised Code. 1409

~~(24)~~ (22) Deduct, to the extent included in federal 1410
adjusted gross income and not otherwise allowable as a deduction 1411
or exclusion in computing federal or Ohio adjusted gross income 1412
for the taxable year, military pay and allowances received by 1413
the taxpayer during the taxable year for active duty service in 1414
the United States army, air force, navy, marine corps, or coast 1415
guard or reserve components thereof or the national guard. The 1416
deduction may not be claimed for military pay and allowances 1417
received by the taxpayer while the taxpayer is stationed in this 1418
state. 1419

~~(25)~~ (23) Deduct, to the extent not otherwise allowable as 1420
a deduction or exclusion in computing federal or Ohio adjusted 1421
gross income for the taxable year and not otherwise compensated 1422
for by any other source, the amount of qualified organ donation 1423
expenses incurred by the taxpayer during the taxable year, not 1424
to exceed ten thousand dollars. A taxpayer may deduct qualified 1425
organ donation expenses only once for all taxable years 1426
beginning with taxable years beginning in 2007. 1427

For the purposes of division (A) ~~(25)~~ (23) of this section: 1428

(a) "Human organ" means all or any portion of a human 1429
liver, pancreas, kidney, intestine, or lung, and any portion of 1430
human bone marrow. 1431

(b) "Qualified organ donation expenses" means travel 1432
expenses, lodging expenses, and wages and salary forgone by a 1433
taxpayer in connection with the taxpayer's donation, while 1434
living, of one or more of the taxpayer's human organs to another 1435
human being. 1436

~~(26)~~ (24) Deduct, to the extent not otherwise deducted or 1437
excluded in computing federal or Ohio adjusted gross income for 1438
the taxable year, amounts received by the taxpayer as retired 1439
personnel pay for service in the uniformed services or reserve 1440
components thereof, or the national guard, or received by the 1441
surviving spouse or former spouse of such a taxpayer under the 1442
survivor benefit plan on account of such a taxpayer's death. If 1443
the taxpayer receives income on account of retirement paid under 1444
the federal civil service retirement system or federal employees 1445
retirement system, or under any successor retirement program 1446
enacted by the congress of the United States that is established 1447
and maintained for retired employees of the United States 1448
government, and such retirement income is based, in whole or in 1449
part, on credit for the taxpayer's uniformed service, the 1450
deduction allowed under this division shall include only that 1451
portion of such retirement income that is attributable to the 1452
taxpayer's uniformed service, to the extent that portion of such 1453
retirement income is otherwise included in federal adjusted 1454
gross income and is not otherwise deducted under this section. 1455
Any amount deducted under division (A) ~~(26)~~ (24) of this section 1456
is not included in a taxpayer's adjusted gross income for the 1457

purposes of section 5747.055 of the Revised Code. No amount may
be deducted under division (A) ~~(26)~~ (24) of this section on the
basis of which a credit was claimed under section 5747.055 of
the Revised Code.

~~(27)~~ (25) 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 from the military injury relief fund created in
section 5902.05 of the Revised Code.

~~(28)~~ (26) 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 as a veterans
bonus during the taxable year from the Ohio department of
veterans services as authorized by Section 2r of Article VIII,
Ohio Constitution.

~~(29)~~ (27) Deduct, to the extent not otherwise deducted or
excluded in computing federal or Ohio adjusted gross income for
the taxable year, any income derived from a transfer agreement
or from the enterprise transferred under that agreement under
section 4313.02 of the Revised Code.

~~(30)~~ (28) Deduct, to the extent not otherwise deducted or
excluded in computing federal or Ohio adjusted gross income for
the taxable year, Ohio college opportunity or federal Pell grant
amounts received by the taxpayer or the taxpayer's spouse or
dependent pursuant to section 3333.122 of the Revised Code or 20
U.S.C. 1070a, et seq., and used to pay room or board furnished
by the educational institution for which the grant was awarded
at the institution's facilities, including meal plans
administered by the institution. For the purposes of this
division, receipt of a grant includes the distribution of a

grant directly to an educational institution and the crediting 1488
of the grant to the enrollee's account with the institution. 1489

~~(31)~~(29)(a) For taxable years beginning in 2015, deduct 1490
from the portion of an individual's adjusted gross income that 1491
is business income, to the extent not otherwise deducted or 1492
excluded in computing federal or Ohio adjusted gross income for 1493
the taxable year, the lesser of the following amounts: 1494

(i) Seventy-five per cent of the individual's business 1495
income; 1496

(ii) Ninety-three thousand seven hundred fifty dollars for 1497
each spouse if spouses file separate returns under section 1498
5747.08 of the Revised Code or one hundred eighty-seven thousand 1499
five hundred dollars for all other individuals. 1500

(b) For taxable years beginning in 2016 or thereafter, 1501
deduct from the portion of an individual's adjusted gross income 1502
that is business income, to the extent not otherwise deducted or 1503
excluded in computing federal adjusted gross income for the 1504
taxable year, one hundred twenty-five thousand dollars for each 1505
spouse if spouses file separate returns under section 5747.08 of 1506
the Revised Code or two hundred fifty thousand dollars for all 1507
other individuals. 1508

(B) "Business income" means income, including gain or 1509
loss, arising from transactions, activities, and sources in the 1510
regular course of a trade or business and includes income, gain, 1511
or loss from real property, tangible property, and intangible 1512
property if the acquisition, rental, management, and disposition 1513
of the property constitute integral parts of the regular course 1514
of a trade or business operation. "Business income" includes 1515
income, including gain or loss, from a partial or complete 1516

liquidation of a business, including, but not limited to, gain	1517
or loss from the sale or other disposition of goodwill.	1518
(C) "Nonbusiness income" means all income other than	1519
business income and may include, but is not limited to,	1520
compensation, rents and royalties from real or tangible personal	1521
property, capital gains, interest, dividends and distributions,	1522
patent or copyright royalties, or lottery winnings, prizes, and	1523
awards.	1524
(D) "Compensation" means any form of remuneration paid to	1525
an employee for personal services.	1526
(E) "Fiduciary" means a guardian, trustee, executor,	1527
administrator, receiver, conservator, or any other person acting	1528
in any fiduciary capacity for any individual, trust, or estate.	1529
(F) "Fiscal year" means an accounting period of twelve	1530
months ending on the last day of any month other than December.	1531
(G) "Individual" means any natural person.	1532
(H) "Internal Revenue Code" means the "Internal Revenue	1533
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	1534
(I) "Resident" means any of the following, provided that	1535
division (I) (3) of this section applies only to taxable years of	1536
a trust beginning in 2002 or thereafter:	1537
(1) An individual who is domiciled in this state, subject	1538
to section 5747.24 of the Revised Code;	1539
(2) The estate of a decedent who at the time of death was	1540
domiciled in this state. The domicile tests of section 5747.24	1541
of the Revised Code are not controlling for purposes of division	1542
(I) (2) of this section.	1543

(3) A trust that, in whole or part, resides in this state. 1544
If only part of a trust resides in this state, the trust is a 1545
resident only with respect to that part. 1546

For the purposes of division (I) (3) of this section: 1547

(a) A trust resides in this state for the trust's current 1548
taxable year to the extent, as described in division (I) (3) (d) 1549
of this section, that the trust consists directly or indirectly, 1550
in whole or in part, of assets, net of any related liabilities, 1551
that were transferred, or caused to be transferred, directly or 1552
indirectly, to the trust by any of the following: 1553

(i) A person, a court, or a governmental entity or 1554
instrumentality on account of the death of a decedent, but only 1555
if the trust is described in division (I) (3) (e) (i) or (ii) of 1556
this section; 1557

(ii) A person who was domiciled in this state for the 1558
purposes of this chapter when the person directly or indirectly 1559
transferred assets to an irrevocable trust, but only if at least 1560
one of the trust's qualifying beneficiaries is domiciled in this 1561
state for the purposes of this chapter during all or some 1562
portion of the trust's current taxable year; 1563

(iii) A person who was domiciled in this state for the 1564
purposes of this chapter when the trust document or instrument 1565
or part of the trust document or instrument became irrevocable, 1566
but only if at least one of the trust's qualifying beneficiaries 1567
is a resident domiciled in this state for the purposes of this 1568
chapter during all or some portion of the trust's current 1569
taxable year. If a trust document or instrument became 1570
irrevocable upon the death of a person who at the time of death 1571
was domiciled in this state for purposes of this chapter, that 1572

person is a person described in division (I) (3) (a) (iii) of this section. 1573
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(b) A trust is irrevocable to the extent that the transferor is not considered to be the owner of the net assets of the trust under sections 671 to 678 of the Internal Revenue Code. 1575
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(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e) (2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code. 1579
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(d) For the purposes of division (I) (3) (a) of this section, the extent to which a trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred directly or indirectly, in whole or part, to the trust by any of the sources enumerated in that division shall be ascertained by multiplying the fair market value of the trust's assets, net of related liabilities, by the qualifying ratio, which shall be computed as follows: 1589
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(i) The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time, net of any related liabilities, from sources enumerated in division (I) (3) (a) of this section. The denominator of the qualifying ratio is the fair market value of all the trust's assets at that time, net of any related 1597
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liabilities. 1603

(ii) Each subsequent time the trust receives assets, a 1604
revised qualifying ratio shall be computed. The numerator of the 1605
revised qualifying ratio is the sum of (1) the fair market value 1606
of the trust's assets immediately prior to the subsequent 1607
transfer, net of any related liabilities, multiplied by the 1608
qualifying ratio last computed without regard to the subsequent 1609
transfer, and (2) the fair market value of the subsequently 1610
transferred assets at the time transferred, net of any related 1611
liabilities, from sources enumerated in division (I) (3) (a) of 1612
this section. The denominator of the revised qualifying ratio is 1613
the fair market value of all the trust's assets immediately 1614
after the subsequent transfer, net of any related liabilities. 1615

(iii) Whether a transfer to the trust is by or from any of 1616
the sources enumerated in division (I) (3) (a) of this section 1617
shall be ascertained without regard to the domicile of the 1618
trust's beneficiaries. 1619

(e) For the purposes of division (I) (3) (a) (i) of this 1620
section: 1621

(i) A trust is described in division (I) (3) (e) (i) of this 1622
section if the trust is a testamentary trust and the testator of 1623
that testamentary trust was domiciled in this state at the time 1624
of the testator's death for purposes of the taxes levied under 1625
Chapter 5731. of the Revised Code. 1626

(ii) A trust is described in division (I) (3) (e) (ii) of 1627
this section if the transfer is a qualifying transfer described 1628
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 1629
trust is an irrevocable inter vivos trust, and at least one of 1630
the trust's qualifying beneficiaries is domiciled in this state 1631

for purposes of this chapter during all or some portion of the 1632
trust's current taxable year. 1633

(f) For the purposes of division (I) (3) (e) (ii) of this 1634
section, a "qualifying transfer" is a transfer of assets, net of 1635
any related liabilities, directly or indirectly to a trust, if 1636
the transfer is described in any of the following: 1637

(i) The transfer is made to a trust, created by the 1638
decedent before the decedent's death and while the decedent was 1639
domiciled in this state for the purposes of this chapter, and, 1640
prior to the death of the decedent, the trust became irrevocable 1641
while the decedent was domiciled in this state for the purposes 1642
of this chapter. 1643

(ii) The transfer is made to a trust to which the 1644
decedent, prior to the decedent's death, had directly or 1645
indirectly transferred assets, net of any related liabilities, 1646
while the decedent was domiciled in this state for the purposes 1647
of this chapter, and prior to the death of the decedent the 1648
trust became irrevocable while the decedent was domiciled in 1649
this state for the purposes of this chapter. 1650

(iii) The transfer is made on account of a contractual 1651
relationship existing directly or indirectly between the 1652
transferor and either the decedent or the estate of the decedent 1653
at any time prior to the date of the decedent's death, and the 1654
decedent was domiciled in this state at the time of death for 1655
purposes of the taxes levied under Chapter 5731. of the Revised 1656
Code. 1657

(iv) The transfer is made to a trust on account of a 1658
contractual relationship existing directly or indirectly between 1659
the transferor and another person who at the time of the 1660

decedent's death was domiciled in this state for purposes of 1661
this chapter. 1662

(v) The transfer is made to a trust on account of the will 1663
of a testator who was domiciled in this state at the time of the 1664
testator's death for purposes of the taxes levied under Chapter 1665
5731. of the Revised Code. 1666

(vi) The transfer is made to a trust created by or caused 1667
to be created by a court, and the trust was directly or 1668
indirectly created in connection with or as a result of the 1669
death of an individual who, for purposes of the taxes levied 1670
under Chapter 5731. of the Revised Code, was domiciled in this 1671
state at the time of the individual's death. 1672

(g) The tax commissioner may adopt rules to ascertain the 1673
part of a trust residing in this state. 1674

(J) "Nonresident" means an individual or estate that is 1675
not a resident. An individual who is a resident for only part of 1676
a taxable year is a nonresident for the remainder of that 1677
taxable year. 1678

(K) "~~Pass-through entity~~" ~~has the same meaning as in~~ 1679
~~section 5733.04 of the Revised Code~~ means a corporation that has 1680
made an election under subchapter S of Chapter 1 of Subtitle A 1681
of the Internal Revenue Code for its taxable year under that 1682
code, or a partnership, limited liability company, or any other 1683
person, other than an individual, trust, estate, or disregarded 1684
entity, if the partnership, limited liability company, or other 1685
person is not classified for federal income tax purposes as an 1686
association taxed as a corporation. 1687

(L) "Return" means the notifications and reports required 1688
to be filed pursuant to this chapter for the purpose of 1689

reporting the tax due and includes declarations of estimated tax 1690
when so required. 1691

(M) "Taxable year" means the calendar year or the 1692
taxpayer's fiscal year ending during the calendar year, or 1693
fractional part thereof, upon which the adjusted gross income is 1694
calculated pursuant to this chapter. 1695

(N) "Taxpayer" means any person subject to the tax imposed 1696
by section 5747.02 of the Revised Code or any pass-through 1697
entity ~~that makes the election under division (D) of section~~ 1698
~~5747.08~~ required to file a return under section 5747.41 of the 1699
Revised Code. 1700

(O) "Dependents" means dependents as defined in the 1701
Internal Revenue Code and as claimed in the taxpayer's federal 1702
income tax return for the taxable year or which the taxpayer 1703
would have been permitted to claim had the taxpayer filed a 1704
federal income tax return. 1705

(P) "Principal county of employment" means, in the case of 1706
a nonresident, the county within the state in which a taxpayer 1707
performs services for an employer or, if those services are 1708
performed in more than one county, the county in which the major 1709
portion of the services are performed. 1710

(Q) As used in sections 5747.50 to 5747.55 of the Revised 1711
Code: 1712

(1) "Subdivision" means any county, municipal corporation, 1713
park district, or township. 1714

(2) "Essential local government purposes" includes all 1715
functions that any subdivision is required by general law to 1716
exercise, including like functions that are exercised under a 1717
charter adopted pursuant to the Ohio Constitution. 1718

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

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

(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities, 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:

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

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

(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;

(3) Add the amount of personal exemption allowed to the	1748
estate pursuant to section 642(b) of the Internal Revenue Code;	1749
(4) Deduct interest or dividends, net of related expenses	1750
deducted in computing federal taxable income, on obligations of	1751
the United States and its territories and possessions or of any	1752
authority, commission, or instrumentality of the United States	1753
to the extent that the interest or dividends are exempt from	1754
state taxes under the laws of the United States, but only to the	1755
extent that such amount is included in federal taxable income	1756
and is described in either division (S) (1) (a) or (b) of this	1757
section;	1758
(5) Deduct the amount of wages and salaries, if any, not	1759
otherwise allowable as a deduction but that would have been	1760
allowable as a deduction in computing federal taxable income for	1761
the taxable year, had the targeted jobs credit allowed under	1762
sections 38, 51, and 52 of the Internal Revenue Code not been in	1763
effect, but only to the extent such amount relates either to	1764
income included in federal taxable income for the taxable year	1765
or to income of the S portion of an electing small business	1766
trust for the taxable year;	1767
(6) Deduct any interest or interest equivalent, net of	1768
related expenses deducted in computing federal taxable income,	1769
on public obligations and purchase obligations, but only to the	1770
extent that such net amount relates either to income included in	1771
federal taxable income for the taxable year or to income of the	1772
S portion of an electing small business trust for the taxable	1773
year;	1774
(7) Add any loss or deduct any gain resulting from sale,	1775
exchange, or other disposition of public obligations to the	1776
extent that such loss has been deducted or such gain has been	1777

included in computing either federal taxable income or income of 1778
the S portion of an electing small business trust for the 1779
taxable year; 1780

(8) Except in the case of the final return of an estate, 1781
add any amount deducted by the taxpayer on both its Ohio estate 1782
tax return pursuant to section 5731.14 of the Revised Code, and 1783
on its federal income tax return in determining federal taxable 1784
income; 1785

(9) (a) Deduct any amount included in federal taxable 1786
income solely because the amount represents a reimbursement or 1787
refund of expenses that in a previous year the decedent had 1788
deducted as an itemized deduction pursuant to section 63 of the 1789
Internal Revenue Code and applicable treasury regulations. The 1790
deduction otherwise allowed under division (S) (9) (a) of this 1791
section shall be reduced to the extent the reimbursement is 1792
attributable to an amount the taxpayer or decedent deducted 1793
under this section in any taxable year. 1794

(b) Add any amount not otherwise included in Ohio taxable 1795
income for any taxable year to the extent that the amount is 1796
attributable to the recovery during the taxable year of any 1797
amount deducted or excluded in computing federal or Ohio taxable 1798
income in any taxable year, but only to the extent such amount 1799
has not been distributed to beneficiaries for the taxable year. 1800

(10) Deduct any portion of the deduction described in 1801
section 1341(a) (2) of the Internal Revenue Code, for repaying 1802
previously reported income received under a claim of right, that 1803
meets both of the following requirements: 1804

(a) It is allowable for repayment of an item that was 1805
included in the taxpayer's taxable income or the decedent's 1806

adjusted gross income for a prior taxable year and did not 1807
qualify for a credit under division (A) or (B) of section 1808
5747.05 of the Revised Code for that year. 1809

(b) It does not otherwise reduce the taxpayer's taxable 1810
income or the decedent's adjusted gross income for the current 1811
or any other taxable year. 1812

~~(11) Add any amount claimed as a credit under section 1813
5747.059 or 5747.65 of the Revised Code to the extent that the 1814
amount satisfies either of the following: 1815~~

~~(a) The amount was deducted or excluded from the 1816
computation of the taxpayer's federal taxable income as required 1817
to be reported for the taxpayer's taxable year under the 1818
Internal Revenue Code; 1819~~

~~(b) The amount resulted in a reduction in the taxpayer's 1820
federal taxable income as required to be reported for any of the 1821
taxpayer's taxable years under the Internal Revenue Code. 1822~~

~~(12)~~ Deduct any amount, net of related expenses deducted 1823
in computing federal taxable income, that a trust is required to 1824
report as farm income on its federal income tax return, but only 1825
if the assets of the trust include at least ten acres of land 1826
satisfying the definition of "land devoted exclusively to 1827
agricultural use" under section 5713.30 of the Revised Code, 1828
regardless of whether the land is valued for tax purposes as 1829
such land under sections 5713.30 to 5713.38 of the Revised Code. 1830
If the trust is a pass-through entity investor, section 5747.231 1831
of the Revised Code applies in ascertaining if the trust is 1832
eligible to claim the deduction provided by division (S) ~~(12)~~ 1833
(11) of this section in connection with the pass-through 1834
entity's farm income. 1835

