

As Reported by the Senate Ways and Means Committee

131st General Assembly

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Sub. S. B. No. 288

Senator Eklund

Cosponsors: Senators LaRose, Seitz, Patton, Beagle

A BILL

To amend sections 901.13, 5733.01, 5733.04, 1
5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 2
5747.012, 5747.03, 5747.08, 5747.082, 5747.11, 3
5747.13, 5747.132, 5747.14, 5747.15, 5747.20, 4
5747.21, 5747.212, 5747.22, 5747.221, 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, 5747.059, 5747.40, 5747.401, 10
5747.41, 5747.42, 5747.43, 5747.45, 5747.451, 11
5747.453, and 5747.75 of the Revised Code to 12
revise the law governing how taxes on income 13
from pass-through entities is to be reported and 14
paid by the entities and their investors. 15

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

Section 1. That sections 901.13, 5733.01, 5733.04, 16
5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 5747.012, 5747.03, 17
5747.08, 5747.082, 5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 18
5747.20, 5747.21, 5747.212, 5747.22, 5747.221, 5747.231, 19

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

Sec. 901.13. (A) As used in this section: 23

(1) "Ethanol" has the same meaning as in section 5733.46 24
of the Revised Code. 25

(2) "Facility" means an ethanol production plant that will 26
be located in this state. 27

(B) There is hereby created the ethanol incentive board. 28
The board shall consist of the following five members: the 29
director of agriculture, who shall serve as chairperson of the 30
board, the director of development, the executive director of 31
the Ohio air quality development authority, one member appointed 32
by the speaker of the house of representatives, and one member 33
appointed by the president of the senate. Initial appointments 34
to the board shall be made within thirty days of ~~the effective~~ 35
~~date of this section~~ March 21, 2002. Vacancies shall be filled 36
in the same manner provided for original appointments. Members 37
of the board shall serve without compensation. The board shall 38
meet and conduct its business as directed by the chairperson. 39
The board shall cease to exist January 1, 2014. 40

(C) The board's sole duty is to review any application 41
that is submitted to it under this section. The board shall 42
approve an application only if it determines, by the affirmative 43
vote of all members of the board, that the applicant's business 44
plan for a facility meets the requirements established by 45
division (D) of this section. 46

(D) The owner of a facility may apply to the board, on an 47
application provided by the director of agriculture, for 48

approval of the facility's business plan under this section. 49

Within sixty days of receipt of an application, the board shall 50

determine whether the applicant's business plan meets the 51

following requirements: 52

(1) The business plan is for the construction and 53

operation of a facility. 54

(2) The business plan contains detailed information 55

regarding: 56

(a) The availability and price of corn in the area where 57

the facility will be located; 58

(b) The availability and cost of energy needed for 59

operation of the facility; 60

(c) The availability of water and waste disposal systems 61

in the area where the facility will be located; 62

(d) The availability of labor and a qualified site manager 63

for the facility. 64

(3) The business plan analyzes any proposed marketing 65

agreements for the products produced by the facility. 66

(4) The facility to be constructed and operated under the 67

business plan is majority-owned by Ohio farmers or will be prior 68

to the first day the facility commences production. 69

(5) The business plan meets any other requirements 70

established by the board under rules adopted in accordance with 71

division (G) of this section. 72

The board shall issue a certificate of approval for each 73

application approved under this section, and any taxpayer that 74

invests money in the facility for which a business plan has been 75

approved may claim a tax credit for such investment under 76
section 5733.46 or former section 5747.75 of the Revised Code. 77

(E) Any business plan submitted to the board under this 78
section is not a public record subject to section 149.43 of the 79
Revised Code. 80

(F) The board shall notify the tax commissioner of any 81
certificate of approval issued under this section, within ten 82
days of its issuance. 83

(G) The director of agriculture, in consultation with the 84
director of development and in accordance with Chapter 119. of 85
the Revised Code, shall adopt rules necessary to implement this 86
section, including rules prescribing procedures and forms for 87
administering this section. 88

(H) The ethanol incentive board created by this section is 89
not an agency for purposes of ~~section~~ sections 101.82 to 101.87 90
of the Revised Code. 91

Sec. 5733.01. (A) The tax provided by this chapter for 92
domestic corporations shall be the amount charged against each 93
corporation organized for profit under the laws of this state 94
and each nonprofit corporation organized pursuant to Chapter 95
1729. of the Revised Code, except as provided in sections 96
5733.09 and 5733.10 of the Revised Code, for the privilege of 97
exercising its franchise during the calendar year in which that 98
amount is payable, and the tax provided by this chapter for 99
foreign corporations shall be the amount charged against each 100
corporation organized for profit and each nonprofit corporation 101
organized or operating in the same or similar manner as 102
nonprofit corporations organized under Chapter 1729. of the 103
Revised Code, under the laws of any state or country other than 104

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

(B) A corporation is subject to the tax imposed by section 113
5733.06 of the Revised Code for each calendar year prior to 2014 114
that it is so organized, doing business, owning or using a part 115
or all of its capital or property, holding a certificate of 116
compliance, or otherwise having nexus in or with this state 117
under the Constitution of the United States, on the first day of 118
January of that calendar year. No credit authorized by this 119
chapter may be claimed for tax year 2014 or any tax year 120
thereafter. 121

(C) Any corporation subject to this chapter that is not 122
subject to the federal income tax shall file its returns and 123
compute its tax liability as required by this chapter in the 124
same manner as if that corporation were subject to the federal 125
income tax. 126

(D) For purposes of this chapter, a federally chartered 127
financial institution shall be deemed to be organized under the 128
laws of the state within which its principal office is located. 129

(E) For purposes of this chapter, any person, as defined 130
in section 5701.01 of the Revised Code, shall be treated as a 131
corporation if the person is classified for federal income tax 132
purposes as an association taxable as a corporation, and an 133
equity interest in the person shall be treated as capital stock 134

of the person.	135
(F) For the purposes of this chapter, "disregarded entity"	136
has the same meaning as in division (D) of section 5745.01 of	137
the Revised Code.	138
(1) A person's interest in a disregarded entity, whether	139
held directly or indirectly, shall be treated as the person's	140
ownership of the assets and liabilities of the disregarded	141
entity, and the income, including gain or loss, shall be	142
included in the person's net income under this chapter.	143
(2) Any sale, exchange, or other disposition of the	144
person's interest in the disregarded entity, whether held	145
directly or indirectly, shall be treated as a sale, exchange, or	146
other disposition of the person's share of the disregarded	147
entity's underlying assets or liabilities, and the gain or loss	148
from such sale, exchange, or disposition shall be included in	149
the person's net income under this chapter.	150
(3) The disregarded entity's payroll, property, and sales	151
factors shall be included in the person's factors.	152
(G) The tax a corporation is required to pay under this	153
chapter shall be as follows:	154
(1) (a) For financial institutions, the greater of the	155
minimum payment required under division (E) of section 5733.06	156
of the Revised Code or the difference between all taxes charged	157
the financial institution under this chapter, without regard to	158
division (G) (2) of this section, less any credits allowable	159
against such tax.	160
(b) A corporation satisfying the description in division	161
(E) (5), (6), (7), (8), or (10) of section 5751.01 of the Revised	162
Code, as that section existed before its amendment by H.B. 510	163

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

(2) For all corporations other than those persons 173
described in division (G) (1) (a) or (b) of this section, the 174
amount under division (G) (2) (a) of this section applicable to 175
the tax year specified less the amount under division (G) (2) (b) 176
of this section: 177

(a) (i) For tax year 2005, the greater of the minimum 178
payment required under division (E) of section 5733.06 of the 179
Revised Code or the difference between all taxes charged the 180
corporation under this chapter and any credits allowable against 181
such tax; 182

(ii) For tax year 2006, the greater of the minimum payment 183
required under division (E) of section 5733.06 of the Revised 184
Code or four-fifths of the difference between all taxes charged 185
the corporation under this chapter and any credits allowable 186
against such tax, except the qualifying pass-through entity tax 187
credit described in division (A) (30) and the refundable credits 188
described in divisions (A) (31) to (35) of section 5733.98 of the 189
Revised Code; 190

(iii) For tax year 2007, the greater of the minimum 191
payment required under division (E) of section 5733.06 of the 192
Revised Code or three-fifths of the difference between all taxes 193

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

(iv) For tax year 2008, the greater of the minimum payment 199
required under division (E) of section 5733.06 of the Revised 200
Code or two-fifths of the difference between all taxes charged 201
the corporation under this chapter and any credits allowable 202
against such tax, except the qualifying pass-through entity tax 203
credit described in division (A) (30) and the refundable credits 204
described in divisions (A) (31) to (35) of section 5733.98 of the 205
Revised Code; 206

(v) For tax year 2009, the greater of the minimum payment 207
required under division (E) of section 5733.06 of the Revised 208
Code or one-fifth of the difference between all taxes charged 209
the corporation under this chapter and any credits allowable 210
against such tax, except the qualifying pass-through entity tax 211
credit described in division (A) (30) and the refundable credits 212
described in divisions (A) (31), (32), (33), and (34) of section 213
5733.98 of the Revised Code; 214

(vi) For tax year 2010 and each tax year thereafter, no 215
tax. 216

(b) A corporation shall subtract from the amount 217
calculated under division (G) (2) (a) (ii), (iii), (iv), or (v) of 218
this section ~~any qualifying pass-through entity tax credit~~ 219
~~described in division (A) (30) and any refundable credits~~ 220
described in divisions (A) (31) to (35) of section 5733.98 of the 221
Revised Code to which the corporation is entitled. ~~Any unused~~ 222
~~qualifying pass-through entity tax credit is not refundable.~~ 223

(c) For the purposes of computing the amount of a credit 224
that may be carried forward to a subsequent tax year under 225
division (G) (2) of this section, a credit is utilized against 226
the tax for a tax year to the extent the credit applies against 227
the tax for that tax year, even if the difference is then 228
multiplied by the applicable fraction under division (G) (2) (a) 229
of this section. 230

(d) References in division (G) (2) of this section to 231
section 5733.98 of the Revised Code is to that section before 232
its amendment by H.B. 59 of the 130th general assembly. 233

~~(3) Nothing in division (G) of this section eliminates or 234
reduces the tax imposed by section 5733.41 of the Revised Code 235
on a qualifying pass-through entity. 236~~

Sec. 5733.04. As used in this chapter: 237

(A) "Issued and outstanding shares of stock" applies to 238
nonprofit corporations, as provided in section 5733.01 of the 239
Revised Code, and includes, but is not limited to, membership 240
certificates and other instruments evidencing ownership of an 241
interest in such nonprofit corporations, and with respect to a 242
financial institution that does not have capital stock, "issued 243
and outstanding shares of stock" includes, but is not limited 244
to, ownership interests of depositors in the capital employed in 245
such an institution. 246

(B) "Taxpayer" means a corporation subject to the tax 247
imposed by section 5733.06 of the Revised Code. 248

(C) "Resident" means a corporation organized under the 249
laws of this state. 250

(D) "Commercial domicile" means the principal place from 251
which the trade or business of the taxpayer is directed or 252

managed.	253
(E) "Taxable year" means the period prescribed by division	254
(A) of section 5733.031 of the Revised Code upon the net income	255
of which the value of the taxpayer's issued and outstanding	256
shares of stock is determined under division (B) of section	257
5733.05 of the Revised Code or the period prescribed by division	258
(A) of section 5733.031 of the Revised Code that immediately	259
precedes the date as of which the total value of the corporation	260
is determined under division (A) or (C) of section 5733.05 of	261
the Revised Code.	262
(F) "Tax year" means the calendar year in and for which	263
the tax imposed by section 5733.06 of the Revised Code is	264
required to be paid.	265
(G) "Internal Revenue Code" means the "Internal Revenue	266
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	267
(H) "Federal income tax" means the income tax imposed by	268
the Internal Revenue Code.	269
(I) Except as provided in section 5733.058 of the Revised	270
Code, "net income" means the taxpayer's taxable income before	271
operating loss deduction and special deductions, as required to	272
be reported for the taxpayer's taxable year under the Internal	273
Revenue Code, subject to the following adjustments:	274
(1) (a) Deduct any net operating loss incurred in any	275
taxable years ending in 1971 or thereafter, but exclusive of any	276
net operating loss incurred in taxable years ending prior to	277
January 1, 1971. This deduction shall not be allowed in any tax	278
year commencing before December 31, 1973, but shall be carried	279
over and allowed in tax years commencing after December 31,	280
1973, until fully utilized in the next succeeding taxable year	281

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

(b) For losses incurred in taxable years ending on or 296
before December 31, 1981, the designated carryover period shall 297
be the five consecutive taxable years after the taxable year in 298
which the net operating loss occurred. For losses incurred in 299
taxable years ending on or after January 1, 1982, and beginning 300
before August 6, 1997, the designated carryover period shall be 301
the fifteen consecutive taxable years after the taxable year in 302
which the net operating loss occurs. For losses incurred in 303
taxable years beginning on or after August 6, 1997, the 304
designated carryover period shall be the twenty consecutive 305
taxable years after the taxable year in which the net operating 306
loss occurs. 307