Except for farm income attributable to the S portion of an 1836
electing small business trust, the deduction provided by 1837
division (S) ~~(12)~~ (11) of this section is allowed only to the 1838
extent that the trust has not distributed such farm income. 1839
Division (S) ~~(12)~~ (11) of this section applies only to taxable 1840
years of a trust beginning in 2002 or thereafter. 1841

~~(13)~~ (12) Add the net amount of income described in 1842
section 641(c) of the Internal Revenue Code to the extent that 1843
amount is not included in federal taxable income. 1844

~~(14)~~ (13) Add or deduct the amount the taxpayer would be 1845
required to add or deduct under division (A) ~~(20)~~ (18) or ~~(21)~~ 1846
(19) of this section if the taxpayer's Ohio taxable income were 1847
computed in the same manner as an individual's Ohio adjusted 1848
gross income is computed under this section. In the case of a 1849
trust, division (S) ~~(14)~~ (13) of this section applies only to any 1850
of the trust's taxable years beginning in 2002 or thereafter. 1851

(T) "School district income" and "school district income 1852
tax" have the same meanings as in section 5748.01 of the Revised 1853
Code. 1854

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 1855
(7) of this section, "public obligations," "purchase 1856
obligations," and "interest or interest equivalent" have the 1857
same meanings as in section 5709.76 of the Revised Code. 1858

(V) "Limited liability company" means any limited 1859
liability company formed under Chapter 1705. of the Revised Code 1860
or under the laws of any other state. 1861

(W) "Pass-through entity investor" or "investor" means any 1862
person who, during any portion of a taxable year of a pass- 1863
through entity, is a partner, member, shareholder, or equity 1864

investor in that pass-through entity. 1865

(X) "Banking day" has the same meaning as in section 1866
1304.01 of the Revised Code. 1867

(Y) "Month" means a calendar month. 1868

(Z) "Quarter" means the first three months, the second 1869
three months, the third three months, or the last three months 1870
of the taxpayer's taxable year. 1871

(AA) (1) "Eligible institution" means a state university or 1872
state institution of higher education as defined in section 1873
3345.011 of the Revised Code, or a private, nonprofit college, 1874
university, or other post-secondary institution located in this 1875
state that possesses a certificate of authorization issued by 1876
the chancellor of higher education pursuant to Chapter 1713. of 1877
the Revised Code or a certificate of registration issued by the 1878
state board of career colleges and schools under Chapter 3332. 1879
of the Revised Code. 1880

(2) "Qualified tuition and fees" means tuition and fees 1881
imposed by an eligible institution as a condition of enrollment 1882
or attendance, not exceeding two thousand five hundred dollars 1883
in each of the individual's first two years of post-secondary 1884
education. If the individual is a part-time student, "qualified 1885
tuition and fees" includes tuition and fees paid for the 1886
academic equivalent of the first two years of post-secondary 1887
education during a maximum of five taxable years, not exceeding 1888
a total of five thousand dollars. "Qualified tuition and fees" 1889
does not include: 1890

(a) Expenses for any course or activity involving sports, 1891
games, or hobbies unless the course or activity is part of the 1892
individual's degree or diploma program; 1893

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

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

(BB) (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.

(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 satisfied:

(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.

(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~~

~~and 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.~~ 1923
1924
1925
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(4) "Modified Ohio taxable income" applies only to trusts, 1927
and means the sum of the amounts described in divisions (BB) (4) 1928
(a) to (c) of this section: 1929

(a) The fraction, calculated under section 5747.013, and 1930
applying section 5747.231 of the Revised Code, multiplied by the 1931
~~sum of the following amounts:~~ 1932

~~(i) The trust's modified business income;~~ 1933

~~(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.~~ 1934
1935
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(b) The qualifying trust amount multiplied by a fraction, 1939
the numerator of which is the sum of the book value of the 1940
qualifying investee's physical assets in this state on the last 1941
day of the qualifying investee's fiscal or calendar year ending 1942
immediately prior to the day on which the trust recognizes the 1943
qualifying trust amount, and the denominator of which is the sum 1944
of the book value of the qualifying investee's total physical 1945
assets everywhere on the last day of the qualifying investee's 1946
fiscal or calendar year ending immediately prior to the day on 1947
which the trust recognizes the qualifying trust amount. If, for 1948
a taxable year, the trust recognizes a qualifying trust amount 1949
with respect to more than one qualifying investee, the amount 1950
described in division (BB) (4) (b) of this section shall equal the 1951

sum of the products so computed for each such qualifying 1952
investee. 1953

(c) (i) With respect to a trust or portion of a trust that 1954
is a resident as ascertained in accordance with division (I) (3) 1955
(d) of this section, its modified nonbusiness income. 1956

(ii) With respect to a trust or portion of a trust that is 1957
not a resident as ascertained in accordance with division (I) (3) 1958
(d) of this section, the amount of its modified nonbusiness 1959
income satisfying the descriptions in divisions (B) (2) to (5) of 1960
section 5747.20 of the Revised Code, except as otherwise 1961
provided in division (BB) (4) (c) (ii) of this section. With 1962
respect to a trust or portion of a trust that is not a resident 1963
as ascertained in accordance with division (I) (3) (d) of this 1964
section, the trust's portion of modified nonbusiness income 1965
recognized from the sale, exchange, or other disposition of a 1966
debt interest in or equity interest in a section 5747.212 1967
entity, as defined in section 5747.212 of the Revised Code, 1968
without regard to division (A) of that section, shall not be 1969
allocated to this state in accordance with section 5747.20 of 1970
the Revised Code but shall be apportioned to this state in 1971
accordance with division (B) of section 5747.212 of the Revised 1972
Code without regard to division (A) of that section. 1973

If the allocation and apportionment of a trust's income 1974
under divisions (BB) (4) (a) and (c) of this section do not fairly 1975
represent the modified Ohio taxable income of the trust in this 1976
state, the alternative methods described in division (C) of 1977
section 5747.21 of the Revised Code may be applied in the manner 1978
and to the same extent provided in that section. 1979

(5) (a) Except as set forth in division (BB) (5) (b) of this 1980
section, "qualifying investee" means a person in which a trust 1981

has an equity or ownership interest, or a person or unit of 1982
government the debt obligations of either of which are owned by 1983
a trust. For the purposes of division (BB) (2) (a) of this section 1984
and for the purpose of computing the fraction described in 1985
division (BB) (4) (b) of this section, all of the following apply: 1986

(i) If the qualifying investee is a member of a qualifying 1987
controlled group on the last day of the qualifying investee's 1988
fiscal or calendar year ending immediately prior to the date on 1989
which the trust recognizes the gain or loss, then "qualifying 1990
investee" includes all persons in the qualifying controlled 1991
group on such last day. 1992

(ii) If the qualifying investee, or if the qualifying 1993
investee and any members of the qualifying controlled group of 1994
which the qualifying investee is a member on the last day of the 1995
qualifying investee's fiscal or calendar year ending immediately 1996
prior to the date on which the trust recognizes the gain or 1997
loss, separately or cumulatively own, directly or indirectly, on 1998
the last day of the qualifying investee's fiscal or calendar 1999
year ending immediately prior to the date on which the trust 2000
recognizes the qualifying trust amount, more than fifty per cent 2001
of the equity of a pass-through entity, then the qualifying 2002
investee and the other members are deemed to own the 2003
proportionate share of the pass-through entity's physical assets 2004
which the pass-through entity directly or indirectly owns on the 2005
last day of the pass-through entity's calendar or fiscal year 2006
ending within or with the last day of the qualifying investee's 2007
fiscal or calendar year ending immediately prior to the date on 2008
which the trust recognizes the qualifying trust amount. 2009

(iii) For the purposes of division (BB) (5) (a) (iii) of this 2010
section, "upper level pass-through entity" means a pass-through 2011

entity directly or indirectly owning any equity of another pass-through entity, and "lower level pass-through entity" means that other pass-through entity.

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

(b) With respect to a trust that is not a resident for the taxable year and with respect to a part of a trust that is not a

resident for the taxable year, "qualifying investee" for that 2043
taxable year does not include a C corporation if both of the 2044
following apply: 2045

(i) During the taxable year the trust or part of the trust 2046
recognizes a gain or loss from the sale, exchange, or other 2047
disposition of equity or ownership interests in, or debt 2048
obligations of, the C corporation. 2049

(ii) Such gain or loss constitutes nonbusiness income. 2050

(6) "Available" means information is such that a person is 2051
able to learn of the information by the due date plus 2052
extensions, if any, for filing the return for the taxable year 2053
in which the trust recognizes the gain or loss. 2054

~~(CC) (7) "Qualifying controlled group" has the same~~ 2055
~~meaning as in section 5733.04 of the Revised Code~~ means a group 2056
of two or more corporations each of which owns or controls 2057
directly, indirectly, or constructively through related 2058
interests more than fifty per cent of the capital stock with 2059
voting rights of one or more other corporations in the group or 2060
which has more than fifty per cent of its capital stock with 2061
voting rights owned or controlled directly, indirectly, or 2062
constructively through related interest by one or more other 2063
corporations in the group. 2064

(CC) "Partnership" has the same meaning as in section 2065
1776.01 of the Revised Code. 2066

~~(DD) (1) "Related member" has the same meaning as in~~ 2067
~~section 5733.042 of the Revised Code~~ means any of the following 2068
persons: 2069

(a) A person that, with respect to the taxpayer during all 2070
or any portion of the taxable year, is a component member as 2071

defined in section 1563(b) of the Internal Revenue Code; 2072

(b) An individual, or a member of the individual's family 2073
enumerated in section 318 of the Internal Revenue Code, if the 2074
individual and the members of the individual's family own, 2075
directly, indirectly, beneficially, or constructively, in the 2076
aggregate, at least fifty per cent of the value of the 2077
taxpayer's outstanding stock or ownership interest; 2078

(c) A stockholder, or a stockholder's partnership, estate, 2079
trust, or corporation, if the stockholder and the stockholder's 2080
partnerships, estates, trusts, and corporations own directly, 2081
indirectly, beneficially, or constructively, in the aggregate, 2082
at least fifty per cent of the value of the taxpayer's 2083
outstanding stock; 2084

(d) A corporation, or a party related to the corporation 2085
in a manner that would require an attribution of stock from the 2086
corporation to the party or from the party to the corporation, 2087
if the taxpayer owns, directly, indirectly, beneficially, or 2088
constructively, at least fifty per cent of the value of the 2089
corporation's outstanding stock; 2090

(e) A pass-through entity, or a partner or member thereof, 2091
if the pass-through entity, partner, or member owns directly, 2092
indirectly, beneficially, or constructively, in the aggregate, 2093
at least fifty per cent of the value of the taxpayer's ownership 2094
interest. 2095

(2) The attribution rules of section 318 of the Internal 2096
Revenue Code apply for purposes of determining whether the 2097
ownership requirements in divisions (DD) (1) (b) to (e) of this 2098
section have been met. 2099

(EE) (1) For the purposes of division (EE) of this section: 2100

(a) "Qualifying person" means any person other than a qualifying corporation.	2101 2102
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	2103 2104 2105
(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;	2106 2107 2108 2109
(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.	2110 2111 2112 2113 2114
(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.	2115 2116 2117
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	2118 2119
(1) "Trust" does not include a qualified pre-income tax trust.	2120 2121
(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 (FF)(3) of this section.	2122 2123 2124
(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	2125 2126 2127 2128

controls, directly, indirectly, or constructively through 2129
related interests, five per cent or more of the ownership or 2130
equity interests. The trustee shall notify the tax commissioner 2131
in writing of the election on or before April 15, 2006. The 2132
election, if timely made, shall be effective on and after 2133
January 1, 2006, and shall apply for all tax periods and tax 2134
years until revoked by the trustee of the trust. 2135

(4) A "pre-income tax trust" is a trust that satisfies all 2136
of the following requirements: 2137

(a) The document or instrument creating the trust was 2138
executed by the grantor before January 1, 1972; 2139

(b) The trust became irrevocable upon the creation of the 2140
trust; and 2141

(c) The grantor was domiciled in this state at the time 2142
the trust was created. 2143

(GG) "Uniformed services" has the same meaning as in 10 2144
U.S.C. 101. 2145

(HH) "Taxable business income" means the amount by which 2146
an individual's business income that is included in federal 2147
adjusted gross income exceeds the amount of business income the 2148
individual is authorized to deduct under division (A) (31) of 2149
this section for the taxable year. 2150

(II) "Distributive share" includes the sum of the income, 2151
gain, expense, or loss of a disregarded entity or qualified 2152
subchapter S subsidiary. 2153

(JJ) "Disregarded entity" means an entity that, for its 2154
taxable year, is by default, or has elected to be, disregarded 2155
as an entity separate from its owner pursuant to 26 C.F.R. 2156

301.7701-3. 2157

Sec. 5747.011. (A) As used in this section: 2158

(1) "Qualifying closely-held C corporation" means a person 2159
classified for federal income tax purposes as an association 2160
taxed as a corporation and that has more than fifty per cent of 2161
the value of its outstanding stock or equity owned, directly or 2162
indirectly, by or for not more than five qualifying persons. For 2163
the purposes of this division, the ownership of stock shall be 2164
determined under the rules set forth in section 544 of the 2165
Internal Revenue Code. 2166

(2) "Qualifying person" means an individual; an 2167
organization described in section 401(a), 501(c)(17), or 509(a) 2168
of the Internal Revenue Code; or a portion of a trust 2169
permanently set aside or to be used exclusively for the purposes 2170
described in section 642(c) of the Internal Revenue Code or a 2171
corresponding provision of a prior federal income tax law. 2172

(3) "Qualifying limited liability company" means a limited 2173
liability company that is not classified for federal income tax 2174
purposes as an association taxed as a corporation. 2175

(4) "Ownership interest" means the equity or ownership 2176
interest in, or debt obligation of, a "qualifying investee" as 2177
defined in section 5747.01 of the Revised Code. 2178

(5) "Qualifying individual beneficiary" has the same 2179
meaning as qualifying beneficiary as used in division (I)(3)(c) 2180
of section 5747.01 of the Revised Code, but is limited to 2181
individuals. 2182

(6) "Family" of an individual means only the individual's 2183
spouse; the individual's ancestors, limited to the individual's 2184
parents, grandparents, and great grandparents; the siblings of 2185

such ancestors, whether by the whole or half blood or by legal 2186
adoption; the lineal descendants of such ancestors and siblings; 2187
persons legally adopted by such ancestors or by such siblings; 2188
and the spouses of such ancestors, siblings, legally adopted 2189
persons, and lineal descendants. 2190

(B) The requirements of this division apply for purposes 2191
of division (BB) (2) (b) of section 5747.01 of the Revised Code 2192
~~and for the purposes of division (D) of section 5747.012 of the~~ 2193
~~Revised Code.~~ Gain or loss included in a trust's Ohio taxable 2194
income is not a qualifying trust amount unless the trust's 2195
ownership interest in the qualifying investee is at least five 2196
per cent of the total outstanding ownership interests in such 2197
qualifying investee at any time during the ten-year period 2198
ending on the last day of the trust's taxable year in which the 2199
sale, exchange, or other disposition occurs. Nothing in this 2200
section negates the requirements in division (BB) (2) of section 2201
5747.01 of the Revised Code. 2202

For the purpose of ascertaining whether the trust's 2203
ownership interest in a qualifying investee is at least five per 2204
cent of the total outstanding ownership interests in such 2205
qualifying investee, the following apply: 2206

(1) On each day, an ownership interest owned, directly or 2207
indirectly, by or for a qualifying closely-held C corporation, 2208
an S corporation, a partnership other than a publicly traded 2209
partnership, a qualifying limited liability company, an estate, 2210
or a trust that is irrevocable as defined in division (I) (3) (b) 2211
of section 5747.01 of the Revised Code is considered as being 2212
owned proportionately on the same day by the equity investors of 2213
such qualifying closely-held C corporation, S corporation, 2214
partnership, or qualifying limited liability company, or by the 2215

beneficiaries of such estate or trust, as the case may be. For 2216
the purposes of division (B) (1) of this section, a beneficiary's 2217
proportionate share of an ownership interest held by a trust 2218
shall be ascertained in accordance with section 544(a) (1) of the 2219
Internal Revenue Code. 2220

(2) On each day, a trust, hereinafter referred to as the 2221
first trust, is considered as owning any ownership interest 2222
owned, directly or indirectly, by or for another trust, 2223
hereinafter referred to as the second trust, if on the same day 2224
the second trust has at least one individual trustee who is 2225
either (a) a trustee of the first trust, or (b) a member of a 2226
family that includes at least one of the trustees of the first 2227
trust. 2228

(3) On each day, a trust, hereinafter referred to as the 2229
first trust, is considered as owning any ownership interest 2230
owned, directly or indirectly, by or for another trust, 2231
hereinafter referred to as the second trust, if on the same day 2232
the second trust has at least one qualifying individual 2233
beneficiary who is either (a) a qualifying individual 2234
beneficiary of the first trust or (b) a member of a family which 2235
includes a qualifying individual beneficiary of the first trust. 2236

(4) An ownership interest constructively owned by a person 2237
by reason of the application of division (B) (1) of this section 2238
shall, for the purpose of applying divisions (B) (1) to (3) of 2239
this section, be treated as actually owned by that person. 2240

(5) An ownership interest constructively owned by a trust 2241
by reason of the application of division (B) (2) or (3) of this 2242
section shall not be treated as actually owned by that trust for 2243
purposes of applying divisions (B) (1) to (3) of this section. 2244

(6) If an ownership interest may be considered as owned by 2245
a trust under division (B) (1) or (2) of this section, the 2246
ownership interest shall be considered owned by that trust under 2247
division (B) (2) of this section. 2248

(7) If an ownership interest may be considered as owned by 2249
a trust under division (B) (1) or (3) of this section, the 2250
ownership interest shall be considered owned by that trust under 2251
division (B) (3) of this section. 2252

Sec. 5747.02. (A) For the purpose of providing revenue for 2253
the support of schools and local government functions, to 2254
provide relief to property taxpayers, to provide revenue for the 2255
general revenue fund, and to meet the expenses of administering 2256
the tax levied by this chapter, there is hereby levied on every 2257
individual, trust, and estate residing in or earning or 2258
receiving income in this state, on every individual, trust, and 2259
estate earning or receiving lottery winnings, prizes, or awards 2260
pursuant to Chapter 3770. of the Revised Code, on every 2261
individual, trust, and estate earning or receiving winnings on 2262
casino gaming, and on every individual, trust, and estate 2263
otherwise having nexus with or in this state under the 2264
Constitution of the United States, an annual tax measured as 2265
prescribed in divisions (A) (1) to (4) of this section. 2266

(1) In the case of trusts, the tax imposed by this section 2267
shall be measured by modified Ohio taxable income under division 2268
(D) of this section and levied at the same rates prescribed in 2269
division (A) (3) of this section for individuals. 2270

(2) In the case of estates, the tax imposed by this 2271
section shall be measured by Ohio taxable income and levied at 2272
the same rates prescribed in division (A) (3) of this section for 2273
individuals. 2274

(3) In the case of individuals, for taxable years 2275
beginning in 2015 or thereafter, the tax imposed by this section 2276
on income other than taxable business income shall be measured 2277
by Ohio adjusted gross income, less taxable business income and 2278
less an exemption for the taxpayer, the taxpayer's spouse, and 2279
each dependent as provided in section 5747.025 of the Revised 2280
Code. The tax imposed on the balance thus obtained is hereby 2281
levied as follows: 2282

OHIO ADJUSTED GROSS 2283
INCOME LESS TAXABLE 2284
BUSINESS INCOME AND EXEMPTIONS 2285
(INDIVIDUALS) 2286

OR 2287

MODIFIED OHIO 2288
TAXABLE INCOME (TRUSTS) 2289

OR 2290

OHIO TAXABLE INCOME (ESTATES) TAX 2291

\$5,000 or less	.495%	2292
More than \$5,000 but	\$24.75 plus .990% of the amount	2293
not more than \$10,000	in excess of \$5,000	2294
More than \$10,000 but	\$74.25 plus 1.980% of the amount	2295
not more than \$15,000	in excess of \$10,000	2296
More than \$15,000 but	\$173.25 plus 2.476% of the amount	2297
not more than \$20,000	in excess of \$15,000	2298
More than \$20,000 but	\$297.05 plus 2.969% of the amount	2299
not more than \$40,000	in excess of \$20,000	2300
More than \$40,000 but	\$890.85 plus 3.465% of the amount	2301
not more than \$80,000	in excess of \$40,000	2302
More than \$80,000 but	\$2,276.85 plus 3.960% of the amount	2303
not more than \$100,000	in excess of \$80,000	2304
More than \$100,000 but	\$3,068.85 plus 4.597% of the amount	2305

not more than \$200,000	in excess of \$100,000	2306
More than \$200,000	\$7,665.85 plus 4.997% of the amount	2307
	in excess of \$200,000	2308

(4) (a) In the case of individuals, for taxable years 2309
beginning in 2015, the tax imposed by this section on taxable 2310
business income shall be measured by taxable business income 2311
less any amount allowed under division (A) (4) (c) of this 2312
section. The tax imposed on the balance thus obtained is hereby 2313
levied as follows: 2314

TAXABLE BUSINESS INCOME		TAX	
LESS ALLOWED EXEMPTION AMOUNT			2315
			2316
\$5,000 or less		.495%	2317
More than \$5,000 but not		\$24.75 plus .990% of the	2318
more than \$10,000		amount in excess of	2319
		\$5,000	2320
More than \$10,000 but not more		\$74.25 plus 1.980% of	2321
than \$15,000		the amount in excess of	2322
		\$10,000	2323
More than \$15,000 but not more		\$173.25 plus 2.476% of	2324
than \$20,000		the amount in excess of	2325
		\$15,000	2326
More than \$20,000 but not more		\$297.05 plus 2.969% of	2327
than \$40,000		the amount in excess of	2328
		\$20,000	2329
More than \$40,000		\$890.85 plus 3% of the	2330
		amount in excess of	2331
		\$40,000	2332

(b) In the case of individuals, for taxable years 2333

beginning in 2016 or thereafter, the tax imposed by this section 2334
on taxable business income shall equal three per cent of the 2335
result obtained by subtracting any amount allowed under division 2336
(A) (4) (c) of this section from the individual's taxable business 2337
income. 2338

(c) If the exemptions allowed to an individual under 2339
division (A) (3) of this section exceed the taxpayer's Ohio 2340
adjusted gross income less taxable business income, the excess 2341
shall be deducted from taxable business income before computing 2342
the tax under division (A) (4) (a) or (b) of this section. 2343

Except as otherwise provided in this division, in August 2344
of each year, the tax commissioner shall make a new adjustment 2345
to the income amounts prescribed in division (A) (3) of this 2346
section by multiplying the percentage increase in the gross 2347
domestic product deflator computed that year under section 2348
5747.025 of the Revised Code by each of the income amounts 2349
resulting from the adjustment under this division in the 2350
preceding year, adding the resulting product to the 2351
corresponding income amount resulting from the adjustment in the 2352
preceding year, and rounding the resulting sum to the nearest 2353
multiple of fifty dollars. The tax commissioner also shall 2354
recompute each of the tax dollar amounts to the extent necessary 2355
to reflect the new adjustment of the income amounts. The rates 2356
of taxation shall not be adjusted. 2357

The adjusted amounts apply to taxable years beginning in 2358
the calendar year in which the adjustments are made and to 2359
taxable years beginning in each ensuing calendar year until a 2360
calendar year in which a new adjustment is made pursuant to this 2361
division. The tax commissioner shall not make a new adjustment 2362
in any year in which the amount resulting from the adjustment 2363

would be less than the amount resulting from the adjustment in 2364
the preceding year. The commissioner shall not make a new 2365
adjustment for taxable years beginning in 2013, 2014, or 2015. 2366

(B) If the director of budget and management makes a 2367
certification to the tax commissioner under division (B) of 2368
section 131.44 of the Revised Code, the amount of tax as 2369
determined under divisions (A) (1) to (3) of this section shall 2370
be reduced by the percentage prescribed in that certification 2371
for taxable years beginning in the calendar year in which that 2372
certification is made. 2373

(C) The levy of this tax on income does not prevent a 2374
municipal corporation, a joint economic development zone created 2375
under section 715.691, or a joint economic development district 2376
created under section 715.70 or 715.71 or sections 715.72 to 2377
715.81 of the Revised Code from levying a tax on income. 2378

(D) This division applies only to taxable years of a trust 2379
beginning in 2002 or thereafter. 2380

(1) The tax imposed by this section on a trust shall be 2381
computed by multiplying the Ohio modified taxable income of the 2382
trust by the rates prescribed by division (A) of this section. 2383

(2) A resident trust may claim a credit against the tax 2384
computed under division (D) of this section equal to the lesser 2385
of (1) the tax paid to another state or the District of Columbia 2386
on the resident trust's modified nonbusiness income, ~~other than~~ 2387
~~the portion of the resident trust's nonbusiness income that is~~ 2388
~~qualifying investment income as defined in section 5747.012 of~~ 2389
~~the Revised Code,~~ or (2) the effective tax rate, based on 2390
modified Ohio taxable income, multiplied by the resident trust's 2391
modified nonbusiness income ~~other than the portion of the~~ 2392

~~resident trust's nonbusiness income that is qualifying~~ 2393
~~investment income.~~ The credit applies before any other 2394
applicable credits. 2395

(3) The credits enumerated in divisions (A)(1) to (10) and 2396
(A)(19) to (21) of section 5747.98 of the Revised Code do not 2397
apply to a trust subject to division (D) of this section. Any 2398
credits enumerated in other divisions of section 5747.98 of the 2399
Revised Code apply to a trust subject to division (D) of this 2400
section. To the extent that the trust distributes income for the 2401
taxable year for which a credit is available to the trust, the 2402
credit shall be shared by the trust and its beneficiaries. The 2403
tax commissioner and the trust shall be guided by applicable 2404
regulations of the United States treasury regarding the sharing 2405
of credits. 2406

(E) For the purposes of this section, "trust" means any 2407
trust described in Subchapter J of Chapter 1 of the Internal 2408
Revenue Code, excluding trusts that are not irrevocable as 2409
defined in division (I)(3)(b) of section 5747.01 of the Revised 2410
Code and that have no modified Ohio taxable income for the 2411
taxable year, charitable remainder trusts, qualified funeral 2412
trusts and preneed funeral contract trusts established pursuant 2413
to sections 4717.31 to 4717.38 of the Revised Code that are not 2414
qualified funeral trusts, endowment and perpetual care trusts, 2415
qualified settlement trusts and funds, designated settlement 2416
trusts and funds, and trusts exempted from taxation under 2417
section 501(a) of the Internal Revenue Code. 2418

Sec. 5747.03. (A) All money ~~collected under this chapter~~ 2419
~~arising from the taxes imposed by section 5747.02 or 5747.41 of~~ 2420
~~the Revised Code~~ tax imposed by this chapter shall be credited 2421
to the general revenue fund, except that the treasurer of state 2422

shall, at the beginning of each calendar quarter, credit to the 2423
Ohio political party fund, pursuant to section 3517.16 of the 2424
Revised Code, an amount equal to the total dollar value realized 2425
from the taxpayer exercise of the income tax checkoff option on 2426
tax forms processed during the preceding calendar quarter. 2427

(B) (1) Following the crediting of moneys pursuant to 2428
division (A) of this section, the remainder deposited in the 2429
general revenue fund shall be distributed pursuant to division 2430
(F) of section 321.24 and section 323.156 of the Revised Code; 2431
to make subsidy payments to institutions of higher education 2432
from appropriations to the Ohio board of regents; to support 2433
expenditures for programs and services for the mentally ill, 2434
mentally retarded, developmentally disabled, and elderly; for 2435
primary and secondary education; for medical assistance; and for 2436
any other purposes authorized by law, subject to the limitation 2437
that at least fifty per cent of the income tax collected by the 2438
state from the tax imposed by section 5747.02 of the Revised 2439
Code shall be returned pursuant to Section 9 of Article XII, 2440
Ohio Constitution. 2441

(2) To ensure that such constitutional requirement is 2442
satisfied the tax commissioner shall, on or before the thirtieth 2443
day of June of each year, from the best information available to 2444
the tax commissioner, determine and certify for each county to 2445
the director of budget and management the amount of taxes 2446
collected under this chapter from the tax imposed under section 2447
5747.02 of the Revised Code during the preceding calendar year 2448
that are required to be returned to the county by Section 9 of 2449
Article XII, Ohio Constitution. The director shall provide for 2450
payment from the general revenue fund to the county in the 2451
amount, if any, that the sum of the amount so certified for that 2452
county exceeds the sum of the following: 2453

(a) The sum of the payments from the general revenue fund 2454
for the preceding calendar year credited to the county's 2455
undivided income tax fund pursuant to division (F) of section 2456
321.24 and section 323.156 of the Revised Code or made directly 2457
from the general revenue fund to political subdivisions located 2458
in the county; 2459

(b) The sum of the amounts from the general revenue fund 2460
distributed in the county during the preceding calendar year for 2461
subsidy payments to institutions of higher education from 2462
appropriations to the Ohio board of regents; for programs and 2463
services for mentally ill, mentally retarded, developmentally 2464
disabled, and elderly persons; for primary and secondary 2465
education; and for medical assistance. 2466

(c) In the case of payments made by the director under 2467
this division in 2007, the total amount distributed to the 2468
county during the preceding calendar year from the local 2469
government fund and the local government revenue assistance 2470
fund, and, in the case of payments made by the director under 2471
this division in subsequent calendar years, the amount 2472
distributed to the county from the local government fund; 2473

(d) In the case of payments made by the director under 2474
this division, the total amount distributed to the county during 2475
the preceding calendar year from the public library fund. 2476

Payments under this division shall be credited to the 2477
county's undivided income tax fund, except that, notwithstanding 2478
section 5705.14 of the Revised Code, such payments may be 2479
transferred by the board of county commissioners to the county 2480
general fund by resolution adopted with the affirmative vote of 2481
two-thirds of the members thereof. 2482

(C) All payments received in each month from taxes imposed 2483
under Chapter 5748. of the Revised Code and any penalties or 2484
interest thereon shall be paid into the school district income 2485
tax fund, which is hereby created in the state treasury, except 2486
that an amount equal to the following portion of such payments 2487
shall be paid into the general school district income tax 2488
administrative fund, which is hereby created in the state 2489
treasury: 2490

(1) One and three-quarters of one per cent of those 2491
received in fiscal year 1996; 2492

(2) One and one-half per cent of those received in fiscal 2493
year 1997 and thereafter. 2494

Money in the school district income tax administrative 2495
fund shall be used by the tax commissioner to defray costs 2496
incurred in administering the school district's income tax, 2497
including the cost of providing employers with information 2498
regarding the rate of tax imposed by any school district. Any 2499
moneys remaining in the fund after such use shall be deposited 2500
in the school district income tax fund. 2501

All interest earned on moneys in the school district 2502
income tax fund shall be credited to the fund. 2503

(D) (1) (a) Within thirty days of the end of each calendar 2504
quarter ending on the last day of March, June, September, and 2505
December, the director of budget and management shall make a 2506
payment from the school district income tax fund to each school 2507
district for which school district income tax revenue was 2508
received during that quarter. The amount of the payment shall 2509
equal the balance in the school district's account at the end of 2510
that quarter. 2511

(b) After a school district ceases to levy an income tax, 2512
the director of budget and management shall adjust the payments 2513
under division (D) (1) (a) of this section to retain sufficient 2514
money in the school district's account to pay refunds. For the 2515
calendar quarters ending on the last day of March and December 2516
of the calendar year following the last calendar year the tax is 2517
levied, the director shall make the payments in the amount 2518
required under division (D) (1) (a) of this section. For the 2519
calendar quarter ending on the last day of June of the calendar 2520
year following the last calendar year the tax is levied, the 2521
director shall make a payment equal to nine-tenths of the 2522
balance in the account at the end of that quarter. For the 2523
calendar quarter ending on the last day of September of the 2524
calendar year following the last calendar year the tax is 2525
levied, the director shall make no payment. For the second and 2526
succeeding calendar years following the last calendar year the 2527
tax is levied, the director shall make one payment each year, 2528
within thirty days of the last day of June, in an amount equal 2529
to the balance in the district's account on the last day of 2530
June. 2531

(2) Moneys paid to a school district under this division 2532
shall be deposited in its school district income tax fund. All 2533
interest earned on moneys in the school district income tax fund 2534
shall be apportioned by the tax commissioner pro rata among the 2535
school districts in the proportions and at the times the 2536
districts are entitled to receive payments under this division. 2537

Sec. 5747.08. An annual return with respect to the tax 2538
imposed by section 5747.02 of the Revised Code and each tax 2539
imposed under Chapter 5748. of the Revised Code shall be made by 2540
every taxpayer for any taxable year for which the taxpayer is 2541
liable for the tax imposed by that section or under that 2542

chapter, unless the total credits allowed under division (E) of 2543
section 5747.05 and divisions (F) and (G) of section 5747.055 of 2544
the Revised Code for the year are equal to or exceed the tax 2545
imposed by section 5747.02 of the Revised Code, in which case no 2546
return shall be required unless the taxpayer is liable for a tax 2547
imposed pursuant to Chapter 5748. of the Revised Code. 2548

(A) If an individual is deceased, any return or notice 2549
required of that individual under this chapter shall be made and 2550
filed by that decedent's executor, administrator, or other 2551
person charged with the property of that decedent. 2552

(B) If an individual is unable to make a return or notice 2553
required by this chapter, the return or notice required of that 2554
individual shall be made and filed by the individual's duly 2555
authorized agent, guardian, conservator, fiduciary, or other 2556
person charged with the care of the person or property of that 2557
individual. 2558

(C) Returns or notices required of an estate or a trust 2559
shall be made and filed by the fiduciary of the estate or trust. 2560

~~(D) (1) (a) Except as otherwise provided in division (D) (1) 2561
(b) of this section, any pass-through entity may file a single 2562
return on behalf of one or more of the entity's investors other 2563
than an investor that is a person subject to the tax imposed 2564
under section 5733.06 of the Revised Code. The single return 2565
shall set forth the name, address, and social security number or 2566
other identifying number of each of those pass-through entity 2567
investors and shall indicate the distributive share of each of 2568
those pass-through entity investor's income taxable in this 2569
state in accordance with sections 5747.20 to 5747.231 of the 2570
Revised Code. Such pass-through entity investors for whom the 2571
pass-through entity elects to file a single return are not 2572~~

~~entitled to the exemption or credit provided for by sections 2573
5747.02 and 5747.022 of the Revised Code; shall calculate the 2574
tax before business credits at the highest rate of tax set forth 2575
in section 5747.02 of the Revised Code for the taxable year for 2576
which the return is filed; and are entitled to only their 2577
distributive share of the business credits as defined in 2578
division (D) (2) of this section. A single check drawn by the 2579
pass through entity shall accompany the return in full payment 2580
of the tax due, as shown on the single return, for such 2581
investors, other than investors who are persons subject to the 2582
tax imposed under section 5733.06 of the Revised Code. 2583~~

~~(b) (i) A pass through entity shall not include in such a 2584
single return any investor that is a trust to the extent that 2585
any direct or indirect current, future, or contingent 2586
beneficiary of the trust is a person subject to the tax imposed 2587
under section 5733.06 of the Revised Code. 2588~~

~~(ii) A pass through entity shall not include in such a 2589
single return any investor that is itself a pass through entity 2590
to the extent that any direct or indirect investor in the second 2591
pass through entity is a person subject to the tax imposed under 2592
section 5733.06 of the Revised Code. 2593~~

~~(c) Nothing in division (D) of this section precludes the 2594
tax commissioner from requiring such investors to file the 2595
return and make the payment of taxes and related interest, 2596
penalty, and interest penalty required by this section or 2597
section 5747.02, 5747.09, or 5747.15 of the Revised Code. 2598
Nothing in division (D) of this section precludes such an 2599
investor from filing the annual return under this section, 2600
utilizing the refundable credit equal to the investor's 2601
proportionate share of the tax paid by the pass through entity 2602~~

~~on behalf of the investor under division (I) of this section,~~ 2603
~~and making the payment of taxes imposed under section 5747.02 of~~ 2604
~~the Revised Code. Nothing in division (D) of this section shall~~ 2605
~~be construed to provide to such an investor or pass-through~~ 2606
~~entity any additional deduction or credit, other than the credit~~ 2607
~~provided by division (I) of this section, solely on account of~~ 2608
~~the entity's filing a return in accordance with this section.~~ 2609
~~Such a pass-through entity also shall make the filing and~~ 2610
~~payment of estimated taxes on behalf of the pass-through entity~~ 2611
~~investors other than an investor that is a person subject to the~~ 2612
~~tax imposed under section 5733.06 of the Revised Code.~~ 2613

~~(2) For the purposes of this section, "business credits"~~ 2614
~~means the credits listed in section 5747.98 of the Revised Code~~ 2615
~~excluding the following credits:~~ 2616

~~(a) The retirement income credit under division (B) of~~ 2617
~~section 5747.055 of the Revised Code;~~ 2618

~~(b) The senior citizen credit under division (F) of~~ 2619
~~section 5747.055 of the Revised Code;~~ 2620

~~(c) The lump sum distribution credit under division (G) of~~ 2621
~~section 5747.055 of the Revised Code;~~ 2622

~~(d) The dependent care credit under section 5747.054 of~~ 2623
~~the Revised Code;~~ 2624

~~(e) The lump sum retirement income credit under division~~ 2625
~~(C) of section 5747.055 of the Revised Code;~~ 2626

~~(f) The lump sum retirement income credit under division~~ 2627
~~(D) of section 5747.055 of the Revised Code;~~ 2628

~~(g) The lump sum retirement income credit under division~~ 2629
~~(E) of section 5747.055 of the Revised Code;~~ 2630