(c) The tax commissioner may require a taxpayer to furnish 308
any information necessary to support a claim for deduction under 309
division (I) (1) (a) of this section and no deduction shall be 310
allowed unless the information is furnished. 311

(2) Deduct any amount included in net income by 312
application of section 78 or 951 of the Internal Revenue Code, 313
amounts received for royalties, technical or other services 314
derived from sources outside the United States, and dividends 315
received from a subsidiary, associate, or affiliated corporation 316
that neither transacts any substantial portion of its business 317
nor regularly maintains any substantial portion of its assets 318
within the United States. For purposes of determining net 319
foreign source income deductible under division (I) (2) of this 320
section, the amount of gross income from all such sources other 321
than dividend income and income derived by application of 322
section 78 or 951 of the Internal Revenue Code shall be reduced 323
by: 324

(a) The amount of any reimbursed expenses for personal 325
services performed by employees of the taxpayer for the 326
subsidiary, associate, or affiliated corporation; 327

(b) Ten per cent of the amount of royalty income and 328
technical assistance fees; 329

(c) Fifteen per cent of the amount of all other income. 330

The amounts described in divisions (I) (2) (a) to (c) of 331
this section are deemed to be the expenses attributable to the 332
production of deductible foreign source income unless the 333
taxpayer shows, by clear and convincing evidence, less actual 334
expenses, or the tax commissioner shows, by clear and convincing 335
evidence, more actual expenses. 336

(3) Add any loss or deduct any gain resulting from the 337
sale, exchange, or other disposition of a capital asset, or an 338
asset described in section 1231 of the Internal Revenue Code, to 339
the extent that such loss or gain occurred prior to the first 340

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

(4) Deduct the dividend received deduction provided by 363
section 243 of the Internal Revenue Code. 364

(5) Deduct any interest or interest equivalent on public 365
obligations and purchase obligations to the extent included in 366
federal taxable income. As used in divisions (I) (5) and (6) of 367
this section, "public obligations," "purchase obligations," and 368
"interest or interest equivalent" have the same meanings as in 369
section 5709.76 of the Revised Code. 370

(6) Add any loss or deduct any gain resulting from the 371
sale, exchange, or other disposition of public obligations to 372
the extent included in federal taxable income. 373

(7) To the extent not otherwise allowed, deduct any 374
dividends or distributions received by a taxpayer from a public 375
utility, excluding an electric company and a combined company, 376
and, for tax years 2005 and thereafter, a telephone company, if 377
the taxpayer owns at least eighty per cent of the issued and 378
outstanding common stock of the public utility. As used in 379
division (I)(7) of this section, "public utility" means a public 380
utility as defined in Chapter 5727. of the Revised Code, whether 381
or not the public utility is doing business in the state. 382

(8) To the extent not otherwise allowed, deduct any 383
dividends received by a taxpayer from an insurance company, if 384
the taxpayer owns at least eighty per cent of the issued and 385
outstanding common stock of the insurance company. As used in 386
division (I)(8) of this section, "insurance company" means an 387
insurance company that is taxable under Chapter 5725. or 5729. 388
of the Revised Code. 389

(9) Deduct expenditures for modifying existing buildings 390
or structures to meet American national standards institute 391
standard A-117.1-1961 (R-1971), as amended; provided, that no 392
deduction shall be allowed to the extent that such deduction is 393
not permitted under federal law or under rules of the tax 394
commissioner. Those deductions as are allowed may be taken over 395
a period of five years. The tax commissioner shall adopt rules 396
under Chapter 119. of the Revised Code establishing reasonable 397
limitations on the extent that expenditures for modifying 398
existing buildings or structures are attributable to the purpose 399
of making the buildings or structures accessible to and usable 400

by physically handicapped persons. 401

(10) Deduct the amount of wages and salaries, if any, not 402
otherwise allowable as a deduction but that would have been 403
allowable as a deduction in computing federal taxable income 404
before operating loss deduction and special deductions for the 405
taxable year, had the targeted jobs credit allowed and 406
determined under sections 38, 51, and 52 of the Internal Revenue 407
Code not been in effect. 408

(11) Deduct net interest income on obligations of the 409
United States and its territories and possessions or of any 410
authority, commission, or instrumentality of the United States 411
to the extent the laws of the United States prohibit inclusion 412
of the net interest for purposes of determining the value of the 413
taxpayer's issued and outstanding shares of stock under division 414
(B) of section 5733.05 of the Revised Code. As used in division 415
(I)(11) of this section, "net interest" means interest net of 416
any expenses taken on the federal income tax return that would 417
not have been allowed under section 265 of the Internal Revenue 418
Code if the interest were exempt from federal income tax. 419

(12) (a) Except as set forth in division (I)(12)(d) of this 420
section, to the extent not included in computing the taxpayer's 421
federal taxable income before operating loss deduction and 422
special deductions, add gains and deduct losses from direct or 423
indirect sales, exchanges, or other dispositions, made by a 424
related entity who is not a taxpayer, of the taxpayer's 425
indirect, beneficial, or constructive investment in the stock or 426
debt of another entity, unless the gain or loss has been 427
included in computing the federal taxable income before 428
operating loss deduction and special deductions of another 429
taxpayer with a more closely related investment in the stock or 430

debt of the other entity. The amount of gain added or loss 431
deducted shall not exceed the product obtained by multiplying 432
such gain or loss by the taxpayer's proportionate share, 433
directly, indirectly, beneficially, or constructively, of the 434
outstanding stock of the related entity immediately prior to the 435
direct or indirect sale, exchange, or other disposition. 436

(b) Except as set forth in division (I)(12)(e) of this 437
section, to the extent not included in computing the taxpayer's 438
federal taxable income before operating loss deduction and 439
special deductions, add gains and deduct losses from direct or 440
indirect sales, exchanges, or other dispositions made by a 441
related entity who is not a taxpayer, of intangible property 442
other than stock, securities, and debt, if such property was 443
owned, or used in whole or in part, at any time prior to or at 444
the time of the sale, exchange, or disposition by either the 445
taxpayer or by a related entity that was a taxpayer at any time 446
during the related entity's ownership or use of such property, 447
unless the gain or loss has been included in computing the 448
federal taxable income before operating loss deduction and 449
special deductions of another taxpayer with a more closely 450
related ownership or use of such intangible property. The amount 451
of gain added or loss deducted shall not exceed the product 452
obtained by multiplying such gain or loss by the taxpayer's 453
proportionate share, directly, indirectly, beneficially, or 454
constructively, of the outstanding stock of the related entity 455
immediately prior to the direct or indirect sale, exchange, or 456
other disposition. 457

(c) As used in division (I)(12) of this section, "related 458
entity" means those entities described in divisions (I)(12)(c) 459
(i) to (iii) of this section: 460

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

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

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

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

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

exchange, or other disposition of such investment at least fifty 491
per cent or more of the value of either the outstanding stock or 492
such debt of such other entity. 493

(e) For purposes of the adjustments required by division 494
(I) (12) (b) of this section, the term "related entity" excludes 495
all of the following: 496

(i) Foreign corporations as defined in section 7701 of the 497
Internal Revenue Code; 498

(ii) Foreign partnerships as defined in section 7701 of 499
the Internal Revenue Code; 500

(iii) Corporations, partnerships, estates, and trusts 501
created or organized in or under the laws of the Commonwealth of 502
Puerto Rico or any possession of the United States; 503

(iv) Foreign estates and foreign trusts as defined in 504
section 7701 of the Internal Revenue Code. 505

The exclusions described in divisions (I) (12) (e) (i) to 506
(iv) of this section do not apply if the corporation, 507
partnership, estate, or trust is described in any one of 508
divisions (C) (1) to (5) of section 5733.042 of the Revised Code. 509

(f) Nothing in division (I) (12) of this section shall 510
require or permit a taxpayer to add any gains or deduct any 511
losses described in divisions (I) (12) (f) (i) and (ii) of this 512
section: 513

(i) Gains or losses recognized for federal income tax 514
purposes by an individual, estate, or trust without regard to 515
the attribution rules described in division (I) (12) (c) of this 516
section; 517

(ii) A related entity's gains or losses described in 518

division (I) (12) (b) of this section if the taxpayer's ownership 519
of or use of such intangible property was limited to a period 520
not exceeding nine months and was attributable to a transaction 521
or a series of transactions executed in accordance with the 522
election or elections made by the taxpayer or a related entity 523
pursuant to section 338 of the Internal Revenue Code. 524

(13) Any adjustment required by section 5733.042 of the 525
Revised Code. 526

~~(14) Add any amount claimed as a credit under section 527
5733.0611 of the Revised Code to the extent that such amount 528
satisfies either of the following: 529~~

~~(a) It was deducted or excluded from the computation of 530
the corporation's taxable income before operating loss deduction 531
and special deductions as required to be reported for the 532
corporation's taxable year under the Internal Revenue Code; 533~~

~~(b) It resulted in a reduction of the corporation's 534
taxable income before operating loss deduction and special 535
deductions as required to be reported for any of the 536
corporation's taxable years under the Internal Revenue Code. 537~~

~~(15)~~ Deduct the amount contributed by the taxpayer to an 538
individual development account program established by a county 539
department of job and family services pursuant to sections 540
329.11 to 329.14 of the Revised Code for the purpose of matching 541
funds deposited by program participants. On request of the tax 542
commissioner, the taxpayer shall provide any information that, 543
in the tax commissioner's opinion, is necessary to establish the 544
amount deducted under division (I) ~~(15)~~ (14) of this section. 545

~~(16)~~ (15) Any adjustment required by section 5733.0510 or 546
5733.0511 of the Revised Code. 547

~~(17)~~(16)(a)(i) Add five-sixths of the amount of 548
depreciation expense allowed under subsection (k) of section 168 549
of the Internal Revenue Code, including a person's proportionate 550
or distributive share of the amount of depreciation expense 551
allowed by that subsection to any pass-through entity in which 552
the person has direct or indirect ownership. 553

(ii) Add five-sixths of the amount of qualifying section 554
179 depreciation expense, including a person's proportionate or 555
distributive share of the amount of qualifying section 179 556
depreciation expense allowed to any pass-through entity in which 557
the person has a direct or indirect ownership. For the purposes 558
of this division, "qualifying section 179 depreciation expense" 559
means the difference between (I) the amount of depreciation 560
expense directly or indirectly allowed to the taxpayer under 561
section 179 of the Internal Revenue Code, and (II) the amount of 562
depreciation expense directly or indirectly allowed to the 563
taxpayer under section 179 of the Internal Revenue Code as that 564
section existed on December 31, 2002. 565

The tax commissioner, under procedures established by the 566
commissioner, may waive the add-backs related to a pass-through 567
entity if the person owns, directly or indirectly, less than 568
five per cent of the pass-through entity. 569

(b) Nothing in division (I) ~~(17)~~(16) of this section shall 570
be construed to adjust or modify the adjusted basis of any 571
asset. 572

(c) To the extent the add-back is attributable to property 573
generating income or loss allocable under section 5733.051 of 574
the Revised Code, the add-back shall be allocated to the same 575
location as the income or loss generated by that property. 576
Otherwise, the add-back shall be apportioned, subject to 577

division (B) (2) (d) of section 5733.05 of the Revised Code.	578
(18) (17) (a) If a person is required to make the add-back	579
under division (I) (17) (16) (a) of this section for a tax year,	580
the person shall deduct one-fifth of the amount added back for	581
each of the succeeding five tax years.	582
(b) If the amount deducted under division (I) (18) (17) (a)	583
of this section is attributable to an add-back allocated under	584
division (I) (17) (16) (c) of this section, the amount deducted	585
shall be allocated to the same location. Otherwise, the amount	586
shall be apportioned using the apportionment factors for the	587
taxable year in which the deduction is taken, subject to	588
division (B) (2) (d) of section 5733.05 of the Revised Code.	589
(J) Except as otherwise expressly provided or clearly	590
appearing from the context, any term used in this chapter has	591
the same meaning as when used in a comparable context in the	592
laws of the United States relating to federal income taxes. Any	593
reference in this chapter to the Internal Revenue Code includes	594
other laws of the United States relating to federal income	595
taxes.	596
(K) "Financial institution" has the meaning given by	597
section 5725.01 of the Revised Code but does not include a	598
production credit association as described in 85 Stat. 597, 12	599
U.S.C.A. 2091.	600
(L) (1) A "qualifying holding company" is any corporation	601
satisfying all of the following requirements:	602
(a) Subject to divisions (L) (2) and (3) of this section,	603
the net book value of the corporation's intangible assets is	604
greater than or equal to ninety per cent of the net book value	605
of all of its assets and at least fifty per cent of the net book	606

value of all of its assets represents direct or indirect 607
investments in the equity of, loans and advances to, and 608
accounts receivable due from related members; 609

(b) At least ninety per cent of the corporation's gross 610
income for the taxable year is attributable to the following: 611