(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	2631 2632
(i) The twenty dollar personal exemption credit under section 5747.022 of the Revised Code;	2633 2634
(j) The joint filing credit under division (E) of section 5747.05 of the Revised Code;	2635 2636
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	2637 2638
(l) The credit for a resident's out of state income under division (B) of section 5747.05 of the Revised Code;	2639 2640
(m) The low income credit under section 5747.056 of the Revised Code;	2641 2642
(n) The earned income tax credit under section 5747.71 of the Revised Code.	2643 2644
(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division shall be construed to provide for any deduction or credit that would not be allowable if a nonresident pass-through entity investor were to file an annual return.	2645 2646 2647 2648 2649 2650 2651 2652
(4) If a pass-through entity makes the election provided for under division (D) of this section, the pass-through entity shall be liable for any additional taxes, interest, interest penalty, or penalties imposed by this chapter if the tax commissioner finds that the single return does not reflect the correct tax due by the pass-through entity investors covered by	2653 2654 2655 2656 2657 2658

~~that return. Nothing in this division shall be construed to~~ 2659
~~limit or alter the liability, if any, imposed on pass-through~~ 2660
~~entity investors for unpaid or underpaid taxes, interest,~~ 2661
~~interest penalty, or penalties as a result of the pass-through~~ 2662
~~entity's making the election provided for under division (D) of~~ 2663
~~this section. For the purposes of division (D) of this section,~~ 2664
~~"correct tax due" means the tax that would have been paid by the~~ 2665
~~pass-through entity had the single return been filed in a manner~~ 2666
~~reflecting the commissioner's findings. Nothing in division (D)~~ 2667
~~of this section shall be construed to make or hold a pass-~~ 2668
~~through entity liable for tax attributable to a pass-through~~ 2669
~~entity investor's income from a source other than the pass-~~ 2670
~~through entity electing to file the single return. Returns or~~ 2671
~~notices required of a pass-through entity shall be made and~~ 2672
~~filed pursuant to sections 5747.40 to 5747.44 of the Revised~~ 2673
~~Code.~~ 2674

(E) If a husband and wife file a joint federal income tax 2675
return for a taxable year, they shall file a joint return under 2676
this section for that taxable year, and their liabilities are 2677
joint and several, but, if the federal income tax liability of 2678
either spouse is determined on a separate federal income tax 2679
return, they shall file separate returns under this section. 2680

If either spouse is not required to file a federal income 2681
tax return and either or both are required to file a return 2682
pursuant to this chapter, they may elect to file separate or 2683
joint returns, and, pursuant to that election, their liabilities 2684
are separate or joint and several. If a husband and wife file 2685
separate returns pursuant to this chapter, each must claim the 2686
taxpayer's own exemption, but not both, as authorized under 2687
section 5747.02 of the Revised Code on the taxpayer's own 2688
return. 2689

(F) Each return or notice required to be filed under this 2690
section shall contain the signature of the taxpayer or the 2691
taxpayer's duly authorized agent and of the person who prepared 2692
the return for the taxpayer, and shall include the taxpayer's 2693
social security number. Each return shall be verified by a 2694
declaration under the penalties of perjury. The tax commissioner 2695
shall prescribe the form that the signature and declaration 2696
shall take. 2697

(G) Each return or notice required to be filed under this 2698
section shall be made and filed as required by section 5747.04 2699
of the Revised Code, on or before the fifteenth day of April of 2700
each year, on forms that the tax commissioner shall prescribe, 2701
together with remittance made payable to the treasurer of state 2702
in the combined amount of the state and all school district 2703
income taxes shown to be due on the form. 2704

Upon good cause shown, the commissioner may extend the 2705
period for filing any notice or return required to be filed 2706
under this section and may adopt rules relating to extensions. 2707
If the extension results in an extension of time for the payment 2708
of any state or school district income tax liability with 2709
respect to which the return is filed, the taxpayer shall pay at 2710
the time the tax liability is paid an amount of interest 2711
computed at the rate per annum prescribed by section 5703.47 of 2712
the Revised Code on that liability from the time that payment is 2713
due without extension to the time of actual payment. Except as 2714
provided in section 5747.132 of the Revised Code, in addition to 2715
all other interest charges and penalties, all taxes imposed 2716
under this chapter or Chapter 5748. of the Revised Code and 2717
remaining unpaid after they become due, except combined amounts 2718
due of one dollar or less, bear interest at the rate per annum 2719
prescribed by section 5703.47 of the Revised Code until paid or 2720

until the day an assessment is issued under section 5747.13 of 2721
the Revised Code, whichever occurs first. 2722

If the commissioner considers it necessary in order to 2723
ensure the payment of the tax imposed by section 5747.02 of the 2724
Revised Code or any tax imposed under Chapter 5748. of the 2725
Revised Code, the commissioner may require returns and payments 2726
to be made otherwise than as provided in this section. 2727

To the extent that any provision in this division 2728
conflicts with any provision in section 5747.026 of the Revised 2729
Code, the provision in that section prevails. 2730

(H) The amounts withheld by an employer pursuant to 2731
section 5747.06 of the Revised Code, a casino operator pursuant 2732
to section 5747.063 of the Revised Code, or a lottery sales 2733
agent pursuant to section 5747.064 of the Revised Code shall be 2734
allowed to the recipient of the compensation casino winnings, or 2735
lottery prize award as credits against payment of the 2736
appropriate taxes imposed on the recipient by section 5747.02 2737
and under Chapter 5748. of the Revised Code. 2738

~~(I) If a pass-through entity elects to file a single- 2739
return under division (D) of this section and if any investor is 2740
required to file the annual return and make the payment of taxes 2741
required by this chapter on account of the investor's other 2742
income that is not included in a single return filed by a pass- 2743
through entity or any other investor elects to file the annual 2744
return, the investor is entitled to a refundable credit equal to 2745
the investor's proportionate share of the tax paid by the pass- 2746
through entity on behalf of the investor. The investor shall 2747
claim the credit for the investor's taxable year in which or 2748
with which ends the taxable year of the pass-through entity. 2749
Nothing in this chapter shall be construed to allow any credit- 2750~~

~~provided in this chapter to be claimed more than once. For the~~ 2751
~~purpose of computing any interest, penalty, or interest penalty,~~ 2752
~~the investor shall be deemed to have paid the refundable credit~~ 2753
~~provided by this division on the day that the pass-through~~ 2754
~~entity paid the estimated tax or the tax giving rise to the~~ 2755
~~credit.~~ 2756

~~(J)~~ The tax commissioner shall ensure that each return 2757
required to be filed under this section includes a box that the 2758
taxpayer may check to authorize a paid tax preparer who prepared 2759
the return to communicate with the department of taxation about 2760
matters pertaining to the return. The return or instructions 2761
accompanying the return shall indicate that by checking the box 2762
the taxpayer authorizes the department of taxation to contact 2763
the preparer concerning questions that arise during the 2764
processing of the return and authorizes the preparer only to 2765
provide the department with information that is missing from the 2766
return, to contact the department for information about the 2767
processing of the return or the status of the taxpayer's refund 2768
or payments, and to respond to notices about mathematical 2769
errors, offsets, or return preparation that the taxpayer has 2770
received from the department and has shown to the preparer. 2771

~~(K)~~ (J) The tax commissioner shall permit individual 2772
taxpayers to instruct the department of taxation to cause any 2773
refund of overpaid taxes to be deposited directly into a 2774
checking account, savings account, or an individual retirement 2775
account or individual retirement annuity, or preexisting college 2776
savings plan or program account offered by the Ohio tuition 2777
trust authority under Chapter 3334. of the Revised Code, as 2778
designated by the taxpayer, when the taxpayer files the annual 2779
return required by this section electronically. 2780

~~(I)~~ ~~(K)~~ The tax commissioner may adopt rules to administer 2781
this section. 2782

Sec. 5747.082. (A) As used in this section: 2783

(1) "Electronic technology" means electronic technology 2784
acceptable to the tax commissioner under division (B) of this 2785
section. 2786

(2) "Original tax return" means any report, return, or 2787
other tax document required to be filed under this chapter for 2788
the purpose of reporting the taxes due under, and withholdings 2789
required by, this chapter. "Original tax return" does not 2790
include an amended return or any declaration or form required by 2791
or filed in connection with section 5747.09 of the Revised Code. 2792

~~(3) "Related member" has the same meaning as in section-~~ 2793
~~5733.042 of the Revised Code.~~ 2794

~~(4)~~ "Tax return preparer" means any person that operates a 2795
business that prepares, or directly or indirectly employs 2796
another person to prepare, for a taxpayer an original tax return 2797
in exchange for compensation or remuneration from the taxpayer 2798
or the taxpayer's related member. With respect to the 2799
preparation of a return or application for refund under this 2800
chapter, "tax return preparer" does not include an individual 2801
who performs only one or more of the following activities: 2802

(a) Furnishes typing, reproducing, or other mechanical 2803
assistance; 2804

(b) Prepares an application for refund or a return on 2805
behalf of an employer by whom the individual is regularly and 2806
continuously employed, or on behalf of an officer or employee of 2807
that employer; 2808

(c) Prepares as a fiduciary an application for refund or a return; 2809
2810

(d) Prepares an application for refund or a return for a taxpayer in response to a notice of deficiency issued to the taxpayer or the taxpayer's related member, or in response to a waiver of restriction after the commencement of an audit of the taxpayer or the taxpayer's related member. 2811
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(B) Divisions (C) and (D) of this section apply to the filing of original tax returns that are due in a calendar year only if the tax commissioner, by the last day of the calendar year immediately preceding the calendar year in which such returns are due, has published on the department of taxation's official internet web site at least one method of electronic technology acceptable to the commissioner for filing such returns. 2816
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(C) A tax return preparer that prepares more than seventy-five original tax returns during any calendar year that ends before January 1, 2013, or that prepares more than eleven original tax returns during any calendar year that begins on or after January 1, 2013, shall use electronic technology to file with the tax commissioner all original tax returns prepared by the tax return preparer. This division does not apply to a tax return preparer in any calendar year that ends before January 1, 2013, if, during the previous calendar year, the tax return preparer prepared no more than twenty-five original tax returns. This division does not apply to a tax return preparer in any calendar year that begins on or after January 1, 2013, if, during the previous calendar year, the tax return preparer prepared not more than ten original tax returns. 2824
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(D) If a tax return preparer required by this section to 2838

submit original tax returns by electronic technology files an 2839
original tax return by some means other than by electronic 2840
technology, the tax commissioner shall impose a penalty of fifty 2841
dollars for each return, in excess of seventy-five in calendar 2842
year 2010, 2011, or 2012, or in excess of eleven in any calendar 2843
year thereafter, that is not filed by electronic technology. 2844
Upon good cause shown by the tax return preparer, the tax 2845
commissioner may waive all or any portion of the penalty or may 2846
refund all or any portion of the penalty the tax return preparer 2847
has paid. 2848

Sec. 5747.11. (A) The tax commissioner shall refund ~~to~~ 2849
~~employers, qualifying entities, or taxpayers subject to a tax~~ 2850
~~imposed under section 5733.41, 5747.02, or 5747.41, or Chapter~~ 2851
~~5748. of the Revised Code the amount of any overpayment of such~~ 2852
the tax imposed under this chapter or Chapter 5748. of the 2853
Revised Code. 2854

(B) ~~Except as otherwise provided under divisions (D) and~~ 2855
~~(E) of this section, applications~~ Applications for refund shall 2856
be filed with the tax commissioner, on the form prescribed by 2857
the commissioner, within four years from the date of the 2858
illegal, erroneous, or excessive payment of the tax, or within 2859
any additional period allowed by division (B) (3) (b) of section 2860
5747.05, division (B) of section 5747.10, or division (A) of 2861
section 5747.13, ~~or division (C) of section 5747.45~~ of the 2862
Revised Code. 2863

On filing of the refund application, the commissioner 2864
shall determine the amount of refund due and, if that amount 2865
exceeds one dollar, certify such amount to the director of 2866
budget and management and treasurer of state for payment from 2867
the tax refund fund created by section 5703.052 of the Revised 2868

Code. Payment shall be made as provided in division (C) of 2869
section 126.35 of the Revised Code. 2870

(C) ~~(1)~~ Interest shall be allowed and paid at the rate per 2871
annum prescribed by section 5703.47 of the Revised Code on 2872
amounts refunded with respect to the tax imposed under ~~section-~~ 2873
~~5747.02 or this chapter or~~ Chapter 5748. of the Revised Code 2874
from the date of the overpayment until the date of the refund of 2875
the overpayment, except that if any overpayment is refunded 2876
within ninety days after the final filing date of the annual 2877
return or ninety days after the return is filed, whichever is 2878
later, no interest shall be allowed on such overpayment. If the 2879
overpayment results from the carryback of a net operating loss 2880
or net capital loss to a previous taxable year, the overpayment 2881
is deemed not to have been made prior to the filing date, 2882
including any extension thereof, for the taxable year in which 2883
the net operating loss or net capital loss arises. For purposes 2884
of the payment of interest on overpayments, no amount of tax, 2885
for any taxable year, shall be treated as having been paid 2886
before the date on which the tax return for that year was due 2887
without regard to any extension of time for filing such return. 2888

~~(2) Interest shall be allowed at the rate per annum-~~ 2889
~~prescribed by section 5703.47 of the Revised Code on amounts-~~ 2890
~~refunded with respect to the taxes imposed under sections-~~ 2891
~~5733.41 and 5747.41 of the Revised Code. The interest shall run-~~ 2892
~~from whichever of the following days is the latest until the day-~~ 2893
~~the refund is paid: the day the illegal, erroneous, or excessive~~ 2894
~~payment was made; the ninetieth day after the final day the-~~ 2895
~~annual report was required to be filed under section 5747.42 of-~~ 2896
~~the Revised Code; or the ninetieth day after the day that report-~~ 2897
~~was filed.~~ 2898

~~(D) "Ninety days" shall be substituted for "four years" in~~ 2899
~~division (E) of this section if the taxpayer satisfies both of~~ 2900
~~the following conditions:~~ 2901

~~(1) The taxpayer has applied for a refund based in whole~~ 2902
~~or in part upon section 5747.059 of the Revised Code;~~ 2903

~~(2) The taxpayer asserts that either the imposition or~~ 2904
~~collection of the tax imposed or charged by this chapter or any~~ 2905
~~portion of such tax violates the Constitution of the United~~ 2906
~~States or the Constitution of Ohio.~~ 2907

~~(E) (1) Division (E) (2) of this section applies only if all~~ 2908
~~of the following conditions are satisfied:~~ 2909

~~(a) A qualifying entity pays an amount of the tax imposed~~ 2910
~~by section 5733.41 or 5747.41 of the Revised Code;~~ 2911

~~(b) The taxpayer is a qualifying investor as to that~~ 2912
~~qualifying entity;~~ 2913

~~(c) The taxpayer did not claim the credit provided for in~~ 2914
~~section 5747.059 of the Revised Code as to the tax described in~~ 2915
~~division (E) (1) (a) of this section;~~ 2916

~~(d) The four year period described in division (B) of this~~ 2917
~~section has ended as to the taxable year for which the taxpayer~~ 2918
~~otherwise would have claimed that credit.~~ 2919

~~(2) A taxpayer shall file an application for refund~~ 2920
~~pursuant to division (E) of this section within one year after~~ 2921
~~the date the payment described in division (E) (1) (a) of this~~ 2922
~~section is made. An application filed under division (E) (2) of~~ 2923
~~this section shall claim refund only of overpayments resulting~~ 2924
~~from the taxpayer's failure to claim the credit described in~~ 2925
~~division (E) (1) (c) of this section. Nothing in division (E) of~~ 2926

~~this section shall be construed to relieve a taxpayer from~~ 2927
~~complying with division (A) (16) of section 5747.01 of the~~ 2928
~~Revised Code.~~ 2929

Sec. 5747.13. (A) If any employer collects the tax imposed 2930
by section 5747.02 or under Chapter 5748. of the Revised Code 2931
and fails to remit the tax as required by law, or fails to 2932
collect the tax, the employer is personally liable for any 2933
amount collected that the employer fails to remit, or any amount 2934
that the employer fails to collect. If any taxpayer fails to 2935
file a return or fails to pay the tax imposed by section 5747.02 2936
or under Chapter 5748. of the Revised Code, the taxpayer is 2937
personally liable for the amount of the tax. 2938

If any employer, or taxpayer, ~~or qualifying entity~~ 2939
required to file a return under this chapter fails to file the 2940
return within the time prescribed, files an incorrect return, 2941
fails to remit the full amount of the taxes due for the period 2942
covered by the return, or fails to remit any additional tax due 2943
as a result of a reduction in the amount of the credit allowed 2944
under division (B) of section 5747.05 of the Revised Code 2945
together with interest on the additional tax within the time 2946
prescribed by that division, the tax commissioner may make an 2947
assessment against any person liable for any deficiency for the 2948
period for which the return is or taxes are due, based upon any 2949
information in the commissioner's possession. 2950

An assessment issued against either the employer or the 2951
taxpayer pursuant to this section shall not be considered an 2952
election of remedies or a bar to an assessment against the other 2953
for failure to report or pay the same tax. No assessment shall 2954
be issued against any person if the tax actually has been paid 2955
by another. 2956

No assessment shall be made or issued against an employer, ~~or taxpayer, or qualifying entity~~ more than four years after the final date the return subject to assessment was required to be filed or the date the return was filed, whichever is later. However, the commissioner may assess any balance due as the result of a reduction in the credit allowed under section 5747.65 or division (B) of section 5747.05 of the Revised Code, including applicable penalty and interest. Any such balance shall be assessed within four years of the date on which the taxpayer reports a change ~~in either the portion of the taxpayer's adjusted gross income subjected to an income tax or tax measured by income in another state or the District of Columbia, or the amount of liability for an income tax or tax measured by income to another state or the District of Columbia,~~ affecting the taxpayer's liability as required by division (B) (3) of section 5747.05 or division (D) (2) of section 5747.65 of the Revised Code, as applicable. Such time limits may be extended if both the employer, ~~or taxpayer, or qualifying entity~~ and the commissioner consent in writing to the extension or if an agreement waiving or extending the time limits has been entered into pursuant to section 122.171 of the Revised Code. Any such extension shall extend the four-year time limit in division (B) of section 5747.11 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against an employer for taxes withheld from employees and not remitted to the state, against an employer, ~~or taxpayer, or qualifying entity~~ that fails to file a return subject to assessment as required by this chapter, or against an employer, ~~or taxpayer, or qualifying entity~~ that files a fraudulent return.