(i) The maintenance, management, ownership, acquisition, 612
use, and disposition of its intangible property, its aircraft 613
the use of which is not subject to regulation under 14 C.F.R. 614
part 121 or part 135, and any real property described in 615
division (L) (2) (c) of this section; 616

(ii) The collection and distribution of income from such 617
property. 618

(c) The corporation is not a financial institution on the 619
last day of the taxable year ending prior to the first day of 620
the tax year; 621

(d) The corporation's related members make a good faith 622
and reasonable effort to make timely and fully the adjustments 623
required by division (D) of section 5733.05 of the Revised Code 624
and to pay timely and fully all uncontested taxes, interest, 625
penalties, and other fees and charges imposed under this 626
chapter; 627

(e) Subject to division (L) (4) of this section, the 628
corporation elects to be treated as a qualifying holding company 629
for the tax year. 630

A corporation otherwise satisfying divisions (L) (1) (a) to 631
(e) of this section that does not elect to be a qualifying 632
holding company is not a qualifying holding company for the 633
purposes of this chapter. 634

(2) (a) (i) For purposes of making the ninety per cent 635
computation under division (L) (1) (a) of this section, the net 636
book value of the corporation's assets shall not include the net 637
book value of aircraft or real property described in division 638
(L) (1) (b) (i) of this section. 639

(ii) For purposes of making the fifty per cent computation 640
under division (L) (1) (a) of this section, the net book value of 641
assets shall include the net book value of aircraft or real 642
property described in division (L) (1) (b) (i) of this section. 643

(b) (i) As used in division (L) of this section, 644
"intangible asset" includes, but is not limited to, the 645
corporation's direct interest in each pass-through entity only 646
if at all times during the corporation's taxable year ending 647
prior to the first day of the tax year the corporation's and the 648
corporation's related members' combined direct and indirect 649
interests in the capital or profits of such pass-through entity 650
do not exceed fifty per cent. If the corporation's interest in 651
the pass-through entity is an intangible asset for that taxable 652
year, then the distributive share of any income from the pass- 653
through entity shall be income from an intangible asset for that 654
taxable year. 655

(ii) If a corporation's and the corporation's related 656
members' combined direct and indirect interests in the capital 657
or profits of a pass-through entity exceed fifty per cent at any 658
time during the corporation's taxable year ending prior to the 659
first day of the tax year, "intangible asset" does not include 660
the corporation's direct interest in the pass-through entity, 661
and the corporation shall include in its assets its 662
proportionate share of the assets of any such pass-through 663
entity and shall include in its gross income its distributive 664

share of the gross income of such pass-through entity in the 665
same form as was earned by the pass-through entity. 666

(iii) A pass-through entity's direct or indirect 667
proportionate share of any other pass-through entity's assets 668
shall be included for the purpose of computing the corporation's 669
proportionate share of the pass-through entity's assets under 670
division (L) (2) (b) (ii) of this section, and such pass-through 671
entity's distributive share of any other pass-through entity's 672
gross income shall be included for purposes of computing the 673
corporation's distributive share of the pass-through entity's 674
gross income under division (L) (2) (b) (ii) of this section. 675

(c) For the purposes of divisions (L) (1) (b) (i), (1) (b) 676
(ii), (2) (a) (i), and (2) (a) (ii) of this section, real property 677
is described in division (L) (2) (c) of this section only if all 678
of the following conditions are present at all times during the 679
taxable year ending prior to the first day of the tax year: 680

(i) The real property serves as the headquarters of the 681
corporation's trade or business, or is the place from which the 682
corporation's trade or business is principally managed or 683
directed; 684

(ii) Not more than ten per cent of the value of the real 685
property and not more than ten per cent of the square footage of 686
the building or buildings that are part of the real property is 687
used, made available, or occupied for the purpose of providing, 688
acquiring, transferring, selling, or disposing of tangible 689
property or services in the normal course of business to persons 690
other than related members, the corporation's employees and 691
their families, and such related members' employees and their 692
families. 693

(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 721
or under the laws of any other state. 722

(O) "Pass-through entity" means a corporation that has 723
made an election under subchapter S of Chapter 1 of Subtitle A 724
of the Internal Revenue Code for its taxable year under that 725
code, or a partnership, limited liability company, or any other 726
person, other than an individual, trust, or estate, if the 727
partnership, limited liability company, or other person is not 728
classified for federal income tax purposes as an association 729
taxed as a corporation. 730

(P) "Electric company," "combined company," and "telephone 731
company" have the same meanings as in section 5727.01 of the 732
Revised Code. 733

(Q) "Business income" means income arising from 734
transactions, activities, and sources in the regular course of a 735
trade or business and includes income from real property, 736
tangible personal property, and intangible personal property if 737
the acquisition, rental, management, and disposition of the 738
property constitute integral parts of the regular course of a 739
trade or business operation. "Business income" includes income, 740
including gain or loss, from a partial or complete liquidation 741
of a business, including, but not limited to, gain or loss from 742
the sale or other disposition of goodwill. 743

(R) "Nonbusiness income" means all income other than 744
business income. 745

~~Sec. 5733.057. As used in this section, "adjusted-~~ 746
~~qualifying amount" has the same meaning as in section 5733.40 of~~ 747
~~the Revised Code.~~ 748

This section does not apply to divisions (E) and (F) of 749

section 5733.051 of the Revised Code. 750

Except as otherwise provided in ~~divisions (A) and (B) of~~ 751
~~section 5733.401 and in sections~~ section 5733.058 and 5747.401 752
of the Revised Code, in making all apportionment, allocation, 753
income, gain, loss, deduction, tax, and credit computations 754
under this chapter ~~and under sections 5747.41 and 5747.43 of the~~ 755
~~Revised Code~~, each person shall include in that person's items 756
of business income, nonbusiness income, ~~adjusted qualifying~~ 757
~~amounts~~, allocable income or loss, if any, apportionable income 758
or loss, property, compensation, and sales, the person's entire 759
distributive share or proportionate share of the items of 760
business income, nonbusiness income, ~~adjusted qualifying~~ 761
~~amounts~~, allocable income or loss, apportionable income or loss, 762
property, compensation, and sales of any pass-through entity in 763
which the person has a direct or indirect ownership interest at 764
any time during the pass-through entity's calendar or fiscal 765
year ending within, or with the last day of the person's taxable 766
year. A pass-through entity's direct or indirect distributive 767
share or proportionate share of any other pass-through entity's 768
items of business income, nonbusiness income, ~~adjusted~~ 769
~~qualifying amounts~~, allocable income or loss, apportionable 770
income or loss, property, compensation, and sales shall be 771
included for the purposes of computing the person's distributive 772
share or proportionate share of the pass-through entity's items 773
of business income, nonbusiness income, ~~adjusted qualifying~~ 774
~~amounts~~, allocable income or loss, apportionable income or loss, 775
property, compensation, and sales under this section. Those 776
items shall be in the same form as was recognized by the pass- 777
through entity. 778

Sec. 5733.09. (A) (1) Except as provided in divisions (A) 779
(2) and (3) of this section, an incorporated company, whether 780

foreign or domestic, owning and operating a public utility in 781
this state, and required by law to file reports with the tax 782
commissioner and to pay an excise tax upon its gross receipts, 783
and insurance, fraternal, beneficial, bond investment, and other 784
corporations required by law to file annual reports with the 785
superintendent of insurance and dealers in intangibles, the 786
shares of which are, or the capital or ownership in capital 787
employed by such dealer is, subject to the taxes imposed by 788
section 5707.03 of the Revised Code, shall not be subject to 789
this chapter, except for sections 5733.031, 5733.042, 5733.05, 790
5733.052, 5733.053, 5733.069, ~~5733.0611, 5733.40, 5733.41,~~ and 791
sections 5747.40 to ~~5747.453~~ 5747.44 of the Revised Code. 792
However, for reports required to be filed under section 5725.14 793
of the Revised Code in 2003 and thereafter, nothing in this 794
section shall be construed to exempt the property of any dealer 795
in intangibles under section 5725.13 of the Revised Code from 796
the tax imposed under section 5707.03 of the Revised Code. 797

(2) An electric company subject to the filing requirements 798
of section 5727.08 of the Revised Code or otherwise having nexus 799
with or in this state under the Constitution of the United 800
States, or any other corporation having any gross receipts 801
directly attributable to providing public utility service as an 802
electric company or having any property directly attributable to 803
providing public utility service as an electric company, is 804
subject to this chapter. 805

(3) A telephone company that no longer pays an excise tax 806
under section 5727.30 of the Revised Code on its gross receipts 807
billed after June 30, 2004, is first subject to taxation under 808
this chapter for tax year 2005. For that tax year, a telephone 809
company with a taxable year ending in 2004 shall compute the tax 810
imposed under this chapter, and shall compute the net operating 811

loss carry forward for tax year 2005, by multiplying the tax 812
owed under this chapter, net of all nonrefundable credits, or 813
the loss for the taxable year, by fifty per cent. 814

(B) A corporation that has made an election under 815
subchapter S, chapter one, subtitle A, of the Internal Revenue 816
Code for its taxable year under such code is exempt from the tax 817
imposed by section 5733.06 of the Revised Code that is based on 818
that taxable year. 819

A corporation that makes such an election shall file a 820
notice of such election with the tax commissioner between the 821
first day of January and the thirty-first day of March of each 822
tax year that the election is in effect. 823

(C) An entity defined to be a "real estate investment 824
trust" by section 856 of the Internal Revenue Code, a "regulated 825
investment company" by section 851 of the Internal Revenue Code, 826
or a "real estate mortgage investment conduit" by section 860D 827
of the Internal Revenue Code, is exempt from taxation for a tax 828
year as a corporation under this chapter and is exempt from 829
taxation for a return year as a dealer in intangibles under 830
Chapter 5725. of the Revised Code if it provides the report 831
required by this division. By the last day of March of the tax 832
or return year the entity shall submit to the tax commissioner 833
the name of the entity with a list of the names, addresses, and 834
social security or federal identification numbers of all 835
investors, shareholders, and other similar investors who owned 836
any interest or invested in the entity during the preceding 837
calendar year. The commissioner may extend the date by which the 838
report must be submitted for reasonable cause shown by the 839
entity. The commissioner may prescribe the form of the report 840
required for exemption under this division. 841

(D) (1) As used in this division:	842
(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.	843 844 845 846 847
(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.	848 849 850 851 852
(c) "Contract for printing" means an oral or written agreement for the purchase of printed materials produced by a commercial printer.	853 854 855
(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.	856 857 858 859 860
(e) "Printed material" means any tangible personal property produced or processed by a commercial printer pursuant to a contract for printing.	861 862 863
(f) "Related member" has the same meaning as in section 5733.042 of the Revised Code without regard to division (B) of that section.	864 865 866
(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	867 868 869 870

any one or more of the following occurring in this state during 871
the taxable year that ends immediately prior to the tax year: 872

(a) Ownership by the corporation or a related member of 873
the corporation of tangible personal property or intangible 874
property located during all or any portion of the taxable year 875
or on the first day of the tax year at the premises of a 876
commercial printer with which the corporation or the 877
corporation's related member has a contract for printing with 878
respect to such property or the premises of a commercial 879
printer's related member with which the corporation or the 880
corporation's related member has a contract for printing with 881
respect to such property; 882

(b) Sales by the corporation or a related member of the 883
corporation of property produced at and shipped or distributed 884
from the premises of a commercial printer with which the 885
corporation or the corporation's related member has a contract 886
for printing with respect to such property or the premises of a 887
commercial printer's related member with which the corporation 888
or the corporation's related member has a contract for printing 889
with respect to such property; 890

(c) Activities of employees, officers, agents, or 891
contractors of the corporation or a related member of the 892
corporation on the premises of a commercial printer with which 893
the corporation or the corporation's related member has a 894
contract for printing or the premises of a commercial printer's 895
related member with which the corporation or the corporation's 896
related member has a contract for printing, where the activities 897
are directly and solely related to quality control, 898
distribution, or printing services, or any combination thereof, 899
performed by or at the direction of the commercial printer or 900

the commercial printer's related member. 901

(3) The exemption under this division does not apply for a 902
taxable year to any corporation having on the first day of 903
January of the tax year or at any time during the taxable year 904
ending immediately preceding the first day of January of the tax 905
year a related member which, on the first day of January of the 906
tax year or during any portion of such taxable year of the 907
corporation, has nexus in or with this state under the 908
Constitution of the United States or holds a certificate of 909
compliance with the laws of this state authorizing it to do 910
business in this state. 911

(4) With respect to allowing the exemption under this 912
division, the tax commissioner shall be guided by the doctrines 913
of "economic reality," "sham transaction," "step transaction," 914
and "substance over form." A corporation shall bear the burden 915
of establishing by a preponderance of the evidence that any 916
transaction giving rise to an exemption claimed under this 917
division did not have as a principal purpose the avoidance of 918
any portion of the tax imposed by section 5733.06 of the Revised 919
Code. 920

Application of the doctrines listed in division (D) (4) of 921
this section is not limited to this division. 922