The commissioner shall give the party assessed written

notice of the assessment in the manner provided in section 2988
5703.37 of the Revised Code. With the notice, the commissioner 2989
shall provide instructions on how to petition for reassessment 2990
and request a hearing on the petition. 2991

(B) Unless the party assessed files with the tax 2992
commissioner within sixty days after service of the notice of 2993
assessment, either personally or by certified mail, a written 2994
petition for reassessment, signed by the party assessed or that 2995
party's authorized agent having knowledge of the facts, the 2996
assessment becomes final, and the amount of the assessment is 2997
due and payable from the party assessed to the commissioner with 2998
remittance made payable to the treasurer of state. The petition 2999
shall indicate the objections of the party assessed, but 3000
additional objections may be raised in writing if received by 3001
the commissioner prior to the date shown on the final 3002
determination. If the petition has been properly filed, the 3003
commissioner shall proceed under section 5703.60 of the Revised 3004
Code. 3005

(C) After an assessment becomes final, if any portion of 3006
the assessment remains unpaid, including accrued interest, a 3007
certified copy of the tax commissioner's entry making the 3008
assessment final may be filed in the office of the clerk of the 3009
court of common pleas in the county in which the employer's 7 or 3010
taxpayer's, ~~or qualifying entity's~~ place of business is located 3011
or the county in which the party assessed resides. If the party 3012
assessed is not a resident of this state, the certified copy of 3013
the entry may be filed in the office of the clerk of the court 3014
of common pleas of Franklin county. 3015

Immediately upon the filing of the entry, the clerk shall 3016
enter a judgment against the party assessed in the amount shown 3017

on the entry. The judgment shall be filed by the clerk in ~~one of~~ 3018
~~two loose-leaf books~~ the official records, ~~one entitled under~~ 3019
the title of "special judgments for state and school district 3020
income taxes," ~~and the other entitled "special judgments for~~ 3021
~~qualifying entity taxes."~~ The judgment shall have the same 3022
effect as other judgments. Execution shall issue upon the 3023
judgment upon the request of the tax commissioner, and all laws 3024
applicable to sales on execution shall apply to sales made under 3025
the judgment. 3026

If the assessment is not paid in its entirety within sixty 3027
days after the assessment was issued, the portion of the 3028
assessment consisting of tax due shall bear interest at the rate 3029
per annum prescribed by section 5703.47 of the Revised Code from 3030
the day the tax commissioner issues the assessment until it is 3031
paid or until it is certified to the attorney general for 3032
collection under section 131.02 of the Revised Code, whichever 3033
comes first. If the unpaid portion of the assessment is 3034
certified to the attorney general for collection, the entire 3035
unpaid portion of the assessment shall bear interest at the rate 3036
per annum prescribed by section 5703.47 of the Revised Code from 3037
the date of certification until the date it is paid in its 3038
entirety. Interest shall be paid in the same manner as the tax 3039
and may be collected by the issuance of an assessment under this 3040
section. 3041

(D) All money collected under this section shall be 3042
considered as revenue arising from the taxes imposed by this 3043
chapter or Chapter ~~5733. or~~ 5748. of the Revised Code, as 3044
appropriate. 3045

(E) If the party assessed files a petition for 3046
reassessment under division (B) of this section, the person, on 3047

or before the last day the petition may be filed, shall pay the 3048
assessed amount, including assessed interest and assessed 3049
penalties, if any of the following conditions exists: 3050

(1) The person files a tax return reporting Ohio adjusted 3051
gross income, less the exemptions allowed by section 5747.025 of 3052
the Revised Code, in an amount less than one cent, and the 3053
reported amount is not based on the computations required under 3054
division (A) of section 5747.01 or section 5747.025 of the 3055
Revised Code. 3056

(2) The person files a tax return that the tax 3057
commissioner determines to be incomplete, false, fraudulent, or 3058
frivolous. 3059

(3) The person fails to file a tax return, and the basis 3060
for this failure is not either of the following: 3061

(a) An assertion that the person has no nexus with this 3062
state; 3063

(b) The computations required under division (A) of 3064
section 5747.01 of the Revised Code or the application of 3065
credits allowed under this chapter has the result that the 3066
person's tax liability is less than one dollar and one cent. 3067

(F) Notwithstanding the fact that a petition for 3068
reassessment is pending, the petitioner may pay all or a portion 3069
of the assessment that is the subject of the petition. The 3070
acceptance of a payment by the treasurer of state does not 3071
prejudice any claim for refund upon final determination of the 3072
petition. 3073

If upon final determination of the petition an error in 3074
the assessment is corrected by the tax commissioner, upon 3075
petition so filed or pursuant to a decision of the board of tax 3076

appeals or any court to which the determination or decision has 3077
been appealed, so that the amount due from the party assessed 3078
under the corrected assessment is less than the portion paid, 3079
there shall be issued to the petitioner or to the petitioner's 3080
assigns or legal representative a refund in the amount of the 3081
overpayment as provided by section 5747.11 of the Revised Code, 3082
with interest on that amount as provided by such section, 3083
subject to section 5747.12 of the Revised Code. 3084

Sec. 5747.132. (A) As used in this section: 3085

(1) "Qualifying taxpayer" means a taxpayer, ~~or employer,~~ 3086
~~or qualifying entity.~~ 3087

(2) "Qualifying refund overpayment" means an amount 3088
received by a qualifying taxpayer in excess of a refund or 3089
request for payment claimed or made by or on behalf of the 3090
qualifying taxpayer on a return, report, or other document filed 3091
with the tax commissioner. 3092

(B) A qualifying taxpayer is not liable for any interest 3093
or penalty with respect to the repayment of a qualifying refund 3094
overpayment if the taxpayer pays the entire amount of the 3095
overpayment to the tax commissioner not later than thirty days 3096
after the taxpayer receives an assessment for it. If the 3097
taxpayer does not pay the entire amount of the overpayment to 3098
the commissioner within the time prescribed by this section, 3099
interest shall accrue on the amount of the deficiency pursuant 3100
to section 5747.13 of the Revised Code from the day the 3101
commissioner issues the assessment until the deficiency is paid. 3102

Sec. 5747.14. If the tax commissioner finds that an 3103
employer, ~~qualifying entity,~~ or taxpayer liable for any tax 3104
imposed under ~~section 5733.41,~~ this chapter, or Chapter 5748. of 3105

the Revised Code is about to depart from the state, to remove 3106
the employer's, ~~qualifying entity's,~~ or taxpayer's property 3107
therefrom, to conceal the employer's, ~~qualifying entity's,~~ or 3108
taxpayer's self or the employer's, ~~qualifying entity's,~~ or 3109
taxpayer's property, or to do any other act tending to prejudice 3110
or render wholly or partly ineffectual proceedings to collect 3111
such tax, unless such proceedings are brought without delay, or 3112
if the commissioner believes that the collection of the amount 3113
due from any employer, ~~qualifying entity,~~ or taxpayer will be 3114
jeopardized by delay, the commissioner shall give notice of such 3115
findings to such employer, ~~qualifying entity,~~ or taxpayer 3116
together with the demand for an immediate return and immediate 3117
payment of such tax, with an assessment and penalty, if 3118
applicable as provided in section 5747.13 of the Revised Code, 3119
whereupon such tax shall become immediately due and payable. In 3120
such cases the commissioner may immediately file the 3121
commissioner's entry with the clerk of the court of common pleas 3122
in the same manner and with the same effect as provided in 3123
section 5747.13 of the Revised Code, provided that if such 3124
employer, ~~qualifying entity,~~ or taxpayer, within five days from 3125
notice of the assessment, furnishes evidence satisfactory to the 3126
commissioner, under the rules prescribed by the commissioner, 3127
that the employer, ~~qualifying entity,~~ or taxpayer is not in 3128
default in making returns or paying or collecting any tax 3129
prescribed by this chapter or that the employer, ~~qualifying-~~ 3130
~~entity,~~ or taxpayer will duly return and pay, or post bond 3131
satisfactory to the commissioner conditioned upon payment of the 3132
tax finally determined to be due, such tax shall not be payable 3133
prior to the time and manner otherwise fixed for payment under 3134
section 5747.13 of the Revised Code, and the person assessed 3135
shall be restored to the rights granted the person under such 3136
section. Upon satisfaction of the assessment the commissioner 3137

shall order the bond canceled, securities released, and judgment 3138
vacated. 3139

Sec. 5747.15. (A) In addition to any other penalty imposed 3140
by this chapter or Chapter 5703. of the Revised Code, the 3141
following penalties shall apply: 3142

(1) If a taxpayer, ~~qualifying entity,~~ or employer required 3143
to file any report or return, including an informational notice, 3144
report, or return, under this chapter fails to make and file the 3145
report or return within the time prescribed, including any 3146
extensions of time granted by the tax commissioner, a penalty 3147
may be imposed not exceeding the greater of fifty dollars per 3148
month or fraction of a month, not to exceed five hundred 3149
dollars, or five per cent per month or fraction of a month, not 3150
to exceed fifty per cent, of the sum of the taxes required to be 3151
shown on the report or return, for each month or fraction of a 3152
month elapsing between the due date, including extensions of the 3153
due date, and the date on which filed. 3154

(2) If a taxpayer fails to pay any amount of tax required 3155
to be paid under ~~section 5733.41 or Chapters 5747. or this~~ 3156
chapter or Chapter 5748. of the Revised Code, except estimated 3157
tax under section 5747.09 ~~or 5747.43~~ of the Revised Code, by the 3158
dates prescribed for payment, a penalty may be imposed not 3159
exceeding twice the applicable interest charged under division 3160
(G) of section 5747.08 of the Revised Code for the delinquent 3161
payment. 3162

(3) ~~(a)~~ If an employer fails to pay any amount of tax 3163
imposed by section 5747.02 of the Revised Code and required to 3164
be paid under this chapter by the dates prescribed for payment, 3165
a penalty may be imposed not exceeding the sum of ten per cent 3166
of the delinquent payment plus twice the interest charged under 3167

division (F) (5) of section 5747.07 of the Revised Code for the 3168
delinquent payment. 3169

~~(b) If a qualifying entity fails to pay any amount of tax 3170
imposed by section 5733.41 or 5747.41 of the Revised Code and 3171
required to be paid under this chapter by the dates prescribed 3172
for payment, a penalty may be imposed not exceeding the sum of 3173
ten per cent of the delinquent payment plus twice the applicable 3174
interest charged under division (G) of section 5747.08 of the 3175
Revised Code for the delinquent payment. 3176~~

(4)(a) If an employer withholds from employees the tax 3177
imposed by section 5747.02 of the Revised Code and fails to 3178
remit the tax withheld to the state as required by this chapter 3179
on or before the dates prescribed for payment, a penalty may be 3180
imposed not exceeding fifty per cent of the delinquent payment. 3181

~~(b) If a qualifying entity withholds any amount of tax 3182
imposed under section 5747.41 of the Revised Code from an 3183
individual's qualifying amount and fails to remit that amount to 3184
the state as required by sections 5747.42 to 5747.453 of the 3185
Revised Code on or before the dates prescribed for payment, a 3186
penalty may be imposed not exceeding fifty per cent of the 3187
delinquent payment. 3188~~

(5) If a taxpayer, ~~qualifying entity,~~ or employer files 3189
what purports to be a return required by this chapter that does 3190
not contain information upon which the substantial correctness 3191
of the return may be judged or contains information that on its 3192
face indicates that the return is substantially incorrect, and 3193
the filing of the return in that manner is due to a position 3194
that is frivolous or a desire that is apparent from the return 3195
to delay or impede the administration of the tax levied by 3196
section 5733.41, 5747.02, ~~or 5747.41,~~ or Chapter 5748. of the 3197

Revised Code, a penalty of up to five hundred dollars may be 3198
imposed. 3199

(6) If a taxpayer ~~or qualifying entity~~ makes a fraudulent 3200
attempt to evade the reporting or payment of the tax required to 3201
be shown on any return required under this chapter, a penalty 3202
may be imposed not exceeding the greater of one thousand dollars 3203
or one hundred per cent of the tax required to be shown on the 3204
return. 3205

(7) If any person makes a false or fraudulent claim for a 3206
refund under this chapter, a penalty may be imposed not 3207
exceeding the greater of one thousand dollars or one hundred per 3208
cent of the claim. The penalty imposed under division (A) (7) of 3209
this section, any refund issued on the claim, and interest on 3210
any refund from the date of the refund, may be assessed under 3211
section 5747.13 of the Revised Code as tax, penalty, or interest 3212
imposed under section ~~5733.41, 5747.02, or 5747.41~~ of the 3213
Revised Code, ~~without regard to whether the person making the~~ 3214
~~claim is otherwise subject to the provisions of this chapter or~~ 3215
~~Chapter 5733. of the Revised Code, and without regard to any~~ 3216
time limitation for the assessment imposed by division (A) of 3217
section 5747.13 of the Revised Code. 3218

(B) For purposes of this section, the taxes required to be 3219
shown on the return shall be reduced by the amount of any part 3220
of the taxes paid on or before the date, including any 3221
extensions of the date, prescribed for filing the return. 3222

(C) Any penalty imposed under this section shall be in 3223
addition to all other penalties imposed under this section. All 3224
or part of any penalty imposed under this section may be abated 3225
by the commissioner. All or part of any penalty imposed under 3226
this section may be abated by the commissioner if the taxpayer~~,~~ 3227

~~qualifying entity,~~ or employer shows that the failure to comply 3228
with the provisions of this chapter is due to reasonable cause 3229
and not willful neglect. 3230

Sec. 5747.20. This section applies solely for the purposes 3231
of computing the credit allowed under division (A) of section 3232
5747.05 of the Revised Code and computing income taxable in this 3233
state under ~~division (D) of section 5747.08~~ 5747.40 of the 3234
Revised Code. 3235

All items of nonbusiness income or deduction shall be 3236
allocated in this state as follows: 3237

(A) All items of nonbusiness income or deduction taken 3238
into account in the computation of adjusted gross income for the 3239
taxable year by a resident shall be allocated to this state. 3240

(B) All items of nonbusiness income or deduction taken 3241
into account in the computation of adjusted gross income for the 3242
taxable year by a nonresident shall be allocated to this state 3243
as follows: 3244

(1) All items of compensation paid to an individual for 3245
personal services performed in this state who was a nonresident 3246
at the time of payment and all items of deduction directly 3247
allocated thereto shall be allocated to this state. 3248

(2) All gains or losses from the sale of real property, 3249
tangible personal property, or intangible property shall be 3250
allocated as follows: 3251

(a) Capital gains or losses from the sale or other 3252
transfer of real property are allocable to this state if the 3253
property is located physically in this state. 3254

(b) Capital gains or losses from the sale or other 3255

transfer of tangible personal property are allocable to this 3256
state if, at the time of such sale or other transfer, the 3257
property had its physical location in this state. 3258

(c) Capital gains or losses from the sale or other 3259
transfer of intangible personal property are allocable to this 3260
state if the taxpayer's domicile was in this state at the time 3261
of such sale or other transfer. 3262

(3) All rents and royalties of real or tangible personal 3263
property shall be allocated to this state as follows: 3264

(a) Rents and royalties derived from real property are 3265
allocable to this state if the property is physically located in 3266
this state. 3267

(b) Rents and royalties derived from tangible personal 3268
property are allocable to this state to the extent that such 3269
property is utilized in this state. 3270

The extent of utilization of tangible personal property in 3271
a state is determined by multiplying the rents or royalties 3272
derived from such property by a fraction, the numerator of which 3273
is the number of days of physical location of the property in 3274
this state during the rental or royalty period in the taxable 3275
year and the denominator of which is the number of days of 3276
physical location of the property everywhere during all rental 3277
or royalty periods in the taxable year. If the physical location 3278
of the property during the rental or royalty period is unknown 3279
or unascertainable by the nonresident, tangible personal 3280
property is utilized in the state in which the property was 3281
located at the time the rental or royalty payor obtained 3282
possession. 3283

(4) All patent and copyright royalties shall be allocated 3284

to this state to the extent the patent or copyright was utilized 3285
by the payor in this state. 3286

A patent is utilized in a state to the extent that it is 3287
employed in production, fabrication, manufacturing, or other 3288
processing in the state, or to the extent that a patented 3289
product is produced in the state. If the basis of receipts from 3290
patent royalties does not permit allocation to states or if the 3291
accounting procedures do not reflect states of utilization, the 3292
patent is utilized in this state if the taxpayer's domicile was 3293
in this state at the time such royalties were paid or accrued. 3294

A copyright is utilized in a state to the extent that 3295
printing or other publication originates in the state. If the 3296
basis of receipts from copyright royalties does not permit 3297
allocation to states or if the accounting procedures do not 3298
reflect states of utilization, the copyright is utilized in this 3299
state if the taxpayer's domicile was in this state at the time 3300
such royalties were paid or accrued. 3301

(5) (a) All lottery prize awards paid by the state lottery 3302
commission pursuant to Chapter 3770. of the Revised Code shall 3303
be allocated to this state. 3304

(b) All earnings, profit, income, and gain from the sale, 3305
exchange, or other disposition of lottery prize awards paid or 3306
to be paid to any person by the state lottery commission 3307
pursuant to Chapter 3770. of the Revised Code shall be allocated 3308
to this state. 3309

(c) All earnings, profit, income, and gain from the direct 3310
or indirect ownership of lottery prize awards paid or to be paid 3311
to any person by the state lottery commission pursuant to 3312
Chapter 3770. of the Revised Code shall be allocated to this 3313

state. 3314

(d) All earnings, profit, income, and gain from the direct 3315
or indirect interest in any right in or to any lottery prize 3316
awards paid or to be paid to any person by the state lottery 3317
commission pursuant to Chapter 3770. of the Revised Code shall 3318
be allocated to this state. 3319

(6) Any item of income or deduction which has been taken 3320
into account in the computation of adjusted gross income for the 3321
taxable year by a nonresident and which is not otherwise 3322
specifically allocated or apportioned pursuant to sections 3323
5747.20 to 5747.23 of the Revised Code, including, without 3324
limitation, interest, dividends and distributions, items of 3325
income taken into account under the provisions of sections 401 3326
to 425 of the Internal Revenue Code, and benefit payments 3327
received by a beneficiary of a supplemental unemployment trust 3328
which is referred to in section 501(c) (17) of the Internal 3329
Revenue Code, shall not be allocated to this state unless the 3330
taxpayer's domicile was in this state at the time such income 3331
was paid or accrued. 3332

(7) All casino gaming winnings paid by any person licensed 3333
by the Ohio casino control commission shall be allocated to the 3334
state. 3335

(C) If an individual is a resident for part of the taxable 3336
year and a nonresident for the remainder of the taxable year, 3337
all items of nonbusiness income or deduction shall be allocated 3338
under division (A) of this section for the part of the taxable 3339
year that the individual is a resident and under division (B) of 3340
this section for the part of the taxable year that the 3341
individual is a nonresident. 3342

Sec. 5747.21. (A) This section applies solely for the 3343
purposes of computing the credit allowed under division (A) of 3344
section 5747.05 of the Revised Code and computing income taxable 3345
in this state under ~~division (D) of section 5747.08~~ 5747.40 of 3346
the Revised Code. 3347

(B) Except as otherwise provided under section 5747.212 of 3348
the Revised Code, all items of business income and business 3349
deduction shall be apportioned to this state by multiplying 3350
business income by ~~the a fraction calculated under division (B)~~ 3351
~~(2) of section 5733.05 and section 5733.057 of the Revised Code~~ 3352
~~as if the taxpayer's business were a corporation subject to the~~ 3353
~~tax imposed by section 5733.06 of the Revised Code. The~~ 3354
numerator of the fraction is the sum of the following products: 3355
the property factor multiplied by twenty, the payroll factor 3356
multiplied by twenty, and the sales factor multiplied by sixty. 3357
The denominator of the fraction is one hundred, provided that 3358
the denominator shall be reduced by twenty if the property 3359
factor has a denominator of zero, by twenty if the payroll 3360
factor has a denominator of zero, and by sixty if the sales 3361
factor has a denominator of zero. 3362

The property, payroll, and sales factors of a person shall 3363
be determined as provided in divisions (B) (1), (2), and (3) of 3364
this section, but the numerator and the denominator of the 3365
factors shall not include the portion of any property, payroll, 3366
and sales otherwise includible in the factors to the extent that 3367
the portion relates to, or is used in connection with, the 3368
production of nonbusiness income allocated under section 5747.20 3369
of the Revised Code: 3370

(1) The property factor is a fraction computed as follows: 3371

The numerator of the fraction is the average value of the 3372

person's real and tangible personal property owned or rented, 3373
and used in the trade or business in this state during the 3374
taxable year, and the denominator of the fraction is the average 3375
value of all the person's real and tangible personal property 3376
owned or rented, and used in the trade or business everywhere 3377
during such year. Real and tangible personal property used in 3378
the trade or business includes, but is not limited to, real and 3379
tangible personal property that the person rents, subrents, 3380
leases, or subleases to others if the income or loss from such 3381
rentals, subrentals, leases, or subleases is business income, 3382
and also includes those amounts required to be added back as an 3383
expense paid to a related member pursuant to division (A) (2) (a) 3384
of section 5747.40 of the Revised Code. There shall be excluded 3385
from the numerator and denominator of the fraction the original 3386
cost of all of the following property within Ohio: property with 3387
respect to which a pollution control facility certificate has 3388
been issued pursuant to section 5709.21 of the Revised Code; 3389
property with respect to which an industrial water pollution 3390
control certificate has been issued pursuant to that section or 3391
former section 6111.31 of the Revised Code; and property used 3392
exclusively during the taxable year for qualified research. 3393

(a) Property owned by the person is valued at its original 3394
cost. Property rented by the person is valued at eight times the 3395
net annual rental rate. "Net annual rental rate" means the 3396
annual rental rate paid by the person less any annual rental 3397
rate received by the person from subrentals. 3398

(b) The average value of property shall be determined by 3399
averaging the values at the beginning and the end of the taxable 3400
year, but the tax commissioner may require the averaging of 3401
monthly values during the taxable year, if reasonably required 3402
to reflect properly the average value of the person's property. 3403

(2) The payroll factor is a fraction computed as follows: 3404

The numerator of the fraction is the total amount paid in 3405
this state during the taxable year by the person for 3406
compensation, and the denominator of the fraction is the total 3407
compensation paid everywhere by the person during such year. 3408
There shall be excluded from the numerator and the denominator 3409
of the payroll factor the total compensation paid in this state 3410
to employees who are primarily engaged in qualified research. 3411

(a) Compensation means any form of remuneration paid to an 3412
employee for personal services, and includes those amounts 3413
required to be added back as an expense paid to a related member 3414
pursuant to division (A) (2) (a) of section 5747.40 of the Revised 3415
Code, but does not include those amounts reclassified as a 3416
distributive share of income pursuant to division (A) (2) (b) of 3417
section 5747.41 of the Revised Code. 3418

(b) Compensation is paid in this state if: (i) the 3419
recipient's service is performed entirely within this state, 3420
(ii) the recipient's service is performed both within and 3421
without this state, but the service performed without this state 3422
is incidental to the recipient's service within this state, 3423
(iii) some of the service is performed within this state and 3424
either the base of operations or, if there is no base of 3425
operations, the place from which the service is directed or 3426
controlled is within this state, or the base of operations or 3427
the place from which the service is directed or controlled is 3428
not in any state in which some part of the service is performed, 3429
but the recipient's residence is in this state. 3430

(c) Compensation is paid in this state to any employee of 3431
a common or contract motor carrier if the employee performs the 3432
employee's regularly assigned duties on a motor vehicle in more 3433

than one state, in the same ratio by which the mileage traveled 3434
by such employee within the state bears to the total mileage 3435
traveled by such employee everywhere during the taxable year. 3436

(3) The sales factor is a fraction computed as follows: 3437

Except as provided in this section, the numerator of the 3438
fraction is the total sales in this state by the person during 3439
the taxable year or part thereof, and the denominator of the 3440
fraction is the total sales by the person everywhere during such 3441
year or part thereof. In computing the numerator and denominator 3442
of the fraction, the following shall be eliminated from the 3443
fraction: receipts and any related gains or losses from the sale 3444
or other disposal of excluded assets; dividends or 3445
distributions; and interest or other similar amounts received 3446
for the use of, or for the forbearance of the use of, money. In 3447
computing the numerator and denominator of the sales factor, if 3448
a person owns at least eighty per cent of the issued and 3449
outstanding common stock of one or more insurance companies or 3450
public utilities, except an electric company or a telephone 3451
company, or owns at least twenty-five per cent of the issued and 3452
outstanding common stock of one or more financial institutions, 3453
receipts received by the person from such utilities, insurance 3454
companies, and financial institutions shall be eliminated. As 3455
used in this division, "excluded assets" means property that is 3456
either: intangible property, other than trademarks, trade names, 3457
patents, copyrights, and similar intellectual property; or 3458
tangible personal property or real property where that property 3459
is a capital asset or an asset described in section 1231 of the 3460
Internal Revenue Code, without regard to the holding period 3461
specified therein. 3462

(a) For the purpose of this section, receipts not 3463

eliminated or excluded from the fraction shall be sitused as 3464
follows: 3465

(i) Receipts from rents and royalties from real property 3466
located in this state shall be sitused to this state. 3467

(ii) Receipts from rents and royalties of tangible 3468
personal property, to the extent the tangible personal property 3469
is used in this state, shall be sitused to this state. 3470

(iii) Receipts from the sale of electricity and of 3471
electric transmission and distribution services shall be sitused 3472
to this state in the manner provided under division (B) (4) of 3473
this section. 3474

(iv) Receipts from the sale of real property located in 3475
this state shall be sitused to this state. 3476

(v) Receipts from the sale of tangible personal property 3477
shall be sitused to this state if such property is received in 3478
this state by the purchaser. In the case of delivery of tangible 3479
personal property by common carrier or by other means of 3480
transportation, the place at which such property is ultimately 3481
received after all transportation has been completed shall be 3482
considered as the place at which such property is received by 3483
the purchaser. Direct delivery in this state, other than for 3484
purposes of transportation, to a person or firm designated by a 3485
purchaser constitutes delivery to the purchaser in this state, 3486
and direct delivery outside this state to a person or firm 3487
designated by a purchaser does not constitute delivery to the 3488
purchaser in this state, regardless of where title passes or 3489
other conditions of sale. 3490

(vi) Receipts from the sale, exchange, disposition, or 3491
other grant of the right to use trademarks, trade names, 3492

patents, copyrights, and similar intellectual property shall be 3493
sitused to this state to the extent that the receipts are based 3494
on the amount of use of that property in this state. If the 3495
receipts are not based on the amount of use of that property, 3496
but rather on the right to use the property and the payor has 3497
the right to use the property in this state, then the receipts 3498
from the sale, exchange, disposition, or other grant of the 3499
right to use such property shall be sitused to this state to the 3500
extent the receipts are based on the right to use the property 3501
in this state. 3502

(vii) Receipts from the sale of services, and receipts 3503
from any other sales not eliminated or excluded from the sales 3504
factor and not otherwise sitused under division (B) (3) of this 3505
section, shall be sitused to this state in the proportion to the 3506
purchaser's benefit, with respect to the sale, in this state to 3507
the purchaser's benefit, with respect to the sale, everywhere. 3508
The physical location where the purchaser ultimately uses or 3509
receives the benefit of what was purchased shall be paramount in 3510
determining the proportion of the benefit in this state to the 3511
benefit everywhere. 3512

(c) Income from receipts eliminated or excluded from the 3513
sales factor under division (B) (3) of this section shall not be 3514
presumed to be nonbusiness income. 3515

(4) (a) As provided in division (B) (3) (a) (iii) of this 3516
section, for a person whose primary receipts are from the sale 3517
of electricity and of electric transmission and distribution 3518
services, receipts shall be sitused to this state as follows: 3519

(i) Sales of the transmission of electricity are in this 3520
state in proportion to the ratio of the wire mileage of the 3521
person's transmission lines located in this state divided by the 3522

wire mileage of the person's transmission lines located 3523
everywhere. Transmission wire mileage shall be weighted for the 3524
voltage capacity of each line. 3525

(ii) Sales of the distribution of electricity are in this 3526
state in proportion to the ratio of the wire mileage of the 3527
person's distribution lines located in this state divided by the 3528
wire mileage of the person's distribution lines located 3529
everywhere. Distribution wire mileage shall not be weighted for 3530
the voltage capacity of each line. 3531

(b) Division (B) (4) (b) of this section applies only to a 3532
person that has transmission or distribution lines in this 3533
state. If a contract for the sale of electricity includes the 3534
seller's or the seller's related member's obligation to transmit 3535
or distribute the electricity and if the sales contract 3536
separately identifies the price charged for the transmission or 3537
distribution of electricity, the price charged for the 3538
transmission and distribution of electricity shall be 3539
apportioned to this state in accordance with division (B) (4) (a) 3540
of this section. Any remaining portion of the sales price of the 3541
electricity shall be sitused to this state in accordance with 3542
division (B) (4) (c) of this section. 3543

If the sales contract does not separately identify the 3544
price charged for the transmission or distribution of 3545
electricity, the sales price of the electricity shall be sitused 3546
to this state in accordance with division (B) (4) (c) of this 3547
section. 3548

(c) Any person who makes a sale of electricity shall situs 3549
the following to this state: 3550

(i) A sale of electricity directly or indirectly to a 3551

customer to the extent the customer consumes the electricity in 3552
this state; 3553

(ii) A sale of electricity directly or indirectly to a 3554
related member where the related member directly or indirectly 3555
sells electricity to a customer to the extent the customer 3556
consumes the electricity in this state; 3557

(iii) A sale of electricity if the seller or the seller's 3558
related member directly or indirectly delivers the electricity 3559
to a location in this state or directly or indirectly delivers 3560
the electricity exactly to the border of this state and another 3561
state; 3562

(iv) A sale of electricity if the seller or the seller's 3563
related member directly or indirectly directs the delivery of 3564
the electricity to a location in this state or directly or 3565
indirectly directs the delivery of the electricity exactly to 3566
the border of this state and another state. 3567

For the purposes of division (B) (4) (c) of this section, 3568
"customer" means a person who purchases electricity for 3569
consumption either by that person or by the person's related 3570
member and the electricity is not for resale directly or 3571
indirectly to any person other than a related member. 3572

(d) Notwithstanding section 5703.56 of the Revised Code, 3573
for the purposes of division (B) (4) of this section a person 3574
situating a sale outside this state has the burden to establish 3575
by a preponderance of the evidence that the doctrines enumerated 3576
in that section do not apply. 3577

(5) As used in division (B) of this section, "qualified 3578
research" means laboratory research, experimental research, and 3579
other similar types of research; research in developing or 3580

improving a product; or research in developing or improving the 3581
means of producing a product. It does not include market 3582
research, consumer surveys, efficiency surveys, management 3583
studies, ordinary testing or inspection of materials or products 3584
for quality control, historical research, or literary research. 3585
"Product," as used in this division, does not include services 3586
or intangible property. 3587

(C) If the allocation and apportionment provisions of 3588
sections 5747.20 to 5747.23 of the Revised Code or of any rule 3589
adopted by the tax commissioner, do not fairly represent the 3590
extent of business activity in this state of a taxpayer or pass- 3591
through entity, the taxpayer or pass-through entity may request, 3592
which request must be in writing accompanying a timely filed 3593
return or timely filed amended return, or the tax commissioner 3594
may require, in respect of all or any part of the business 3595
activity, if reasonable, any one or more of the following: 3596

(1) Separate accounting; 3597

(2) The exclusion of one or more factors; 3598

(3) The inclusion of one or more additional factors which 3599
will fairly represent the business activity in this state; 3600

(4) The employment of any other method to effectuate an 3601
equitable allocation and apportionment of such business in this 3602
state. An alternative method will be effective only with 3603
approval of the tax commissioner. 3604

(D) The tax commissioner may adopt rules in the manner 3605
provided by sections 5703.14 and 5747.18 of the Revised Code 3606
providing for alternative methods of calculating business income 3607
and nonbusiness income or situsing of sales applicable to all 3608
taxpayers and pass-through entities, to classes of taxpayers and 3609

pass-through entities, or only to taxpayers and pass-through 3610
entities within a certain industry. 3611

Sec. 5747.212. (A) This section applies solely for the 3612
purpose of computing the credit allowed under division (A) of 3613
section 5747.05 of the Revised Code and computing income taxable 3614
in this state under ~~division (D) of section 5747.08~~ 5747.40 of 3615
the Revised Code. 3616

(B) A taxpayer, directly or indirectly, owning at any time 3617
during the three-year period ending on the last day of the 3618
taxpayer's taxable year at least twenty per cent of the equity 3619
voting rights of a section 5747.212 entity shall apportion any 3620
income, including gain or loss, realized from each sale, 3621
exchange, or other disposition of a debt or equity interest in 3622
that entity as prescribed in this section. For such purposes, in 3623
lieu of using the method prescribed by sections 5747.20 and 3624
5747.21 of the Revised Code, the investor shall apportion the 3625
income using the average of the section 5747.212 entity's 3626
apportionment fractions otherwise applicable under section 3627
~~5733.05, 5733.056, or~~ 5747.21 of the Revised Code for the 3628
current and two preceding taxable years. If the section 5747.212 3629
entity was not in business for one or more of those years, each 3630
year that the entity was not in business shall be excluded in 3631
determining the average. 3632

(C) For the purposes of this section: 3633

(1) A "section 5747.212 entity" is any qualifying person 3634
if, on at least one day of the three-year period ending on the 3635
last day of the taxpayer's taxable year, any of the following 3636
apply: 3637

(a) The qualifying person is a pass-through entity; 3638

(b) Five or fewer persons directly or indirectly own all 3639
the equity interests, with voting rights, of the qualifying 3640
person; 3641

(c) One person directly or indirectly owns at least fifty 3642
per cent of the qualifying person's equity interests with voting 3643
rights. 3644

(2) A "qualifying person" is any person other than an 3645
individual, estate, or trust. 3646

(3) "Estate" and "trust" do not include any person 3647
classified for federal income tax purposes as an association 3648
taxable as a corporation. 3649

Sec. 5747.22. (A) This section applies solely for the 3650
purposes of computing the credit allowed under division (A) of 3651
section 5747.05 of the Revised Code and computing income taxable 3652
in this state under ~~division (D) of section 5747.08~~ 5747.40 of 3653
the Revised Code. 3654

(B) With respect to a pass-through entity, one or more of 3655
the pass-through entity investors of which are liable for the 3656
tax imposed by section 5747.02 of the Revised Code, the business 3657
income and deductions of the pass-through entity shall be 3658
apportioned to this state in the hands of the pass-through 3659
entity investors pursuant to section 5747.21 of the Revised 3660
Code. The business income and deductions as thus apportioned to 3661
this state then shall be allocated to the pass-through entity 3662
investors in proportion to their right to share in that business 3663
income. 3664

(C) With respect to a pass-through entity described in 3665
division (B) of this section, the nonbusiness income and 3666
deductions of the pass-through entity shall be allocated to the 3667

pass-through entity investors in proportion to their right to 3668
share in the nonbusiness income, and then the pass-through 3669
entity shares shall be allocated to this state in the hands of 3670
each pass-through entity investor pursuant to section 5747.20 of 3671
the Revised Code. 3672

~~Sec. 5747.231. As used in this section, "adjusted-~~ 3673
~~qualifying amount" has the same meaning as in section 5733.40 of~~ 3674
~~the Revised Code.~~ 3675

This section does not apply to division (BB) (5) (a) (ii) of 3676
section 5747.01 of the Revised Code. 3677

~~Except as set forth in this section and except as~~ 3678
~~otherwise provided in divisions (A) and (B) of section 5733.401-~~ 3679
~~of the Revised Code, in~~ In making all apportionment, allocation, 3680
income, gain, loss, deduction, tax, and credit computations 3681
under this chapter, each person shall include in that person's 3682
items of business income, nonbusiness income, ~~adjusted-~~ 3683
~~qualifying amounts,~~ allocable income or loss, apportionable 3684
income or loss, property, compensation, and sales, the person's 3685
entire distributive share or proportionate share of the items of 3686
business income, nonbusiness income, ~~adjusted qualifying-~~ 3687
~~amounts,~~ allocable income or loss, apportionable income or loss, 3688
property, compensation, and sales of any pass-through entity in 3689
which the person has a direct or indirect ownership interest at 3690
any time during the person's taxable year. A pass-through 3691
entity's direct or indirect distributive share or proportionate 3692
share of any other pass-through entity's items of business 3693
income, nonbusiness income, ~~adjusted qualifying amounts,~~ 3694
allocable income or loss, apportionable income or loss, 3695
property, compensation, and sales shall be included for the 3696
purposes of computing the person's distributive share or 3697

proportionate share of the pass-through entity's items of 3698
business income, nonbusiness income, ~~adjusted qualifying~~ 3699
~~amounts,~~ allocable income or loss, apportionable income or loss, 3700
property, compensation, and sales under this section. Those 3701
items shall ~~be in the same form~~ retain the same character as 3702
that which was originally recognized by the pass-through entity. 3703

Sec. 5747.28. (A) As used in this section: 3704

~~(1) "Qualifying,~~ "qualifying property" means any 3705
property, plant, or equipment used to produce grapes in this 3706
state, and includes but is not limited to land and improvements 3707
to land, grape seeds and vines, stakes, wiring, tractors, and 3708
other machinery used in the growth, harvesting, or producing of 3709
grapes. 3710

~~(2) "Related member" has the same meaning as in division~~ 3711
~~(A) (6) of section 5733.042 of the Revised Code, without regard~~ 3712
~~to division (B) of that section.~~ 3713

(B) A nonrefundable credit is allowed against a taxpayer's 3714
aggregate tax liability under section 5747.02 of the Revised 3715
Code for a taxpayer engaged in the business of producing grapes 3716
who purchases qualifying property on or after January 1, 1994. 3717
The amount of the credit equals ten per cent of the cost of 3718
purchasing and installing or constructing the qualifying 3719
property. The taxpayer shall claim the credit in the taxable 3720
year in which the qualifying property is placed in operation. 3721
The taxpayer shall claim the credit in the order required under 3722
section 5747.98 of the Revised Code. The taxpayer may carry 3723
forward for the ensuing seven taxable years any credit amount in 3724
excess of its aggregate tax due under section 5747.02 of the 3725
Revised Code in the taxable year in which the qualifying 3726
property is placed in operation after allowing for any other 3727

credits that precede the credit under this section in that 3728
order, and shall deduct the amount of the excess credit allowed 3729
in any such year from the balance carried forward to the next 3730
year. However, if the taxpayer is subject to a recapture tax 3731
under division (C) (1) of this section because the taxpayer 3732
disposes of the qualifying property or ceases to use it as 3733
qualifying property during the seven-year recapture period 3734
prescribed under that division, the taxpayer may claim no credit 3735
in connection with that property in the taxable year of disposal 3736
or cessation or any ensuing taxable year. 3737