Sec. 5733.12. (A) All payments received from the taxes 923
imposed under ~~sections~~ section 5733.06 and ~~5733.41~~ of the 924
Revised Code shall be credited to the general revenue fund. 925

(B) Except as otherwise provided under divisions (C) and 926
(D) of this section, an application to refund to the corporation 927
the amount of taxes imposed under section 5733.06 of the Revised 928
Code that are overpaid, paid illegally or erroneously, or paid 929

on any illegal, erroneous, or excessive assessment, with 930
interest thereon as provided by section 5733.26 of the Revised 931
Code, shall be filed with the tax commissioner, on the form 932
prescribed by the commissioner, within three years from the date 933
of the illegal, erroneous, or excessive payment of the tax, or 934
within any additional period allowed by division (C) (2) of 935
section 5733.031, division (D) (2) of section 5733.067, or 936
division (A) of section 5733.11 of the Revised Code. For 937
purposes of division (B) of this section, any payment that the 938
applicant made before the due date or extended due date for 939
filing the report to which the payment relates shall be deemed 940
to have been made on the due date or extended due date. 941

On the filing of the refund application, the commissioner 942
shall determine the amount of refund to which the applicant is 943
entitled. If the amount is not less than that claimed the 944
commissioner shall certify the amount to the director of budget 945
and management and treasurer of state for payment from the tax 946
refund fund created by section 5703.052 of the Revised Code. If 947
the amount is less than that claimed, the commissioner shall 948
proceed in accordance with section 5703.70 of the Revised Code. 949

~~(C) "Ninety days" shall be substituted for "three years" 950
in division (B) of this section if the taxpayer satisfies both 951
of the following: 952~~

~~(1) The taxpayer has applied for a refund based in whole 953
or in part upon section 5733.0611 of the Revised Code; 954~~

~~(2) The taxpayer asserts that the imposition or collection 955
of the tax imposed or charged by section 5733.06 of the Revised 956
Code or any portion of such tax violates the Constitution of the 957
United States or the Constitution of this state. 958~~

~~(D) (1) Division (D) (2) of this section applies only if all
of the following conditions are satisfied;~~ 959
960

~~(a) A qualifying pass-through entity pays an amount of the
tax imposed by section 5733.41 of the Revised Code;~~ 961
962

~~(b) The taxpayer is a qualifying investor as to that
qualifying pass-through entity;~~ 963
964

~~(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;~~ 965
966
967

~~(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.~~ 968
969
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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.~~ 971
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Sec. 5733.98. (A) To provide a uniform procedure for 980
calculating the amount of tax imposed by section 5733.06 of the 981
Revised Code that is due under this chapter, a taxpayer shall 982
claim any credits to which it is entitled in the following 983
order, except as otherwise provided in section 5733.058 of the 984
Revised Code: 985

~~(1) For tax year 2005, the credit for taxes paid by a
qualifying pass-through entity allowed under section 5733.0611~~ 986
987

of the Revised Code;	988
(2) —The credit allowed for financial institutions under section 5733.45 of the Revised Code;	989 990
(3) — <u>(2)</u> The credit for qualifying affiliated groups under section 5733.068 of the Revised Code;	991 992
(4) — <u>(3)</u> The subsidiary corporation credit under section 5733.067 of the Revised Code;	993 994
(5) — <u>(4)</u> The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;	995 996
(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;	997 998 999
(7) — <u>(6)</u> The credit for employers that reimburse employee child care expenses under section 5733.38 of the Revised Code;	1000 1001
(8) — <u>(7)</u> The credit for maintaining railroad active grade crossing warning devices under section 5733.43 of the Revised Code;	1002 1003 1004
(9) — <u>(8)</u> The credit for purchases of lights and reflectors under section 5733.44 of the Revised Code;	1005 1006
(10) — <u>(9)</u> The nonrefundable job retention credit under division (B) of section 5733.0610 of the Revised Code;	1007 1008
(11) — <u>(10)</u> The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	1009 1010 1011
(12) — <u>(11)</u> The job training credit under section 5733.42 of the Revised Code;	1012 1013
(13) — <u>(12)</u> The credit for qualified research expenses under	1014

section 5733.351 of the Revised Code;	1015
(14) <u>(13)</u> The enterprise zone credit under section 5709.66 of the Revised Code;	1016 1017
(15) <u>(14)</u> The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	1018 1019 1020
(16) <u>(15)</u> The credit for employers that establish on-site child day-care centers under section 5733.37 of the Revised Code;	1021 1022 1023
(17) <u>(16)</u> The ethanol plant investment credit under section 5733.46 of the Revised Code;	1024 1025
(18) <u>(17)</u> The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	1026 1027
(19) <u>(18)</u> The export sales credit under section 5733.069 of the Revised Code;	1028 1029
(20) <u>(19)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	1030 1031
(21) <u>(20)</u> The credit for using Ohio coal under section 5733.39 of the Revised Code;	1032 1033
(22) <u>(21)</u> The credit for purchases of qualified low-income community investments under section 5733.58 of the Revised Code;	1034 1035
(23) <u>(22)</u> The credit for small telephone companies under section 5733.57 of the Revised Code;	1036 1037
(24) <u>(23)</u> The credit for eligible nonrecurring 9-1-1 charges under section 5733.55 of the Revised Code;	1038 1039
(25) <u>(24)</u> For tax year 2005, the credit for providing programs to aid the communicatively impaired under division (A)	1040 1041

of section 5733.56 of the Revised Code;	1042
(26) <u>(25)</u> The research and development credit under	1043
section 5733.352 of the Revised Code;	1044
(27) For tax years 2006 and subsequent tax years, the	1045
credit for taxes paid by a qualifying pass-through entity	1046
allowed under section 5733.0611 of the Revised Code;	1047
(28) <u>(26)</u> The refundable credit for rehabilitating a	1048
historic building under section 5733.47 of the Revised Code;	1049
(29) <u>(27)</u> The refundable jobs creation credit or job	1050
retention credit under division (A) of section 5733.0610 of the	1051
Revised Code;	1052
(30) <u>(28)</u> The refundable credit for tax withheld under	1053
division (B) (2) of section 5747.062 of the Revised Code;	1054
(31) <u>(29)</u> The refundable credit under section 5733.49 of	1055
the Revised Code for losses on loans made to the Ohio venture	1056
capital program under sections 150.01 to 150.10 of the Revised	1057
Code;	1058
(32) <u>(30)</u> For tax years 2006, 2007, and 2008, the	1059
refundable credit allowable under division (B) of section	1060
5733.56 of the Revised Code;	1061
(33) <u>(31)</u> The refundable motion picture production credit	1062
under section 5733.59 of the Revised Code.	1063
(B) For any credit except the refundable credits	1064
enumerated in this section, the amount of the credit for a tax	1065
year shall not exceed the tax due after allowing for any other	1066
credit that precedes it in the order required under this	1067
section. Any excess amount of a particular credit may be carried	1068
forward if authorized under the section creating that credit.	1069

Sec. 5747.01. Except as otherwise expressly provided or 1070
clearly appearing from the context, any term used in this 1071
chapter that is not otherwise defined in this section has the 1072
same meaning as when used in a comparable context in the laws of 1073
the United States relating to federal income taxes ~~or if not~~ 1074
~~used in a comparable context in those laws, has the same meaning~~ 1075
~~as in section 5733.40 of the Revised Code.~~ Any reference in this 1076
chapter to the Internal Revenue Code includes other laws of the 1077
United States relating to federal income taxes. 1078

As used in this chapter: 1079

(A) "Adjusted gross income" or "Ohio adjusted gross 1080
income" means federal adjusted gross income, as defined and used 1081
in the Internal Revenue Code, adjusted as provided in this 1082
section: 1083

(1) Add interest or dividends on obligations or securities 1084
of any state or of any political subdivision or authority of any 1085
state, other than this state and its subdivisions and 1086
authorities. 1087

(2) Add interest or dividends on obligations of any 1088
authority, commission, instrumentality, territory, or possession 1089
of the United States to the extent that the interest or 1090
dividends are exempt from federal income taxes but not from 1091
state income taxes. 1092

(3) Deduct interest or dividends on obligations of the 1093
United States and its territories and possessions or of any 1094
authority, commission, or instrumentality of the United States 1095
to the extent that the interest or dividends are included in 1096
federal adjusted gross income but exempt from state income taxes 1097
under the laws of the United States. 1098

(4) Deduct disability and survivor's benefits to the 1099
extent included in federal adjusted gross income. 1100

(5) Deduct benefits under Title II of the Social Security 1101
Act and tier 1 railroad retirement benefits to the extent 1102
included in federal adjusted gross income under section 86 of 1103
the Internal Revenue Code. 1104

~~(6) In the case of a taxpayer who is a beneficiary of a 1105
trust that makes an accumulation distribution as defined in 1106
section 665 of the Internal Revenue Code, add, for the 1107
beneficiary's taxable years beginning before 2002, the portion, 1108
if any, of such distribution that does not exceed the 1109
undistributed net income of the trust for the three taxable 1110
years preceding the taxable year in which the distribution is 1111
made to the extent that the portion was not included in the 1112
trust's taxable income for any of the trust's taxable years 1113
beginning in 2002 or thereafter. "Undistributed net income of a 1114
trust" means the taxable income of the trust increased by (a) (i) 1115
the additions to adjusted gross income required under division 1116
(A) of this section and (ii) the personal exemptions allowed to 1117
the trust pursuant to section 642(b) of the Internal Revenue 1118
Code, and decreased by (b) (i) the deductions to adjusted gross 1119
income required under division (A) of this section, (ii) the 1120
amount of federal income taxes attributable to such income, and 1121
(iii) the amount of taxable income that has been included in the 1122
adjusted gross income of a beneficiary by reason of a prior 1123
accumulation distribution. Any undistributed net income included 1124
in the adjusted gross income of a beneficiary shall reduce the 1125
undistributed net income of the trust commencing with the 1126
earliest years of the accumulation period. 1127~~

~~(7) Deduct the amount of wages and salaries, if any, not 1128~~

otherwise allowable as a deduction but that would have been 1129
allowable as a deduction in computing federal adjusted gross 1130
income for the taxable year, had the targeted jobs credit 1131
allowed and determined under sections 38, 51, and 52 of the 1132
Internal Revenue Code not been in effect. 1133

~~(8)~~(7) Deduct any interest or interest equivalent on 1134
public obligations and purchase obligations to the extent that 1135
the interest or interest equivalent is included in federal 1136
adjusted gross income. 1137

~~(9)~~(8) Add any loss or deduct any gain resulting from the 1138
sale, exchange, or other disposition of public obligations to 1139
the extent that the loss has been deducted or the gain has been 1140
included in computing federal adjusted gross income. 1141

~~(10)~~(9) Deduct or add amounts, as provided under section 1142
5747.70 of the Revised Code, related to contributions to 1143
variable college savings program accounts made or tuition units 1144
purchased pursuant to Chapter 3334. of the Revised Code. 1145

~~(11)~~(10)(a) Deduct, to the extent not otherwise allowable 1146
as a deduction or exclusion in computing federal or Ohio 1147
adjusted gross income for the taxable year, the amount the 1148
taxpayer paid during the taxable year for medical care insurance 1149
and qualified long-term care insurance for the taxpayer, the 1150
taxpayer's spouse, and dependents. No deduction for medical care 1151
insurance under division (A) ~~(11)~~(10) of this section shall be 1152
allowed either to any taxpayer who is eligible to participate in 1153
any subsidized health plan maintained by any employer of the 1154
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 1155
entitled to, or on application would be entitled to, benefits 1156
under part A of Title XVIII of the "Social Security Act," 49 1157
Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 1158

division (A) ~~(11)~~ (10) (a) of this section, "subsidized health 1159
plan" means a health plan for which the employer pays any 1160
portion of the plan's cost. The deduction allowed under division 1161
(A) ~~(11)~~ (10) (a) of this section shall be the net of any related 1162
premium refunds, related premium reimbursements, or related 1163
insurance premium dividends received during the taxable year. 1164

(b) Deduct, to the extent not otherwise deducted or 1165
excluded in computing federal or Ohio adjusted gross income 1166
during the taxable year, the amount the taxpayer paid during the 1167
taxable year, not compensated for by any insurance or otherwise, 1168
for medical care of the taxpayer, the taxpayer's spouse, and 1169
dependents, to the extent the expenses exceed seven and one-half 1170
per cent of the taxpayer's federal adjusted gross income. 1171

(c) Deduct, to the extent not otherwise deducted or 1172
excluded in computing federal or Ohio adjusted gross income, any 1173
amount included in federal adjusted gross income under section 1174
105 or not excluded under section 106 of the Internal Revenue 1175
Code solely because it relates to an accident and health plan 1176
for a person who otherwise would be a "qualifying relative" and 1177
thus a "dependent" under section 152 of the Internal Revenue 1178
Code but for the fact that the person fails to meet the income 1179
and support limitations under section 152(d)(1)(B) and (C) of 1180
the Internal Revenue Code. 1181

(d) For purposes of division (A) ~~(11)~~ (10) of this section, 1182
"medical care" has the meaning given in section 213 of the 1183
Internal Revenue Code, subject to the special rules, 1184
limitations, and exclusions set forth therein, and "qualified 1185
long-term care" has the same meaning given in section 7702B(c) 1186
of the Internal Revenue Code. Solely for purposes of divisions 1187
(A) ~~(11)~~ (10) (a) and (c) of this section, "dependent" includes a 1188

person who otherwise would be a "qualifying relative" and thus a 1189
"dependent" under section 152 of the Internal Revenue Code but 1190
for the fact that the person fails to meet the income and 1191
support limitations under section 152(d)(1)(B) and (C) of the 1192
Internal Revenue Code. 1193

~~(12)~~(11)(a) Deduct any amount included in federal adjusted 1194
gross income solely because the amount represents a 1195
reimbursement or refund of expenses that in any year the 1196
taxpayer had deducted as an itemized deduction pursuant to 1197
section 63 of the Internal Revenue Code and applicable United 1198
States department of the treasury regulations. The deduction 1199
otherwise allowed under division (A)~~(12)~~(11)(a) of this section 1200
shall be reduced to the extent the reimbursement is attributable 1201
to an amount the taxpayer deducted under this section in any 1202
taxable year. 1203

(b) Add any amount not otherwise included in Ohio adjusted 1204
gross income for any taxable year to the extent that the amount 1205
is attributable to the recovery during the taxable year of any 1206
amount deducted or excluded in computing federal or Ohio 1207
adjusted gross income in any taxable year. 1208

~~(13)~~(12) Deduct any portion of the deduction described in 1209
section 1341(a)(2) of the Internal Revenue Code, for repaying 1210
previously reported income received under a claim of right, that 1211
meets both of the following requirements: 1212

(a) It is allowable for repayment of an item that was 1213
included in the taxpayer's adjusted gross income for a prior 1214
taxable year and did not qualify for a credit under division (A) 1215
or (B) of section 5747.05 of the Revised Code for that year; 1216

(b) It does not otherwise reduce the taxpayer's adjusted 1217

gross income for the current or any other taxable year. 1218

~~(14)~~ (13) Deduct an amount equal to the deposits made to, 1219
and net investment earnings of, a medical savings account during 1220
the taxable year, in accordance with section 3924.66 of the 1221
Revised Code. The deduction allowed by division (A) ~~(14)~~ (13) of 1222
this section does not apply to medical savings account deposits 1223
and earnings otherwise deducted or excluded for the current or 1224
any other taxable year from the taxpayer's federal adjusted 1225
gross income. 1226

~~(15)~~ (14) (a) Add an amount equal to the funds withdrawn 1227
from a medical savings account during the taxable year, and the 1228
net investment earnings on those funds, when the funds withdrawn 1229
were used for any purpose other than to reimburse an account 1230
holder for, or to pay, eligible medical expenses, in accordance 1231
with section 3924.66 of the Revised Code; 1232

(b) Add the amounts distributed from a medical savings 1233
account under division (A) (2) of section 3924.68 of the Revised 1234
Code during the taxable year. 1235

~~(16) Add any amount claimed as a credit under section~~ 1236
~~5747.059 or 5747.65 of the Revised Code to the extent that such~~ 1237
~~amount satisfies either of the following:—~~ 1238

~~(a) The amount was deducted or excluded from the~~ 1239
~~computation of the taxpayer's federal adjusted gross income as~~ 1240
~~required to be reported for the taxpayer's taxable year under~~ 1241
~~the Internal Revenue Code;—~~ 1242

~~(b) The amount resulted in a reduction of the taxpayer's~~ 1243
~~federal adjusted gross income as required to be reported for any~~ 1244
~~of the taxpayer's taxable years under the Internal Revenue Code.—~~ 1245

~~(17)~~ (15) Deduct the amount contributed by the taxpayer to 1246

an individual development account program established by a 1247
county department of job and family services pursuant to 1248
sections 329.11 to 329.14 of the Revised Code for the purpose of 1249
matching funds deposited by program participants. On request of 1250
the tax commissioner, the taxpayer shall provide any information 1251
that, in the tax commissioner's opinion, is necessary to 1252
establish the amount deducted under division (A) ~~(17)~~ (15) of 1253
this section. 1254

~~(18)~~ (16) Beginning in taxable year 2001 but not for any 1255
taxable year beginning after December 31, 2005, if the taxpayer 1256
is married and files a joint return and the combined federal 1257
adjusted gross income of the taxpayer and the taxpayer's spouse 1258
for the taxable year does not exceed one hundred thousand 1259
dollars, or if the taxpayer is single and has a federal adjusted 1260
gross income for the taxable year not exceeding fifty thousand 1261
dollars, deduct amounts paid during the taxable year for 1262
qualified tuition and fees paid to an eligible institution for 1263
the taxpayer, the taxpayer's spouse, or any dependent of the 1264
taxpayer, who is a resident of this state and is enrolled in or 1265
attending a program that culminates in a degree or diploma at an 1266
eligible institution. The deduction may be claimed only to the 1267
extent that qualified tuition and fees are not otherwise 1268
deducted or excluded for any taxable year from federal or Ohio 1269
adjusted gross income. The deduction may not be claimed for 1270
educational expenses for which the taxpayer claims a credit 1271
under section 5747.27 of the Revised Code. 1272

~~(19)~~ (17) Add any reimbursement received during the 1273
taxable year of any amount the taxpayer deducted under division 1274
(A) ~~(18)~~ (16) of this section in any previous taxable year to the 1275
extent the amount is not otherwise included in Ohio adjusted 1276
gross income. 1277

~~(20)~~(18)(a) (i) Subject to divisions (A) ~~(20)~~(18)(a) (iii), 1278
(iv), and (v) of this section, add five-sixths of the amount of 1279
depreciation expense allowed by subsection (k) of section 168 of 1280
the Internal Revenue Code, including the taxpayer's 1281
proportionate or distributive share of the amount of 1282
depreciation expense allowed by that subsection to a pass- 1283
through entity in which the taxpayer has a direct or indirect 1284
ownership interest. 1285

(ii) Subject to divisions (A) ~~(20)~~(18)(a) (iii), (iv), and 1286
(v) of this section, add five-sixths of the amount of qualifying 1287
section 179 depreciation expense, including the taxpayer's 1288
proportionate or distributive share of the amount of qualifying 1289
section 179 depreciation expense allowed to any pass-through 1290
entity in which the taxpayer has a direct or indirect ownership 1291
interest. 1292

(iii) Subject to division (A) ~~(20)~~(18)(a) (v) of this 1293
section, for taxable years beginning in 2012 or thereafter, if 1294
the increase in income taxes withheld by the taxpayer is equal 1295
to or greater than ten per cent of income taxes withheld by the 1296
taxpayer during the taxpayer's immediately preceding taxable 1297
year, "two-thirds" shall be substituted for "five-sixths" for 1298
the purpose of divisions (A) ~~(20)~~(18)(a) (i) and (ii) of this 1299
section. 1300

(iv) Subject to division (A) ~~(20)~~(18)(a) (v) of this 1301
section, for taxable years beginning in 2012 or thereafter, a 1302
taxpayer is not required to add an amount under division (A) ~~(20)~~(18) 1303
(18) of this section if the increase in income taxes withheld by 1304
the taxpayer and by any pass-through entity in which the 1305
taxpayer has a direct or indirect ownership interest is equal to 1306
or greater than the sum of (I) the amount of qualifying section 1307

179 depreciation expense and (II) the amount of depreciation 1308
expense allowed to the taxpayer by subsection (k) of section 168 1309
of the Internal Revenue Code, and including the taxpayer's 1310
proportionate or distributive shares of such amounts allowed to 1311
any such pass-through entities. 1312

(v) If a taxpayer directly or indirectly incurs a net 1313
operating loss for the taxable year for federal income tax 1314
purposes, to the extent such loss resulted from depreciation 1315
expense allowed by subsection (k) of section 168 of the Internal 1316
Revenue Code and by qualifying section 179 depreciation expense, 1317
"the entire" shall be substituted for "five-sixths of the" for 1318
the purpose of divisions (A) ~~(20)~~ (18) (a) (i) and (ii) of this 1319
section. 1320

The tax commissioner, under procedures established by the 1321
commissioner, may waive the add-backs related to a pass-through 1322
entity if the taxpayer owns, directly or indirectly, less than 1323
five per cent of the pass-through entity. 1324

(b) Nothing in division (A) ~~(20)~~ (18) of this section shall 1325
be construed to adjust or modify the adjusted basis of any 1326
asset. 1327

(c) To the extent the add-back required under division (A) 1328
~~(20)~~ (18) (a) of this section is attributable to property 1329
generating nonbusiness income or loss allocated under section 1330
5747.20 of the Revised Code, the add-back shall be situated to 1331
the same location as the nonbusiness income or loss generated by 1332
the property for the purpose of determining the credit under 1333
division (A) of section 5747.05 of the Revised Code. Otherwise, 1334
the add-back shall be apportioned, subject to one or more of the 1335
four alternative methods of apportionment enumerated in section 1336
5747.21 of the Revised Code. 1337

(d) For the purposes of division (A) ~~(20)~~ (18) (a) (v) of this 1338
section, net operating loss carryback and carryforward shall not 1339
include the allowance of any net operating loss deduction 1340
carryback or carryforward to the taxable year to the extent such 1341
loss resulted from depreciation allowed by section 168(k) of the 1342
Internal Revenue Code and by the qualifying section 179 1343
depreciation expense amount. 1344

(e) For the purposes of divisions (A) ~~(20)~~ (18) and ~~(21)~~ 1345
(19) of this section: 1346

(i) "Income taxes withheld" means the total amount 1347
withheld and remitted under sections 5747.06 and 5747.07 of the 1348
Revised Code by an employer during the employer's taxable year. 1349

(ii) "Increase in income taxes withheld" means the amount 1350
by which the amount of income taxes withheld by an employer 1351
during the employer's current taxable year exceeds the amount of 1352
income taxes withheld by that employer during the employer's 1353
immediately preceding taxable year. 1354

(iii) "Qualifying section 179 depreciation expense" means 1355
the difference between (I) the amount of depreciation expense 1356
directly or indirectly allowed to a taxpayer under section 179 1357
of the Internal Revised Code, and (II) the amount of 1358
depreciation expense directly or indirectly allowed to the 1359
taxpayer under section 179 of the Internal Revenue Code as that 1360
section existed on December 31, 2002. 1361

~~(21)~~ (19) (a) If the taxpayer was required to add an amount 1362
under division (A) ~~(20)~~ (18) (a) of this section for a taxable 1363
year, deduct one of the following: 1364

(i) One-fifth of the amount so added for each of the five 1365
succeeding taxable years if the amount so added was five-sixths 1366

of qualifying section 179 depreciation expense or depreciation 1367
expense allowed by subsection (k) of section 168 of the Internal 1368
Revenue Code; 1369

(ii) One-half of the amount so added for each of the two 1370
succeeding taxable years if the amount so added was two-thirds 1371
of such depreciation expense; 1372

(iii) One-sixth of the amount so added for each of the six 1373
succeeding taxable years if the entire amount of such 1374
depreciation expense was so added. 1375

(b) If the amount deducted under division (A) ~~(21)~~ (19) (a) 1376
of this section is attributable to an add-back allocated under 1377
division (A) ~~(20)~~ (18) (c) of this section, the amount deducted 1378
shall be situated to the same location. Otherwise, the add-back 1379
shall be apportioned using the apportionment factors for the 1380
taxable year in which the deduction is taken, subject to one or 1381
more of the four alternative methods of apportionment enumerated 1382
in section 5747.21 of the Revised Code. 1383

(c) No deduction is available under division (A) ~~(21)~~ (19) 1384
(a) of this section with regard to any depreciation allowed by 1385
section 168(k) of the Internal Revenue Code and by the 1386
qualifying section 179 depreciation expense amount to the extent 1387
that such depreciation results in or increases a federal net 1388
operating loss carryback or carryforward. If no such deduction 1389
is available for a taxable year, the taxpayer may carry forward 1390
the amount not deducted in such taxable year to the next taxable 1391
year and add that amount to any deduction otherwise available 1392
under division (A) ~~(21)~~ (19) (a) of this section for that next 1393
taxable year. The carryforward of amounts not so deducted shall 1394
continue until the entire addition required by division (A) ~~(20)~~ 1395
(18) (a) of this section has been deducted. 1396