(C) (1) If, within the seven-year period after qualifying 3738
property is placed in operation, the taxpayer disposes of the 3739
property or ceases to use it as qualifying property, the amount 3740
of tax otherwise imposed on the taxpayer by section 5747.02 of 3741
the Revised Code shall be increased in the taxable year in which 3742
the property is disposed of or ceases to be used as qualifying 3743
property. The amount of the increase shall equal the recapture 3744
percentage multiplied by the aggregate credit the taxpayer has 3745
been allowed under this section in all prior taxable years in 3746
connection with that property. The recapture percentage shall be 3747
determined in accordance with the following table: 3748

If the property is disposed of		3749
or ceases to be used as qualifying		3750
property within this amount of time	The recapture	3751
after being placed in operation:	percentage is:	3752
One year	100%	3753
Two years	86%	3754
Three years	72%	3755
Four years	58%	3756
Five years	44%	3757
Six years	30%	3758

Seven years	15%	3759
(2) Division (C) (1) of this section does not apply in any of the following circumstances:		3760 3761
(a) The qualifying property is transferred to a related member and the related member continues to use the property to produce grapes in this state;		3762 3763 3764
(b) The qualifying property is transferred to a family member and the family member continues to use the property to produce grapes in this state;		3765 3766 3767
(c) There is an involuntary disposition of the qualifying property. The involuntary disposition may be due to, without limitation, a bankruptcy, a receivership, or destruction by natural forces.		3768 3769 3770 3771
(D) The tax commissioner, by rule, may prescribe guidelines for taxpayers to use in determining if their property is qualifying property for the purposes of this section.		3772 3773 3774
Sec. 5747.30. (A) As used in this section:		3775
(1) "Commercial printer," "commercial printing," "contract for printing," "intangible property located at the premises of a commercial printer," and "printed material" have the same meanings as in division (D) of section 5733.09 of the Revised Code means a person primarily engaged in the business of <u>commercial printing, but does not include a person primarily engaged in the business of providing duplicating services using photocopy machines or other xerographic processes.</u>		3776 3777 3778 3779 3780 3781 3782 3783
(2) "Related member" has the same meaning as in division (A) (6) of section 5733.042 of the Revised Code without regard to division (B) of that section. <u>"Commercial printing" means</u>		3784 3785 3786

printing by one or more common processes such as letterpress, 3787
lithography, gravure, screen, or digital imaging, and includes 3788
related activities such as binding, platemaking, prepress 3789
operation, cartographic composition, and typesetting. 3790

(3) "Contract for printing" means an oral or written 3791
agreement for the purchase of printed materials produced by a 3792
commercial printer. 3793

(4) "Intangible property located at the premises of a 3794
commercial printer" means intangible property of any kind owned 3795
or licensed by a customer of the commercial printer and 3796
furnished to the commercial printer for use in commercial 3797
printing. 3798

(5) "Printed material" means any tangible personal 3799
property produced or processed by a commercial printer pursuant 3800
to a contract for printing. 3801

(B) Except as provided in divisions (C) and (D) of this 3802
section, a nonresident not otherwise subject to the tax imposed 3803
by section 5747.02 of the Revised Code for a taxable year does 3804
not become subject to that tax for the taxable year solely by 3805
reason of any one or more of the following occurring in this 3806
state during all or any portion of the taxable year: 3807

(1) Ownership by the nonresident, a pass-through entity in 3808
which the nonresident has directly or indirectly invested, or a 3809
related member of the nonresident, of tangible personal property 3810
or intangible property located during all or any portion of the 3811
taxable year at the premises of a commercial printer with which 3812
the nonresident, pass-through entity, or nonresident's related 3813
member has a contract for printing with respect to such property 3814
or the premises of a commercial printer's related member with 3815

which the nonresident, pass-through entity, or nonresident's 3816
related member has a contract for printing with respect to such 3817
property; 3818

(2) Sales by the nonresident, a pass-through entity in 3819
which the nonresident has directly or indirectly invested, or a 3820
related member of the nonresident, of property produced at and 3821
shipped or distributed from the premises of a commercial printer 3822
with which the nonresident, pass-through entity, or 3823
nonresident's related member has a contract for printing with 3824
respect to such property or the premises of a commercial 3825
printer's related member with which the nonresident, pass- 3826
through entity, or nonresident's related member has a contract 3827
for printing with respect to such property; 3828

(3) Activities of employees, officers, agents, or 3829
contractors of the nonresident, a pass-through entity in which 3830
the nonresident has directly or indirectly invested, or a 3831
related member of the nonresident, on the premises of a 3832
commercial printer with which the nonresident, pass-through 3833
entity, or nonresident's related member has a contract for 3834
printing or the premises of a commercial printer's related 3835
member with which the nonresident, pass-through entity, or 3836
nonresident's related member has a contract for printing, where 3837
such activities are directly and solely related to quality 3838
control, distribution, or printing services, or any combination 3839
thereof, performed by or at the direction of the commercial 3840
printer or the commercial printer's related member. 3841

(C) The exemption under this section does not apply to a 3842
taxable year during any portion of which the individual or 3843
estate directly or indirectly owned or invested in a pass- 3844
through entity which during any portion of the taxable year of 3845

the individual or estate owned or used all or a portion of its 3846
property or capital in this state or earned or received income 3847
in this state or was doing business in this state. The exemption 3848
under this section also does not apply to any individual or 3849
estate for a taxable year during any portion of which the 3850
individual or estate directly or indirectly owned or invested in 3851
a pass-through entity which during any portion of such taxable 3852
year was a related member to any entity which during any portion 3853
of such taxable year owned or used all or a portion of its 3854
property or capital in this state or earned or received income 3855
in this state or was doing business in this state. 3856

(D) With respect to allowing the exemption under this 3857
section, the tax commissioner shall be guided by the doctrines 3858
of "economic reality," "sham transaction," "step transaction," 3859
and "substance over form." A nonresident shall bear the burden 3860
of establishing by a preponderance of the evidence that any 3861
transaction giving rise to an exemption claimed under this 3862
section did not have as a principal purpose the avoidance of any 3863
portion of the tax imposed by section 5747.02 of the Revised 3864
Code. 3865

Application of the doctrines listed in this division is 3866
not limited to this section. 3867

Sec. 5747.331. (A) As used in this section: 3868

(1) "Borrower" means any person that receives a loan from 3869
the director of development under section 166.21 of the Revised 3870
Code, regardless of whether the borrower is subject to the tax 3871
imposed by section 5747.02 of the Revised Code. 3872

(2) ~~"Related member" has the same meaning as in section~~ 3873
~~5733.042 of the Revised Code.~~ 3874

~~(3)~~—"Qualified research and development loan payments" has 3875
the same meaning as in section 166.21 of the Revised Code. 3876

(B) Beginning with taxable years beginning in 2003, a 3877
nonrefundable credit is allowed against a taxpayer's aggregate 3878
tax liability under section 5747.02 of the Revised Code equal to 3879
a borrower's qualified research and development loan payments 3880
made during the calendar year that includes the last day of the 3881
taxable year for which the credit is claimed. The amount of the 3882
credit for a taxable year shall not exceed one hundred fifty 3883
thousand dollars. No taxpayer is entitled to claim a credit 3884
under this section unless it has obtained a certificate issued 3885
by the director of development under division (D) of section 3886
166.21 of the Revised Code and submits a copy of the certificate 3887
with its report for the taxable year. Failure to submit a copy 3888
of the certificate with the report does not invalidate a claim 3889
for a credit if the taxpayer submits a copy of the certificate 3890
within sixty days after the tax commissioner requests it. The 3891
credit shall be claimed in the order required under section 3892
5747.98 of the Revised Code. No credit shall be allowed under 3893
this section if the credit was available against the tax imposed 3894
by Chapter 5751. of the Revised Code except to the extent the 3895
credit was not applied against that tax. The credit, to the 3896
extent it exceeds the taxpayer's aggregate tax liability for the 3897
taxable year after allowance for any other credits that precede 3898
the credit under this section in that order, shall be carried 3899
forward to the next succeeding taxable year or years until fully 3900
used. 3901

(C) A borrower entitled to a credit under this section may 3902
assign the credit, or a portion thereof, to any of the 3903
following: 3904

(1) A related member of that borrower;	3905
(2) The owner or lessee of the eligible research and development project;	3906 3907
(3) A related member of the owner or lessee of the eligible research and development project.	3908 3909
A borrower making an assignment under this division shall provide written notice of the assignment to the tax commissioner and the director of development, in such form as the tax commissioner prescribes, before the credit that was assigned is used. The assignor may not claim the credit to the extent it was assigned to an assignee. The assignee may claim the credit only to the extent the assignor has not claimed it.	3910 3911 3912 3913 3914 3915 3916
(D) If any taxpayer is a shareholder in an S corporation, a partner in a partnership, or a member in a limited liability company treated as a partnership for federal income tax purposes, the taxpayer shall be allowed the taxpayer's distributive or proportionate share of the credit available through the S corporation, partnership, or limited liability company.	3917 3918 3919 3920 3921 3922 3923
(E) The aggregate credit against the taxes imposed by section 5747.02 and Chapter 5751. of the Revised Code that may be claimed under this section and section 5751.52 of the Revised Code by a borrower as a result of qualified research and development loan payments attributable during a calendar year to any one loan shall not exceed one hundred fifty thousand dollars.	3924 3925 3926 3927 3928 3929 3930
<u>Sec. 5747.40. (A) Each pass-through entity required to file a composite return pursuant to division (A) (1) of section 5747.41 of the Revised Code shall compute the tax due, before</u>	3931 3932 3933

applying any business credits, as follows: 3934

(1) Aggregating the distributive shares of each of the 3935
pass-through entity's direct investors that are pass-through 3936
entities, estates, trusts, or nonresident individuals. A 3937
resident individual investor may elect to include the investor's 3938
distributive share in the amount aggregated under this division. 3939

(2) Adjusting the aggregate amount calculated under 3940
division (A)(1) of this section as follows: 3941

(a) Add all expenses, other than amounts described in 3942
division (A)(2)(b) of this section, that the pass-through entity 3943
paid to or incurred with respect to direct or indirect 3944
transactions with one or more related members, excluding the 3945
cost of goods sold calculated in accordance with section 263A of 3946
the Internal Revenue Code and United States department of 3947
treasury regulations issued thereunder. 3948

(b) Add all guaranteed payments or compensation paid to 3949
investors by the pass-through entity if such payments or such 3950
compensation are paid to an investor who, at any time during the 3951
pass-through entity's taxable year, holds at least a twenty per 3952
cent direct or indirect interest in the profits or capital of 3953
the entity. 3954

(c) Add all recognized losses, other than losses from 3955
sales of inventory the cost of which is calculated in accordance 3956
with section 263A of the Internal Revenue Code and United States 3957
department of treasury regulations issued thereunder, with 3958
respect to all direct or indirect transactions with one or more 3959
related members. Losses from the sales of inventory shall be 3960
allowed only to the extent calculated in accordance with section 3961
482 of the Internal Revenue Code and United States department of 3962

<u>treasury regulations issued thereunder.</u>	3963
<u>(d) Add interest or dividends on obligations or securities</u>	3964
<u>of any state or of any political subdivision or authority of any</u>	3965
<u>state, other than this state and its subdivisions and</u>	3966
<u>authorities.</u>	3967
<u>(e) Add interest or dividends on obligations of any</u>	3968
<u>authority, commission, instrumentality, territory, or possession</u>	3969
<u>of the United States to the extent that the interest or</u>	3970
<u>dividends are exempt from federal income taxes but not from</u>	3971
<u>state income taxes.</u>	3972
<u>(f) Add or deduct the amount the taxpayer would be</u>	3973
<u>required to add or deduct under divisions (A) (18) and (19) of</u>	3974
<u>section 5747.01 of the Revised Code if the taxpayer's income</u>	3975
<u>were computed in the same manner as an individual's Ohio</u>	3976
<u>adjusted gross income is computed under that section.</u>	3977
<u>(g) Add any loss or deduct any gain, in the same manner as</u>	3978
<u>an individual would in computing the individual's Ohio adjusted</u>	3979
<u>gross income, resulting from the sale, exchange, or other</u>	3980
<u>disposition of public obligations.</u>	3981
<u>(h) Deduct interest or dividends on obligations of the</u>	3982
<u>United States and its territories and possessions or of any</u>	3983
<u>authority, commission, or instrumentality of the United States</u>	3984
<u>to the extent that the interest or dividends are included in</u>	3985
<u>federal adjusted gross income but exempt from state income taxes</u>	3986
<u>under the laws of the United States.</u>	3987
<u>(i) Deduct any wage or salary expense, in the same manner</u>	3988
<u>as an individual would in computing the individual's Ohio</u>	3989
<u>adjusted gross income, that is not otherwise allowable as a</u>	3990
<u>deduction but that would have been allowable as a deduction in</u>	3991

computing federal taxable income for the taxable year had the 3992
targeted jobs credit allowed under sections 38, 51, and 52 of 3993
the Internal Revenue Code not been in effect. 3994

(j) Deduct any interest or interest equivalent, in the 3995
same manner as an individual would in computing the individual's 3996
Ohio adjusted gross income, on public obligations and purchase 3997
obligations. 3998

(3) Allocating and apportioning to this state the adjusted 3999
amount obtained under division (A) (2) of this section in 4000
accordance with sections 5747.20 to 5747.231 of the Revised 4001
Code. 4002

(4) Multiplying the result obtained in division (A) (3) of 4003
this section by the rate specified in division (A) (2) (b) of 4004
section 5747.02 of the Revised Code. 4005

(B) A pass-through entity's method of accounting shall be 4006
the same as its method of accounting for federal income tax 4007
purposes. If a pass-through entity's method of accounting is 4008
changed for federal income tax purposes, its method of 4009
accounting for purposes of this chapter shall be changed 4010
accordingly. In the absence of any method of accounting for 4011
federal income tax purposes, income shall be computed under such 4012
method that the tax commissioner deems reasonably reflects 4013
income. 4014

(C) (1) Notwithstanding division (A) of this section, if, 4015
before the due date of the return, a pass-through entity 4016
receives from a direct or indirect investor documentation 4017
showing the investor is neither subject to the tax imposed under 4018
section 5747.02 of the Revised Code for the entity's entire 4019
taxable year nor is a pass-through entity, the entity required 4020

to file a return under this section is not required to include, 4021
in the calculation under division (A) (1) of this section, the 4022
distributive share of income of the investor not subject to the 4023
tax. 4024

(2) A pass-through entity shall not be subject to any 4025
interest or interest penalties for failure to include amounts in 4026
its calculation of taxes under division (C) (1) of this section 4027
or of estimated taxes if the tax commissioner, upon request, 4028
receives the documentation described in that division. 4029

(D) Investors included on a return filed pursuant to 4030
section 5747.41 of the Revised Code are not entitled to the 4031
exemption allowed under section 5747.025 of the Revised Code, 4032
and are entitled only to their distributive share of business 4033
credits. 4034

(E) (1) For the purposes of sections 5747.40 to 5747.44 of 4035
the Revised Code, "business credits" means the following 4036
credits: 4037

(a) The campaign contribution credit under section 5747.29 4038
of the Revised Code; 4039

(b) The nonrefundable job retention credit under division 4040
(B) of section 5747.058 of the Revised Code; 4041

(c) The enterprise zone credit under section 5709.66 of 4042
the Revised Code; 4043

(d) The credit for purchases of qualifying grape 4044
production property under section 5747.28 of the Revised Code; 4045

(e) The small business investment credit under section 4046
5747.81 of the Revised Code; 4047

(f) The enterprise zone credits under section 5709.65 of 4048

<u>the Revised Code;</u>	4049
<u>(g) The research and development credit under section 5747.331 of the Revised Code;</u>	4050 4051
<u>(h) The credit for rehabilitating an historic building under section 5747.76 of the Revised Code;</u>	4052 4053
<u>(i) The refundable credit for financial institution taxes paid by a pass-through entity granted under section 5747.65 of the Revised Code;</u>	4054 4055 4056
<u>(j) The refundable credit for rehabilitating an historic building under section 5747.76 of the Revised Code;</u>	4057 4058
<u>(k) The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;</u>	4059 4060 4061
<u>(l) The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;</u>	4062 4063 4064 4065
<u>(m) The refundable motion picture production credit under section 5747.66 of the Revised Code;</u>	4066 4067
<u>(n) The refundable credits for taxes paid by a pass-through entity under division (C) of section 5747.42 of the Revised Code.</u>	4068 4069 4070
<u>(2) Nothing in this chapter allows any credit provided in this chapter to be claimed more than once, or to provide for any deduction or credit that would not be allowable if an investor were to file an annual return.</u>	4071 4072 4073 4074
<u>(3) Nothing in this section changes the order in which a</u>	4075

pass-through entity claims business credits from the order 4076
prescribed in section 5747.98 of the Revised Code. 4077

Sec. 5747.41. (A) (1) Each pass-through entity having nexus 4078
with this state shall file a single composite tax return on 4079
behalf of the entity's investors and shall compute the tax due 4080
under section 5747.40 of the Revised Code, unless either of the 4081
following conditions apply: 4082

(a) All of the investors are resident individuals; 4083

(b) None of the investors is either (i) a pass-through 4084
entity or (ii) a person subject to the tax imposed under section 4085
5747.02 of the Revised Code. 4086

(2) Each pass-through entity having nexus with this state 4087
shall file an informational return on behalf of the entity's 4088
investors unless any of the following conditions apply: 4089

(a) The entity is required to file a composite return 4090
under division (A) (1) of this section; 4091

(b) None of the investors is a person subject to the tax 4092
imposed under section 5747.02 of the Revised Code; 4093

(c) All of the investors are resident individuals and the 4094
entity did not claim any of the business credits listed in 4095
division (E) of section 5747.40 of the Revised Code. 4096

(B) Each of the returns required by division (A) of this 4097
section shall contain the following information for each of the 4098
pass-through entity's investors: 4099

(1) Investor name and type; 4100

(2) Investor social security number, federal employer 4101
identification number, or any other identifying number requested 4102

by the tax commissioner; 4103

(3) Investor ownership percentage and, if different, 4104
investor distribution percentage; 4105

(4) Whether or not the investor is exempt from the 4106
calculation required under division (A) (1) of section 5747.40 of 4107
the Revised Code; 4108

(5) The allocation percentage for any business credit 4109
earned by the pass-through entity; 4110

(6) Any other information prescribed by the commissioner. 4111

(C) (1) Any nonresident individual investor directly or 4112
indirectly included on a return required to be filed under 4113
division (A) (1) of this section may elect to file an annual 4114
return under section 5747.08 of the Revised Code and to pay the 4115
tax imposed under section 5747.02 of the Revised Code. 4116

(2) Nothing in this section exempts a resident individual 4117
investor, directly or indirectly included on a return filed 4118
under division (A) of this section, from the individual filing 4119
requirement of section 5747.08 of the Revised Code. 4120

(3) Nothing in sections 5747.40 to 5747.44 of the Revised 4121
Code shall preclude the tax commissioner from requiring that 4122
investors included on a return under division (A) of this 4123
section file any return or make any payment of tax or related 4124
interest, penalty, or penalty interest required by this chapter. 4125