(d) No refund shall be allowed as a result of adjustments	1397
made by division (A) (21) of this section.	1398
(22) <u>(20)</u> Deduct, to the extent not otherwise deducted or	1399
excluded in computing federal or Ohio adjusted gross income for	1400
the taxable year, the amount the taxpayer received during the	1401
taxable year as reimbursement for life insurance premiums under	1402
section 5919.31 of the Revised Code.	1403
(23) <u>(21)</u> Deduct, to the extent not otherwise deducted or	1404
excluded in computing federal or Ohio adjusted gross income for	1405
the taxable year, the amount the taxpayer received during the	1406
taxable year as a death benefit paid by the adjutant general	1407
under section 5919.33 of the Revised Code.	1408
(24) <u>(22)</u> Deduct, to the extent included in federal	1409
adjusted gross income and not otherwise allowable as a deduction	1410
or exclusion in computing federal or Ohio adjusted gross income	1411
for the taxable year, military pay and allowances received by	1412
the taxpayer during the taxable year for active duty service in	1413
the United States army, air force, navy, marine corps, or coast	1414
guard or reserve components thereof or the national guard. The	1415
deduction may not be claimed for military pay and allowances	1416
received by the taxpayer while the taxpayer is stationed in this	1417
state.	1418
(25) <u>(23)</u> Deduct, to the extent not otherwise allowable as	1419
a deduction or exclusion in computing federal or Ohio adjusted	1420
gross income for the taxable year and not otherwise compensated	1421
for by any other source, the amount of qualified organ donation	1422
expenses incurred by the taxpayer during the taxable year, not	1423
to exceed ten thousand dollars. A taxpayer may deduct qualified	1424
organ donation expenses only once for all taxable years	1425
beginning with taxable years beginning in 2007.	1426

For the purposes of division (A) ~~(25)~~ (23) of this section: 1427

(a) "Human organ" means all or any portion of a human 1428
liver, pancreas, kidney, intestine, or lung, and any portion of 1429
human bone marrow. 1430

(b) "Qualified organ donation expenses" means travel 1431
expenses, lodging expenses, and wages and salary forgone by a 1432
taxpayer in connection with the taxpayer's donation, while 1433
living, of one or more of the taxpayer's human organs to another 1434
human being. 1435

~~(26)~~ (24) Deduct, to the extent not otherwise deducted or 1436
excluded in computing federal or Ohio adjusted gross income for 1437
the taxable year, amounts received by the taxpayer as retired 1438
personnel pay for service in the uniformed services or reserve 1439
components thereof, or the national guard, or received by the 1440
surviving spouse or former spouse of such a taxpayer under the 1441
survivor benefit plan on account of such a taxpayer's death. If 1442
the taxpayer receives income on account of retirement paid under 1443
the federal civil service retirement system or federal employees 1444
retirement system, or under any successor retirement program 1445
enacted by the congress of the United States that is established 1446
and maintained for retired employees of the United States 1447
government, and such retirement income is based, in whole or in 1448
part, on credit for the taxpayer's uniformed service, the 1449
deduction allowed under this division shall include only that 1450
portion of such retirement income that is attributable to the 1451
taxpayer's uniformed service, to the extent that portion of such 1452
retirement income is otherwise included in federal adjusted 1453
gross income and is not otherwise deducted under this section. 1454
Any amount deducted under division (A) ~~(26)~~ (24) of this section 1455
is not included in a taxpayer's adjusted gross income for the 1456

purposes of section 5747.055 of the Revised Code. No amount may 1457
be deducted under division (A) ~~(26)~~ (24) of this section on the 1458
basis of which a credit was claimed under section 5747.055 of 1459
the Revised Code. 1460

~~(27)~~ (25) Deduct, to the extent not otherwise deducted or 1461
excluded in computing federal or Ohio adjusted gross income for 1462
the taxable year, the amount the taxpayer received during the 1463
taxable year from the military injury relief fund created in 1464
section 5902.05 of the Revised Code. 1465

~~(28)~~ (26) Deduct, to the extent not otherwise deducted or 1466
excluded in computing federal or Ohio adjusted gross income for 1467
the taxable year, the amount the taxpayer received as a veterans 1468
bonus during the taxable year from the Ohio department of 1469
veterans services as authorized by Section 2r of Article VIII, 1470
Ohio Constitution. 1471

~~(29)~~ (27) Deduct, to the extent not otherwise deducted or 1472
excluded in computing federal or Ohio adjusted gross income for 1473
the taxable year, any income derived from a transfer agreement 1474
or from the enterprise transferred under that agreement under 1475
section 4313.02 of the Revised Code. 1476

~~(30)~~ (28) Deduct, to the extent not otherwise deducted or 1477
excluded in computing federal or Ohio adjusted gross income for 1478
the taxable year, Ohio college opportunity or federal Pell grant 1479
amounts received by the taxpayer or the taxpayer's spouse or 1480
dependent pursuant to section 3333.122 of the Revised Code or 20 1481
U.S.C. 1070a, et seq., and used to pay room or board furnished 1482
by the educational institution for which the grant was awarded 1483
at the institution's facilities, including meal plans 1484
administered by the institution. For the purposes of this 1485
division, receipt of a grant includes the distribution of a 1486

grant directly to an educational institution and the crediting	1487
of the grant to the enrollee's account with the institution.	1488
(31) (29)(a) For taxable years beginning in 2015, deduct	1489
from the portion of an individual's adjusted gross income that	1490
is business income, to the extent not otherwise deducted or	1491
excluded in computing federal or Ohio adjusted gross income for	1492
the taxable year, the lesser of the following amounts:	1493
(i) Seventy-five per cent of the individual's business	1494
income;	1495
(ii) Ninety-three thousand seven hundred fifty dollars for	1496
each spouse if spouses file separate returns under section	1497
5747.08 of the Revised Code or one hundred eighty-seven thousand	1498
five hundred dollars for all other individuals.	1499
(b) For taxable years beginning in 2016 or thereafter,	1500
deduct from the portion of an individual's adjusted gross income	1501
that is business income, to the extent not otherwise deducted or	1502
excluded in computing federal adjusted gross income for the	1503
taxable year, one hundred twenty-five thousand dollars for each	1504
spouse if spouses file separate returns under section 5747.08 of	1505
the Revised Code or two hundred fifty thousand dollars for all	1506
other individuals.	1507
<u>(30) Add the taxpayer's proportionate share of any amounts</u>	1508
<u>described in divisions (A) (2) (a), (b), and (c) of section</u>	1509
<u>5747.40 of the Revised Code to the extent that such amounts are</u>	1510
<u>not otherwise included in federal adjusted gross income for the</u>	1511
<u>taxable year.</u>	1512
(B) "Business income" means income, including gain or	1513
loss, arising from transactions, activities, and sources in the	1514
regular course of a trade or business and includes income, gain,	1515

or loss from real property, tangible property, and intangible 1516
property if the acquisition, rental, management, and disposition 1517
of the property constitute integral parts of the regular course 1518
of a trade or business operation. "Business income" includes 1519
income, including gain or loss, from a partial or complete 1520
liquidation of a business, including, but not limited to, gain 1521
or loss from the sale or other disposition of goodwill. 1522

(C) "Nonbusiness income" means all income other than 1523
business income and may include, but is not limited to, 1524
compensation, rents and royalties from real or tangible personal 1525
property, capital gains, interest, dividends and distributions, 1526
patent or copyright royalties, or lottery winnings, prizes, and 1527
awards. 1528

(D) "Compensation" means any form of remuneration paid to 1529
an employee for personal services. 1530

(E) "Fiduciary" means a guardian, trustee, executor, 1531
administrator, receiver, conservator, or any other person acting 1532
in any fiduciary capacity for any individual, trust, or estate. 1533

(F) "Fiscal year" means an accounting period of twelve 1534
months ending on the last day of any month other than December. 1535

(G) "Individual" means any natural person. 1536

(H) "Internal Revenue Code" means the "Internal Revenue 1537
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 1538

(I) "Resident" means any of the following, provided that 1539
division (I)(3) of this section applies only to taxable years of 1540
a trust beginning in 2002 or thereafter: 1541

(1) An individual who is domiciled in this state, subject 1542
to section 5747.24 of the Revised Code; 1543

(2) The estate of a decedent who at the time of death was 1544
domiciled in this state. The domicile tests of section 5747.24 1545
of the Revised Code are not controlling for purposes of division 1546
(I) (2) of this section. 1547

(3) A trust that, in whole or part, resides in this state. 1548
If only part of a trust resides in this state, the trust is a 1549
resident only with respect to that part. 1550

For the purposes of division (I) (3) of this section: 1551

(a) A trust resides in this state for the trust's current 1552
taxable year to the extent, as described in division (I) (3) (d) 1553
of this section, that the trust consists directly or indirectly, 1554
in whole or in part, of assets, net of any related liabilities, 1555
that were transferred, or caused to be transferred, directly or 1556
indirectly, to the trust by any of the following: 1557

(i) A person, a court, or a governmental entity or 1558
instrumentality on account of the death of a decedent, but only 1559
if the trust is described in division (I) (3) (e) (i) or (ii) of 1560
this section; 1561

(ii) A person who was domiciled in this state for the 1562
purposes of this chapter when the person directly or indirectly 1563
transferred assets to an irrevocable trust, but only if at least 1564
one of the trust's qualifying beneficiaries is domiciled in this 1565
state for the purposes of this chapter during all or some 1566
portion of the trust's current taxable year; 1567

(iii) A person who was domiciled in this state for the 1568
purposes of this chapter when the trust document or instrument 1569
or part of the trust document or instrument became irrevocable, 1570
but only if at least one of the trust's qualifying beneficiaries 1571
is a resident domiciled in this state for the purposes of this 1572

chapter during all or some portion of the trust's current 1573
taxable year. If a trust document or instrument became 1574
irrevocable upon the death of a person who at the time of death 1575
was domiciled in this state for purposes of this chapter, that 1576
person is a person described in division (I) (3) (a) (iii) of this 1577
section. 1578

(b) A trust is irrevocable to the extent that the 1579
transferor is not considered to be the owner of the net assets 1580
of the trust under sections 671 to 678 of the Internal Revenue 1581
Code. 1582

(c) With respect to a trust other than a charitable lead 1583
trust, "qualifying beneficiary" has the same meaning as 1584
"potential current beneficiary" as defined in section 1361(e) (2) 1585
of the Internal Revenue Code, and with respect to a charitable 1586
lead trust "qualifying beneficiary" is any current, future, or 1587
contingent beneficiary, but with respect to any trust 1588
"qualifying beneficiary" excludes a person or a governmental 1589
entity or instrumentality to any of which a contribution would 1590
qualify for the charitable deduction under section 170 of the 1591
Internal Revenue Code. 1592

(d) For the purposes of division (I) (3) (a) of this 1593
section, the extent to which a trust consists directly or 1594
indirectly, in whole or in part, of assets, net of any related 1595
liabilities, that were transferred directly or indirectly, in 1596
whole or part, to the trust by any of the sources enumerated in 1597
that division shall be ascertained by multiplying the fair 1598
market value of the trust's assets, net of related liabilities, 1599
by the qualifying ratio, which shall be computed as follows: 1600

(i) The first time the trust receives assets, the 1601
numerator of the qualifying ratio is the fair market value of 1602

those assets at that time, net of any related liabilities, from 1603
sources enumerated in division (I) (3) (a) of this section. The 1604
denominator of the qualifying ratio is the fair market value of 1605
all the trust's assets at that time, net of any related 1606
liabilities. 1607

(ii) Each subsequent time the trust receives assets, a 1608
revised qualifying ratio shall be computed. The numerator of the 1609
revised qualifying ratio is the sum of (1) the fair market value 1610
of the trust's assets immediately prior to the subsequent 1611
transfer, net of any related liabilities, multiplied by the 1612
qualifying ratio last computed without regard to the subsequent 1613
transfer, and (2) the fair market value of the subsequently 1614
transferred assets at the time transferred, net of any related 1615
liabilities, from sources enumerated in division (I) (3) (a) of 1616
this section. The denominator of the revised qualifying ratio is 1617
the fair market value of all the trust's assets immediately 1618
after the subsequent transfer, net of any related liabilities. 1619

(iii) Whether a transfer to the trust is by or from any of 1620
the sources enumerated in division (I) (3) (a) of this section 1621
shall be ascertained without regard to the domicile of the 1622
trust's beneficiaries. 1623

(e) For the purposes of division (I) (3) (a) (i) of this 1624
section: 1625

(i) A trust is described in division (I) (3) (e) (i) of this 1626
section if the trust is a testamentary trust and the testator of 1627
that testamentary trust was domiciled in this state at the time 1628
of the testator's death for purposes of the taxes levied under 1629
Chapter 5731. of the Revised Code. 1630

(ii) A trust is described in division (I) (3) (e) (ii) of 1631

this section if the transfer is a qualifying transfer described 1632
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 1633
trust is an irrevocable inter vivos trust, and at least one of 1634
the trust's qualifying beneficiaries is domiciled in this state 1635
for purposes of this chapter during all or some portion of the 1636
trust's current taxable year. 1637

(f) For the purposes of division (I) (3) (e) (ii) of this 1638
section, a "qualifying transfer" is a transfer of assets, net of 1639
any related liabilities, directly or indirectly to a trust, if 1640
the transfer is described in any of the following: 1641

(i) The transfer is made to a trust, created by the 1642
decedent before the decedent's death and while the decedent was 1643
domiciled in this state for the purposes of this chapter, and, 1644
prior to the death of the decedent, the trust became irrevocable 1645
while the decedent was domiciled in this state for the purposes 1646
of this chapter. 1647