(D) A pass-through entity filing a composite return 4126
required under division (A) (1) of this section shall be liable 4127
for any additional taxes, interest, interest penalty, or 4128
penalties imposed by this chapter if the tax commissioner finds 4129
that the composite return does not reflect the correct tax due 4130

by the pass-through entity investors covered by that return. 4131
Nothing in this division limits or alters the liability, if any, 4132
imposed on pass-through entity investors for unpaid or underpaid 4133
taxes, interest, interest penalty, or penalties as a result of 4134
the pass-through entity's filing under this section. For the 4135
purposes of this division, "correct tax due" means the tax that 4136
would have been paid by the pass-through entity had the 4137
composite return been filed in a manner reflecting the 4138
commissioner's findings. Nothing in this section shall be 4139
construed to make or hold a pass-through entity liable for tax 4140
attributable to a pass-through entity investor's income from a 4141
source other than the pass-through entity electing to file the 4142
composite return. 4143

Sec. 5747.42. (A) (1) Except as provided in division (A) (2) 4144
of this section, each return required to be filed under division 4145
(A) (1) of section 5747.41 of the Revised Code shall be 4146
accompanied by a single check drawn by the pass-through entity, 4147
or by an electronic submission required under section 5747.44 of 4148
the Revised Code, for the full amount shown to be due on the 4149
return. 4150

(2) If the amount calculated under division (A) (1) of 4151
section 5747.40 of the Revised Code, less the business credits 4152
enumerated in divisions (E) (1) (a) to (i) of that section, is 4153
less than two hundred fifty dollars, no payment need accompany 4154
the return. 4155

(B) Each pass-through entity required to file a return 4156
under division (A) (1) of section 5747.41 of the Revised Code 4157
shall also file and pay estimated taxes, in accordance with 4158
section 5747.09 of the Revised Code, on behalf of the pass- 4159
through entity's investors with regard to the income included on 4160

that return. 4161

(C) (1) Except as provided in division (C) (2) of this 4162
section, a direct or indirect investor that either is required 4163
to file an annual return under division (A) (1) of section 4164
5747.41 of the Revised Code, or that elects to file an annual 4165
return under division (C) of that section, may claim a 4166
refundable credit equal to the investor's proportionate share of 4167
the tax actually paid by the pass-through entity on behalf of 4168
the investor. 4169

(2) An indirect investor shall not claim a credit for tax 4170
paid by a pass-through entity on behalf of the investor if an 4171
intermediate investor claims a credit that includes that amount. 4172
As used in this division, "intermediate investor" means an 4173
investor that has a direct or indirect investment interest in an 4174
entity, and in which one or more persons holds an investment 4175
interest. 4176

(D) The investor shall claim the credit for the investor's 4177
taxable year which ends in the taxable year of the pass-through 4178
entity. 4179

(E) For the purpose of computing any interest, penalty, or 4180
interest penalty, the investor shall be deemed to have paid tax 4181
in an amount equal to the refundable credit allowed by this 4182
section on the day that the pass-through entity paid the tax or 4183
estimated tax giving rise to the credit. 4184

(F) Nothing in sections 5747.40 to 5747.44 of the Revised 4185
Code prohibits an indirect investor who is not subject to the 4186
tax imposed under section 5747.02 of the Revised Code, but for 4187
whom taxes were paid on the investor's behalf, from filing a 4188
refund claim pursuant to section 5747.11 of the Revised Code. 4189

(G) Nothing in sections 5747.40 to 5747.44 of the Revised Code allows an investor or pass-through entity any additional deduction or credit, other than the credit provided by division (C) of this section, solely on account of the entity's filing a return in accordance with section 5747.41 of the Revised Code. 4190
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Sec. 5747.43. (A) The retirement from business or voluntary dissolution of a pass-through entity does not exempt the entity from the requirements of sections 5747.40 to 5747.44 of the Revised Code or from liability for the tax imposed under this chapter. 4195
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(B) Notwithstanding any other provisions of this chapter, if any pass-through entity subject to the tax imposed under section 5747.02 of the Revised Code sells its business or stock of merchandise, or quits its business, the taxes required to be paid before that time, together with any interest or penalty thereon, become due and payable immediately. The entity shall make a final return within thirty days after the filing due date of the entity's final federal tax return. 4200
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Sec. 5747.44. (A) If a ~~qualifying entity's total liability for taxes imposed under sections 5733.41 and 5747.41~~ ~~pass-through entity~~ required to file a return under division (A) (1) of section 5747.41 of the Revised Code ~~exceeds~~ ~~reports tax due exceeding~~ one hundred eighty thousand dollars for ~~the second~~ ~~preceding~~ ~~qualifying~~ ~~two consecutive taxable year~~years, the ~~qualifying~~ entity shall make all payments required under sections 5747.09 and 5747.42 ~~and 5747.43~~ of the Revised Code ~~in subsequent taxable years by electronic funds transfer as prescribed by this section and rules adopted by the treasurer of state under section 113.061 of the Revised Code~~ means as prescribed or as otherwise permitted by the tax commissioner. 4208
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The ~~tax~~-commissioner shall notify each ~~qualifying~~-entity 4220
required to remit taxes by electronic ~~funds transfer means~~ of 4221
the entity's obligation to do so, and shall maintain an updated 4222
list of those entities, ~~and shall provide the list and any~~ 4223
~~additions thereto or deletions therefrom to the treasurer of~~ 4224
~~state~~. Failure by the tax commissioner to notify a ~~qualifying an~~ 4225
entity subject to this section to remit taxes by electronic 4226
~~funds transfer means~~ does not relieve the ~~qualifying~~-entity of 4227
its ~~obligation to remit taxes by electronic funds transfer~~ 4228
obligations under this section. 4229

(B) Except as otherwise provided in this division, the 4230
payment of taxes by electronic ~~funds transfer means~~ does not 4231
affect a ~~qualifying an~~-entity's obligation to file the ~~returns~~- 4232
return required under ~~sections 5747.42 and 5747.43~~ section 4233
5747.41 of the Revised Code. The treasurer of state, in 4234
consultation with the tax commissioner, may adopt rules in 4235
addition to the rules adopted under section 113.061 of the 4236
Revised Code governing the format for filing returns by 4237
~~qualifying~~-entities that remit taxes by electronic ~~funds~~ 4238
transfer means. The rules may provide for the filing of returns 4239
at less frequent intervals than otherwise required if the 4240
treasurer of state and the ~~tax~~-commissioner determine that 4241
remittance by electronic funds transfer warrants less frequent 4242
filing of returns. 4243

(C) ~~A qualifying~~ An entity required by this section to 4244
remit taxes by electronic ~~funds transfer means~~ may apply to the 4245
~~treasurer of state tax commissioner~~ in the manner prescribed or 4246
otherwise permitted by the treasurer of state commissioner to be 4247
excused from that requirement. The ~~treasurer of state~~ 4248
commissioner may excuse the ~~qualifying~~-entity from remittance by 4249
electronic ~~funds transfer means~~ for good cause shown for the 4250

period of time requested by the ~~qualifying~~ entity or for a 4251
portion of that period. ~~The treasurer of state shall notify the~~ 4252
~~tax commissioner and the qualifying entity of the treasurer of~~ 4253
~~state's decision as soon as is practicable.~~ 4254

(D) If a ~~qualifying~~ an entity required by this section to 4255
remit taxes by electronic ~~funds transfer~~ means remits those 4256
taxes by some means other than ~~by electronic funds transfer as~~ 4257
~~those prescribed or otherwise permitted by this section and the~~ 4258
~~rules adopted by the treasurer of state, the tax commissioner,~~ 4259
and the ~~treasurer of state~~ commissioner determines that such 4260
failure was not due to reasonable cause or was due to willful 4261
neglect, the ~~treasurer of state shall notify the tax~~ 4262
~~commissioner of the failure to remit by electronic funds~~ 4263
~~transfer and shall provide the commissioner with any information~~ 4264
~~used in making that determination. The tax commissioner may~~ 4265
collect an additional charge by assessment in the manner 4266
prescribed by section 5747.13 of the Revised Code. The 4267
additional charge shall equal five per cent of the amount of the 4268
taxes required to be paid by electronic ~~funds transfer~~ means, but 4269
shall not exceed five thousand dollars. Any additional charge 4270
assessed under this section is in addition to any other penalty 4271
or charge imposed under this chapter ~~or Chapter 5733. of the~~ 4272
~~Revised Code, and shall be considered as revenue arising from~~ 4273
~~the taxes imposed under sections 5733.41 and 5747.41 of the~~ 4274
~~Revised Code. The tax commissioner may remit all or a portion of~~ 4275
such a charge and may adopt rules governing such remission. 4276

No additional charge shall be assessed under this division 4277
against a ~~qualifying~~ an entity that has been notified of its 4278
obligation to remit taxes under this section and that remits its 4279
first two tax payments after such notification by some means 4280
other than ~~electronic funds transfer~~ those prescribed or 4281

otherwise permitted by the commissioner. The additional charge 4282
may be assessed upon the remittance of any subsequent tax 4283
payment that the ~~qualifying~~ entity remits by some other means 4284
~~other than electronic funds transfer.~~ 4285

(E) The tax commissioner may promulgate rules as necessary 4286
to implement this section. 4287

Sec. 5747.65. (A) There is hereby allowed a ~~refundable~~ 4288
nonrefundable credit against a taxpayer's aggregate tax 4289
liability under section 5747.02 of the Revised Code. The amount 4290
of the credit shall equal the taxpayer's proportionate share of 4291
the lesser of either the tax due or the tax paid for the tax 4292
imposed by section 5726.02 of the Revised Code by a pass-through 4293
entity for the pass-through entity's taxable year ending in the 4294
taxpayer's taxable year. 4295

(B) The taxpayer shall claim the credit for the taxpayer's 4296
taxable year that includes the last day of the pass-through 4297
entity's taxable year. For purposes of making tax payments under 4298
this chapter, taxes equal to the amount of the credit shall be 4299
considered to be paid by the taxpayer on the day the pass- 4300
through entity pays to the treasurer of state the amount due for 4301
the tax imposed by section 5726.02 of the Revised Code. 4302

The credit shall be claimed in the order required under 4303
section 5747.98 of the Revised Code. The credit, to the extent 4304
it exceeds the taxpayer's aggregate amount of tax otherwise due 4305
under section 5747.02 of the Revised Code after deduction of all 4306
other credits in that order, shall be carried forward to the 4307
next succeeding taxable year or years until fully used. 4308

(C) In claiming the credit and determining the taxpayer's 4309
proportionate share of the tax due and the tax paid by a pass- 4310

through entity, the taxpayer shall follow the concepts set forth 4311
in subchapters J and K of the Internal Revenue Code. 4312

~~The credit shall be claimed in the order required under 4313
section 5747.98 of the Revised Code. If the amount of the credit 4314
exceeds the aggregate amount of tax otherwise due under section 4315
5747.02 of the Revised Code after deduction of all other credits 4316
in that order, the taxpayer is entitled to a refund of the 4317
excess. 4318~~

(D) (1) If a credit authorized by this section is affected 4319
by a change in the pass-through entity's tax liability under 4320
section 5726.02 of the Revised Code, the taxpayer shall report 4321
the change within sixty days of the date the change becomes 4322
final. If the amount is not reported within sixty days of that 4323
date, the tax commissioner may assess the taxpayer in accordance 4324
with section 5747.13 of the Revised Code. 4325

(2) The adjustment of a credit authorized by this section 4326
shall not reopen the computation of the taxpayer's tax liability 4327
under this chapter from a previously filed return no longer 4328
subject to assessment except to the extent that such liability 4329
is affected by the adjustment to the credit. 4330

Sec. 5747.98. (A) To provide a uniform procedure for 4331
calculating a taxpayer's aggregate tax liability under section 4332
5747.02 of the Revised Code, a taxpayer shall claim any credits 4333
to which the taxpayer is entitled in the following order: 4334

(1) Either the retirement income credit under division (B) 4335
of section 5747.055 of the Revised Code or the lump sum 4336
retirement income credits under divisions (C), (D), and (E) of 4337
that section; 4338

(2) Either the senior citizen credit under division (F) of 4339

section 5747.055 of the Revised Code or the lump sum	4340
distribution credit under division (G) of that section;	4341
(3) The dependent care credit under section 5747.054 of	4342
the Revised Code;	4343
(4) The low-income credit under section 5747.056 of the	4344
Revised Code;	4345
(5) The credit for displaced workers who pay for job	4346
training under section 5747.27 of the Revised Code;	4347
(6) The campaign contribution credit under section 5747.29	4348
of the Revised Code;	4349
(7) The twenty-dollar personal exemption credit under	4350
section 5747.022 of the Revised Code;	4351
(8) The joint filing credit under division (G) of section	4352
5747.05 of the Revised Code;	4353
(9) The earned income credit under section 5747.71 of the	4354
Revised Code;	4355
(10) The credit for adoption of a minor child under	4356
section 5747.37 of the Revised Code;	4357
(11) The nonrefundable job retention credit under division	4358
(B) of section 5747.058 of the Revised Code;	4359
(12) The enterprise zone credit under section 5709.66 of	4360
the Revised Code;	4361
(13) The ethanol plant investment credit under section	4362
5747.75 of the Revised Code;	4363
(14) The credit for purchases of qualifying grape	4364
production property under section 5747.28 of the Revised Code;	4365

(15) <u>(14)</u> The small business investment credit under section 5747.81 of the Revised Code;	4366 4367
<u>(15) The credit for financial institution taxes paid by a pass-through entity granted under section 5747.65 of the Revised Code;</u>	4368 4369 4370
(16) The enterprise zone credits under section 5709.65 of the Revised Code;	4371 4372
(17) The research and development credit under section 5747.331 of the Revised Code;	4373 4374
(18) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	4375 4376
(19) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	4377 4378
(20) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	4379 4380
(21) The refundable motion picture production credit under section 5747.66 of the Revised Code;	4381 4382
(22) The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;	4383 4384 4385
(23) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	4386 4387
(24) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) <u>(C)</u> of section 5747.08 <u>5747.42</u> of the Revised Code;	4388 4389 4390
(25) <u>(24)</u> The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture	4391 4392

capital program under sections 150.01 to 150.10 of the Revised Code;	4393 4394
(26) (25) The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	4395 4396
(27) The refundable credit for financial institution taxes paid by a pass-through entity granted under section 5747.65 of the Revised Code.	4397 4398 4399
(B) For any credit, except the refundable credits enumerated in this section and the credit granted under division (H) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the taxpayer's aggregate amount of tax due under section 5747.02 of the Revised Code, after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.	4400 4401 4402 4403 4404 4405 4406 4407 4408 4409 4410
Sec. 5748.01. As used in this chapter:	4411
(A) "School district income tax" means an income tax adopted under one of the following:	4412 4413
(1) Former section 5748.03 of the Revised Code as it existed prior to its repeal by Amended Substitute House Bill No. 291 of the 115th general assembly;	4414 4415 4416
(2) Section 5748.03 of the Revised Code as enacted in Substitute Senate Bill No. 28 of the 118th general assembly;	4417 4418
(3) Section 5748.08 of the Revised Code as enacted in Amended Substitute Senate Bill No. 17 of the 122nd general	4419 4420

assembly;	4421
(4) Section 5748.021 of the Revised Code;	4422
(5) Section 5748.081 of the Revised Code;	4423
(6) Section 5748.09 of the Revised Code.	4424
(B) "Individual" means an individual subject to the tax levied by section 5747.02 of the Revised Code.	4425 4426
(C) "Estate" means an estate subject to the tax levied by section 5747.02 of the Revised Code.	4427 4428
(D) "Taxable year" means a taxable year as defined in division (M) of section 5747.01 of the Revised Code.	4429 4430
(E) "Taxable income" means:	4431
(1) In the case of an individual, one of the following, as specified in the resolution imposing the tax:	4432 4433
(a) Ohio adjusted gross income for the taxable year as defined in division (A) of section 5747.01 of the Revised Code, less the exemptions provided by section 5747.02 of the Revised Code, plus any amount deducted under division (A) (31) <u>(29)</u> of section 5747.01 of the Revised Code for the taxable year;	4434 4435 4436 4437 4438
(b) Wages, salaries, tips, and other employee compensation to the extent included in Ohio adjusted gross income as defined in section 5747.01 of the Revised Code, and net earnings from self-employment, as defined in section 1402(a) of the Internal Revenue Code, to the extent included in Ohio adjusted gross income.	4439 4440 4441 4442 4443 4444
(2) In the case of an estate, taxable income for the taxable year as defined in division (S) of section 5747.01 of the Revised Code.	4445 4446 4447

(F) "Resident" of the school district means:	4448
(1) An individual who is a resident of this state as defined in division (I) of section 5747.01 of the Revised Code during all or a portion of the taxable year and who, during all or a portion of such period of state residency, is domiciled in the school district or lives in and maintains a permanent place of abode in the school district;	4449 4450 4451 4452 4453 4454
(2) An estate of a decedent who, at the time of death, was domiciled in the school district.	4455 4456
(G) "School district income" means:	4457
(1) With respect to an individual, the portion of the taxable income of an individual that is received by the individual during the portion of the taxable year that the individual is a resident of the school district and the school district income tax is in effect in that school district. An individual may have school district income with respect to more than one school district.	4458 4459 4460 4461 4462 4463 4464
(2) With respect to an estate, the taxable income of the estate for the portion of the taxable year that the school district income tax is in effect in that school district.	4465 4466 4467
(H) "Taxpayer" means an individual or estate having school district income upon which a school district income tax is imposed.	4468 4469 4470
(I) "School district purposes" means any of the purposes for which a tax may be levied pursuant to division (A) of section 5705.21 of the Revised Code, including the combined purposes authorized by section 5705.217 of the Revised Code.	4471 4472 4473 4474
Section 2. That existing sections 901.13, 5733.01,	4475

5733.04, 5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 5747.011, 4476
5747.02, 5747.03, 5747.08, 5747.082, 5747.11, 5747.13, 5747.132, 4477
5747.14, 5747.15, 5747.20, 5747.21, 5747.212, 5747.22, 5747.231, 4478
5747.28, 5747.30, 5747.331, 5747.40, 5747.41, 5747.42, 5747.43, 4479
5747.44, 5747.65, 5747.98, and 5748.01 and sections 5733.0611, 4480
5733.40, 5733.401, 5733.402, 5733.41, 5747.012, 5747.059, 4481
5747.221, 5747.401, 5747.45, 5747.451, 5747.453, and 5747.75 of 4482
the Revised Code are hereby repealed. 4483

Section 3. The amendment by this act of division (DD) of 4484
section 5747.01 of the Revised Code is intended to clarify and 4485
be declaratory of the law as it existed before the amendment. 4486

Section 4. The amendment, enactment, or repeal by this act 4487
of sections 901.13, 5733.01, 5733.04, 5733.057, 5733.0611, 4488
5733.09, 5733.12, 5733.40, 5733.401, 5733.402, 5733.41, 5733.98, 4489
5747.01, 5747.011, 5747.012, 5747.02, 5747.03, 5747.059, 4490
5747.08, 5747.082, 5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 4491
5747.20, 5747.21, 5747.212, 5747.22, 5747.221, 5747.231, 4492
5747.28, 5747.30, 5747.331, 5747.40, 5747.401, 5747.41, 5747.42, 4493
5747.43, 5747.44, 5747.45, 5747.451, 5747.453, 5747.65, 5747.75, 4494
5747.98, and 5748.01 of the Revised Code shall apply to taxable 4495
years ending on or after January 1, 2017. Those sections as they 4496
existed before the effective date of this act continue to apply 4497
to taxable years ending before January 1, 2017. 4498