(ii) The transfer is made to a trust to which the 1648
decedent, prior to the decedent's death, had directly or 1649
indirectly transferred assets, net of any related liabilities, 1650
while the decedent was domiciled in this state for the purposes 1651
of this chapter, and prior to the death of the decedent the 1652
trust became irrevocable while the decedent was domiciled in 1653
this state for the purposes of this chapter. 1654

(iii) The transfer is made on account of a contractual 1655
relationship existing directly or indirectly between the 1656
transferor and either the decedent or the estate of the decedent 1657
at any time prior to the date of the decedent's death, and the 1658
decedent was domiciled in this state at the time of death for 1659
purposes of the taxes levied under Chapter 5731. of the Revised 1660
Code. 1661

(iv) The transfer is made to a trust on account of a 1662
contractual relationship existing directly or indirectly between 1663
the transferor and another person who at the time of the 1664
decedent's death was domiciled in this state for purposes of 1665
this chapter. 1666

(v) The transfer is made to a trust on account of the will 1667
of a testator who was domiciled in this state at the time of the 1668
testator's death for purposes of the taxes levied under Chapter 1669
5731. of the Revised Code. 1670

(vi) The transfer is made to a trust created by or caused 1671
to be created by a court, and the trust was directly or 1672
indirectly created in connection with or as a result of the 1673
death of an individual who, for purposes of the taxes levied 1674
under Chapter 5731. of the Revised Code, was domiciled in this 1675
state at the time of the individual's death. 1676

(g) The tax commissioner may adopt rules to ascertain the 1677
part of a trust residing in this state. 1678

(J) "Nonresident" means an individual or estate that is 1679
not a resident. An individual who is a resident for only part of 1680
a taxable year is a nonresident for the remainder of that 1681
taxable year. 1682

(K) "~~Pass-through entity" has the same meaning as in~~ 1683
section 5733.04 of the Revised Code means a corporation that has 1684
made an election under subchapter S of Chapter 1 of Subtitle A 1685
of the Internal Revenue Code for its taxable year under that 1686
code, or a partnership, limited liability company, or any other 1687
person, other than an individual, trust, estate, or disregarded 1688
entity, if the partnership, limited liability company, or other 1689
person is not classified for federal income tax purposes as an 1690

<u>association taxed as a corporation.</u>	1691
(L) "Return" means the notifications and reports required	1692
to be filed pursuant to this chapter for the purpose of	1693
reporting the tax due and includes declarations of estimated tax	1694
when so required.	1695
(M) "Taxable year" means the calendar year or the	1696
taxpayer's fiscal year ending during the calendar year, or	1697
fractional part thereof, upon which the adjusted gross income is	1698
calculated pursuant to this chapter.	1699
(N) "Taxpayer" means any person subject to the tax imposed	1700
by section 5747.02 of the Revised Code or any pass-through	1701
entity that makes the election under division (D) of section	1702
5747.08 <u>required to file a return under section 5747.41</u> of the	1703
Revised Code.	1704
(O) "Dependents" means dependents as defined in the	1705
Internal Revenue Code and as claimed in the taxpayer's federal	1706
income tax return for the taxable year or which the taxpayer	1707
would have been permitted to claim had the taxpayer filed a	1708
federal income tax return.	1709
(P) "Principal county of employment" means, in the case of	1710
a nonresident, the county within the state in which a taxpayer	1711
performs services for an employer or, if those services are	1712
performed in more than one county, the county in which the major	1713
portion of the services are performed.	1714
(Q) As used in sections 5747.50 to 5747.55 of the Revised	1715
Code:	1716
(1) "Subdivision" means any county, municipal corporation,	1717
park district, or township.	1718

(2) "Essential local government purposes" includes all 1719
functions that any subdivision is required by general law to 1720
exercise, including like functions that are exercised under a 1721
charter adopted pursuant to the Ohio Constitution. 1722

(R) "Overpayment" means any amount already paid that 1723
exceeds the figure determined to be the correct amount of the 1724
tax. 1725

(S) "Taxable income" or "Ohio taxable income" applies only 1726
to estates and trusts, and means federal taxable income, as 1727
defined and used in the Internal Revenue Code, adjusted as 1728
follows: 1729

(1) Add interest or dividends, net of ordinary, necessary, 1730
and reasonable expenses not deducted in computing federal 1731
taxable income, on obligations or securities of any state or of 1732
any political subdivision or authority of any state, other than 1733
this state and its subdivisions and authorities, but only to the 1734
extent that such net amount is not otherwise includible in Ohio 1735
taxable income and is described in either division (S) (1) (a) or 1736
(b) of this section: 1737

(a) The net amount is not attributable to the S portion of 1738
an electing small business trust and has not been distributed to 1739
beneficiaries for the taxable year; 1740

(b) The net amount is attributable to the S portion of an 1741
electing small business trust for the taxable year. 1742

(2) Add interest or dividends, net of ordinary, necessary, 1743
and reasonable expenses not deducted in computing federal 1744
taxable income, on obligations of any authority, commission, 1745
instrumentality, territory, or possession of the United States 1746
to the extent that the interest or dividends are exempt from 1747

federal income taxes but not from state income taxes, but only 1748
to the extent that such net amount is not otherwise includible 1749
in Ohio taxable income and is described in either division (S) 1750
(1) (a) or (b) of this section; 1751

(3) Add the amount of personal exemption allowed to the 1752
estate pursuant to section 642(b) of the Internal Revenue Code; 1753

(4) Deduct interest or dividends, net of related expenses 1754
deducted in computing federal taxable income, on obligations of 1755
the United States and its territories and possessions or of any 1756
authority, commission, or instrumentality of the United States 1757
to the extent that the interest or dividends are exempt from 1758
state taxes under the laws of the United States, but only to the 1759
extent that such amount is included in federal taxable income 1760
and is described in either division (S) (1) (a) or (b) of this 1761
section; 1762

(5) Deduct the amount of wages and salaries, if any, not 1763
otherwise allowable as a deduction but that would have been 1764
allowable as a deduction in computing federal taxable income for 1765
the taxable year, had the targeted jobs credit allowed under 1766
sections 38, 51, and 52 of the Internal Revenue Code not been in 1767
effect, but only to the extent such amount relates either to 1768
income included in federal taxable income for the taxable year 1769
or to income of the S portion of an electing small business 1770
trust for the taxable year; 1771

(6) Deduct any interest or interest equivalent, net of 1772
related expenses deducted in computing federal taxable income, 1773
on public obligations and purchase obligations, but only to the 1774
extent that such net amount relates either to income included in 1775
federal taxable income for the taxable year or to income of the 1776
S portion of an electing small business trust for the taxable 1777

year;	1778
(7) Add any loss or deduct any gain resulting from sale,	1779
exchange, or other disposition of public obligations to the	1780
extent that such loss has been deducted or such gain has been	1781
included in computing either federal taxable income or income of	1782
the S portion of an electing small business trust for the	1783
taxable year;	1784
(8) Except in the case of the final return of an estate,	1785
add any amount deducted by the taxpayer on both its Ohio estate	1786
tax return pursuant to section 5731.14 of the Revised Code, and	1787
on its federal income tax return in determining federal taxable	1788
income;	1789
(9) (a) Deduct any amount included in federal taxable	1790
income solely because the amount represents a reimbursement or	1791
refund of expenses that in a previous year the decedent had	1792
deducted as an itemized deduction pursuant to section 63 of the	1793
Internal Revenue Code and applicable treasury regulations. The	1794
deduction otherwise allowed under division (S) (9) (a) of this	1795
section shall be reduced to the extent the reimbursement is	1796
attributable to an amount the taxpayer or decedent deducted	1797
under this section in any taxable year.	1798
(b) Add any amount not otherwise included in Ohio taxable	1799
income for any taxable year to the extent that the amount is	1800
attributable to the recovery during the taxable year of any	1801
amount deducted or excluded in computing federal or Ohio taxable	1802
income in any taxable year, but only to the extent such amount	1803
has not been distributed to beneficiaries for the taxable year.	1804
(10) Deduct any portion of the deduction described in	1805
section 1341(a) (2) of the Internal Revenue Code, for repaying	1806

previously reported income received under a claim of right, that 1807
meets both of the following requirements: 1808

(a) It is allowable for repayment of an item that was 1809
included in the taxpayer's taxable income or the decedent's 1810
adjusted gross income for a prior taxable year and did not 1811
qualify for a credit under division (A) or (B) of section 1812
5747.05 of the Revised Code for that year. 1813

(b) It does not otherwise reduce the taxpayer's taxable 1814
income or the decedent's adjusted gross income for the current 1815
or any other taxable year. 1816

~~(11) Add any amount claimed as a credit under section 1817
5747.059 or 5747.65 of the Revised Code to the extent that the 1818
amount satisfies either of the following:— 1819~~

~~(a) The amount was deducted or excluded from the 1820
computation of the taxpayer's federal taxable income as required 1821
to be reported for the taxpayer's taxable year under the 1822
Internal Revenue Code;— 1823~~

~~(b) The amount resulted in a reduction in the taxpayer's 1824
federal taxable income as required to be reported for any of the 1825
taxpayer's taxable years under the Internal Revenue Code.— 1826~~

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

of the Revised Code applies in ascertaining if the trust is 1836
eligible to claim the deduction provided by division (S) ~~(12)~~ 1837
(11) of this section in connection with the pass-through 1838
entity's farm income. 1839

Except for farm income attributable to the S portion of an 1840
electing small business trust, the deduction provided by 1841
division (S) ~~(12)~~ (11) of this section is allowed only to the 1842
extent that the trust has not distributed such farm income. 1843
Division (S) ~~(12)~~ (11) of this section applies only to taxable 1844
years of a trust beginning in 2002 or thereafter. 1845

~~(13)~~ (12) Add the net amount of income described in 1846
section 641(c) of the Internal Revenue Code to the extent that 1847
amount is not included in federal taxable income. 1848

~~(14)~~ (13) Add or deduct the amount the taxpayer would be 1849
required to add or deduct under division (A) ~~(20)~~ (18) or ~~(21)~~ 1850
(19) of this section if the taxpayer's Ohio taxable income were 1851
computed in the same manner as an individual's Ohio adjusted 1852
gross income is computed under this section. In the case of a 1853
trust, division (S) ~~(14)~~ (13) of this section applies only to any 1854
of the trust's taxable years beginning in 2002 or thereafter. 1855

(14) Add the taxpayer's proportionate share of any amounts 1856
described in divisions (A) (2) (a) and (c) of section 5747.40 of 1857
the Revised Code to the extent that such amounts are not 1858
otherwise included in federal taxable income for the taxable 1859
year. 1860

(T) "School district income" and "school district income 1861
tax" have the same meanings as in section 5748.01 of the Revised 1862
Code. 1863

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 1864

(7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

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

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

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

(Y) "Month" means a calendar month.

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

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

(2) "Qualified tuition and fees" means tuition and fees imposed by an eligible institution as a condition of enrollment or attendance, not exceeding two thousand five hundred dollars in each of the individual's first two years of post-secondary

education. If the individual is a part-time student, "qualified
tuition and fees" includes tuition and fees paid for the
academic equivalent of the first two years of post-secondary
education during a maximum of five taxable years, not exceeding
a total of five thousand dollars. "Qualified tuition and fees"
does not include:

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

(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.	1923
(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.	1924 1925 1926
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.	1927 1928 1929
(3) "Modified nonbusiness income" means a trust's Ohio taxable income other than modified business income, other than the qualifying trust amount, and other than qualifying investment income, as defined in section 5747.012 of the Revised Code, to the extent such qualifying investment income is not otherwise part of modified business income.	1930 1931 1932 1933 1934 1935
(4) "Modified Ohio taxable income" applies only to trusts, and means the sum of the amounts described in divisions (BB) (4) (a) to (c) of this section:	1936 1937 1938
(a) The fraction, calculated under section 5747.013, and applying section 5747.231 of the Revised Code, multiplied by the sum of the following amounts:	1939 1940 1941
(i) The trust's modified business income;	1942
(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.	1943 1944 1945 1946 1947
(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last	1948 1949 1950

day of the qualifying investee's fiscal or calendar year ending 1951
immediately prior to the day on which the trust recognizes the 1952
qualifying trust amount, and the denominator of which is the sum 1953
of the book value of the qualifying investee's total physical 1954
assets everywhere on the last day of the qualifying investee's 1955
fiscal or calendar year ending immediately prior to the day on 1956
which the trust recognizes the qualifying trust amount. If, for 1957
a taxable year, the trust recognizes a qualifying trust amount 1958
with respect to more than one qualifying investee, the amount 1959
described in division (BB) (4) (b) of this section shall equal the 1960
sum of the products so computed for each such qualifying 1961
investee. 1962

(c) (i) With respect to a trust or portion of a trust that 1963
is a resident as ascertained in accordance with division (I) (3) 1964
(d) of this section, its modified nonbusiness income. 1965

(ii) With respect to a trust or portion of a trust that is 1966
not a resident as ascertained in accordance with division (I) (3) 1967
(d) of this section, the amount of its modified nonbusiness 1968
income satisfying the descriptions in divisions (B) (2) to (5) of 1969
section 5747.20 of the Revised Code, except as otherwise 1970
provided in division (BB) (4) (c) (ii) of this section. With 1971
respect to a trust or portion of a trust that is not a resident 1972
as ascertained in accordance with division (I) (3) (d) of this 1973
section, the trust's portion of modified nonbusiness income 1974
recognized from the sale, exchange, or other disposition of a 1975
debt interest in or equity interest in a section 5747.212 1976
entity, as defined in section 5747.212 of the Revised Code, 1977
without regard to division (A) of that section, shall not be 1978
allocated to this state in accordance with section 5747.20 of 1979
the Revised Code but shall be apportioned to this state in 1980
accordance with division (B) of section 5747.212 of the Revised 1981

Code without regard to division (A) of that section. 1982

If the allocation and apportionment of a trust's income 1983
under divisions (BB)(4)(a) and (c) of this section do not fairly 1984
represent the modified Ohio taxable income of the trust in this 1985
state, the alternative methods described in division (C) of 1986
section 5747.21 of the Revised Code may be applied in the manner 1987
and to the same extent provided in that section. 1988

(5)(a) Except as set forth in division (BB)(5)(b) of this 1989
section, "qualifying investee" means a person in which a trust 1990
has an equity or ownership interest, or a person or unit of 1991
government the debt obligations of either of which are owned by 1992
a trust. For the purposes of division (BB)(2)(a) of this section 1993
and for the purpose of computing the fraction described in 1994
division (BB)(4)(b) of this section, all of the following apply: 1995

(i) If the qualifying investee is a member of a qualifying 1996
controlled group on the last day of the qualifying investee's 1997
fiscal or calendar year ending immediately prior to the date on 1998
which the trust recognizes the gain or loss, then "qualifying 1999
investee" includes all persons in the qualifying controlled 2000
group on such last day. 2001

(ii) If the qualifying investee, or if the qualifying 2002
investee and any members of the qualifying controlled group of 2003
which the qualifying investee is a member on the last day of the 2004
qualifying investee's fiscal or calendar year ending immediately 2005
prior to the date on which the trust recognizes the gain or 2006
loss, separately or cumulatively own, directly or indirectly, on 2007
the last day of the qualifying investee's fiscal or calendar 2008
year ending immediately prior to the date on which the trust 2009
recognizes the qualifying trust amount, more than fifty per cent 2010
of the equity of a pass-through entity, then the qualifying 2011

investee and the other members are deemed to own the 2012
proportionate share of the pass-through entity's physical assets 2013
which the pass-through entity directly or indirectly owns on the 2014
last day of the pass-through entity's calendar or fiscal year 2015
ending within or with the last day of the qualifying investee's 2016
fiscal or calendar year ending immediately prior to the date on 2017
which the trust recognizes the qualifying trust amount. 2018

(iii) For the purposes of division (BB) (5) (a) (iii) of this 2019
section, "upper level pass-through entity" means a pass-through 2020
entity directly or indirectly owning any equity of another pass- 2021
through entity, and "lower level pass-through entity" means that 2022
other pass-through entity. 2023

An upper level pass-through entity, whether or not it is 2024
also a qualifying investee, is deemed to own, on the last day of 2025
the upper level pass-through entity's calendar or fiscal year, 2026
the proportionate share of the lower level pass-through entity's 2027
physical assets that the lower level pass-through entity 2028
directly or indirectly owns on the last day of the lower level 2029
pass-through entity's calendar or fiscal year ending within or 2030
with the last day of the upper level pass-through entity's 2031
fiscal or calendar year. If the upper level pass-through entity 2032
directly and indirectly owns less than fifty per cent of the 2033
equity of the lower level pass-through entity on each day of the 2034
upper level pass-through entity's calendar or fiscal year in 2035
which or with which ends the calendar or fiscal year of the 2036
lower level pass-through entity and if, based upon clear and 2037
convincing evidence, complete information about the location and 2038
cost of the physical assets of the lower pass-through entity is 2039
not available to the upper level pass-through entity, then 2040
solely for purposes of ascertaining if a gain or loss 2041
constitutes a qualifying trust amount, the upper level pass- 2042

through entity shall be deemed as owning no equity of the lower 2043
level pass-through entity for each day during the upper level 2044
pass-through entity's calendar or fiscal year in which or with 2045
which ends the lower level pass-through entity's calendar or 2046
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 2047
shall be construed to provide for any deduction or exclusion in 2048
computing any trust's Ohio taxable income. 2049

(b) With respect to a trust that is not a resident for the 2050
taxable year and with respect to a part of a trust that is not a 2051
resident for the taxable year, "qualifying investee" for that 2052
taxable year does not include a C corporation if both of the 2053
following apply: 2054

(i) During the taxable year the trust or part of the trust 2055
recognizes a gain or loss from the sale, exchange, or other 2056
disposition of equity or ownership interests in, or debt 2057
obligations of, the C corporation. 2058

(ii) Such gain or loss constitutes nonbusiness income. 2059

(6) "Available" means information is such that a person is 2060
able to learn of the information by the due date plus 2061
extensions, if any, for filing the return for the taxable year 2062
in which the trust recognizes the gain or loss. 2063

~~(CC) (7) "Qualifying controlled group" has the same~~ 2064
~~meaning as in section 5733.04 of the Revised Code means a group~~ 2065
of two or more corporations each of which owns or controls 2066
directly, indirectly, or constructively through related 2067
interests more than fifty per cent of the capital stock with 2068
voting rights of one or more other corporations in the group or 2069
which has more than fifty per cent of its capital stock with 2070
voting rights owned or controlled directly, indirectly, or 2071

constructively through related interest by one or more other 2072
corporations in the group. 2073

(CC) "Partnership" has the same meaning as in section 2074
1776.01 of the Revised Code. 2075

(DD) (1) "Related member" has the same meaning as in 2076
section 5733.042 of the Revised Code means any of the following 2077
persons: 2078

(a) A person that, with respect to the taxpayer during all 2079
or any portion of the taxable year, is a component member as 2080
defined in section 1563(b) of the Internal Revenue Code; 2081

(b) An individual, or a member of the individual's family 2082
enumerated in section 318 of the Internal Revenue Code, if the 2083
individual and the members of the individual's family own, 2084
directly, indirectly, beneficially, or constructively, in the 2085
aggregate, at least fifty per cent of the value of the 2086
taxpayer's outstanding stock or ownership interest; 2087

(c) A stockholder, or a stockholder's partnership, estate, 2088
trust, or corporation, if the stockholder and the stockholder's 2089
partnerships, estates, trusts, and corporations own directly, 2090
indirectly, beneficially, or constructively, in the aggregate, 2091
at least fifty per cent of the value of the taxpayer's 2092
outstanding stock; 2093

(d) A corporation, or a party related to the corporation 2094
in a manner that would require an attribution of stock from the 2095
corporation to the party or from the party to the corporation, 2096
if the taxpayer owns, directly, indirectly, beneficially, or 2097
constructively, at least fifty per cent of the value of the 2098
corporation's outstanding stock; 2099

(e) A pass-through entity, or a partner or member thereof, 2100

if the pass-through entity, partner, or member owns directly, 2101
indirectly, beneficially, or constructively, in the aggregate, 2102
at least fifty per cent of the value of the taxpayer's ownership 2103
interest. 2104

(2) The attribution rules of section 318 of the Internal 2105
Revenue Code apply for purposes of determining whether the 2106
ownership requirements in divisions (DD) (1) (b) to (e) of this 2107
section have been met. 2108

(EE) (1) For the purposes of division (EE) of this section: 2109

(a) "Qualifying person" means any person other than a 2110
qualifying corporation. 2111

(b) "Qualifying corporation" means any person classified 2112
for federal income tax purposes as an association taxable as a 2113
corporation, except either of the following: 2114

(i) A corporation that has made an election under 2115
subchapter S, chapter one, subtitle A, of the Internal Revenue 2116
Code for its taxable year ending within, or on the last day of, 2117
the investor's taxable year; 2118

(ii) A subsidiary that is wholly owned by any corporation 2119
that has made an election under subchapter S, chapter one, 2120
subtitle A of the Internal Revenue Code for its taxable year 2121
ending within, or on the last day of, the investor's taxable 2122
year. 2123

(2) For the purposes of this chapter, unless expressly 2124
stated otherwise, no qualifying person indirectly owns any asset 2125
directly or indirectly owned by any qualifying corporation. 2126

(FF) For purposes of this chapter and Chapter 5751. of the 2127
Revised Code: 2128

(1) "Trust" does not include a qualified pre-income tax trust.	2129 2130
(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.	2131 2132 2133
(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, directly, indirectly, or constructively through related interests, five per cent or more of the ownership or equity interests. The trustee shall notify the tax commissioner in writing of the election on or before April 15, 2006. The election, if timely made, shall be effective on and after January 1, 2006, and shall apply for all tax periods and tax years until revoked by the trustee of the trust.	2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144
(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements:	2145 2146
(a) The document or instrument creating the trust was executed by the grantor before January 1, 1972;	2147 2148
(b) The trust became irrevocable upon the creation of the trust; and	2149 2150
(c) The grantor was domiciled in this state at the time the trust was created.	2151 2152
(GG) "Uniformed services" has the same meaning as in 10 U.S.C. 101.	2153 2154
(HH) "Taxable business income" means the amount by which an individual's business income that is included in federal	2155 2156

adjusted gross income exceeds the amount of business income the 2157
individual is authorized to deduct under division (A) ~~(31)~~ (29) 2158
of this section for the taxable year. 2159

(II) "Distributive share" includes the sum of the income, 2160
gain, expense, or loss of a disregarded entity or qualified 2161
subchapter S subsidiary. 2162

(JJ) "Disregarded entity" means an entity that, for its 2163
taxable year, is by default, or has elected to be, disregarded 2164
as an entity separate from its owner pursuant to 26 C.F.R. 2165
301.7701-3. 2166

Sec. 5747.012. This section applies for the purposes of 2167
divisions (BB) (3) and (BB) (4) (a) (ii) of section 5747.01 of the 2168
Revised Code. 2169

(A) As used in this section: 2170

(1) (a) Except as set forth in division (A) (1) (b) of this 2171
section, "qualifying investment income" means the portion of a 2172
qualifying investment pass-through entity's net income 2173
~~attributable to transaction fees in connection with the~~ 2174
~~acquisition, ownership, or disposition of intangible property;~~ 2175
~~loan fees; financing fees; consent fees; waiver fees;~~ 2176
~~application fees; net management fees; dividend income; interest~~ 2177
~~income; net capital gains from the sale or exchange or other~~ 2178
~~disposition of intangible property; and all types and~~ 2179
~~classifications of income attributable to distributive shares of~~ 2180
~~income from other pass through entities~~ that is "investment 2181
income" as defined in section 5747.221 of the Revised Code. 2182

(b) (i) Notwithstanding division (A) (1) (a) of this section, 2183
"qualifying investment income" does not include any part of the 2184
qualifying investment pass-through entity's net capital gain 2185

which, after the application of section 5747.231 of the Revised Code with respect to a trust, would also constitute a qualifying trust amount.

(ii) Notwithstanding division (A)(1)(a) of this section, "qualifying investment income" does not include any part of the qualifying investment pass-through entity's net income attributable to the portion of a distributive share of income directly or indirectly from another pass-through entity to the extent such portion constitutes the other pass-through entity's net capital gain which, after the application of section 5747.231 of the Revised Code with respect to a trust, would also constitute a qualifying trust amount.

(2) "Qualifying investment pass-through entity" means an investment pass-through entity, as defined in division (B)(3) of section 5733.401-5747.221 of the Revised Code, subject to the following qualifications:

(a) "Forty per cent" shall be substituted for "ninety per cent" wherever "ninety per cent" appears in ~~section 5733.401 of the Revised Code~~ that division.

(b) The pass-through entity must have been formed or organized as an entity prior to June 5, 2002, and must exist as a pass-through entity for all of the taxable year of the trust.

(c) The qualifying section 5747.012 trust or related persons to the qualifying section 5747.012 trust must directly or indirectly own at least five per cent of the equity of the investment pass-through entity each day of the entity's fiscal or calendar year ending within or with the last day of the qualifying section 5747.012 trust's taxable year;

(d) During the investment pass-through entity's calendar

or fiscal year ending within or with the last day of the 2215
qualifying section 5747.012 trust's taxable year, the qualifying 2216
section 5747.012 trust or related persons of or to the 2217
qualifying section 5747.012 trust must, on each day of the 2218
investment pass-through entity's year, own directly, or own 2219
through equity investments in other pass-through entities, more 2220
than sixty per cent of the equity of the investment pass-through 2221
entity. 2222

(B) "Qualifying section 5747.012 trust" means a trust 2223
satisfying one of the following: 2224

(1) The trust was created prior to, and was irrevocable 2225
on, June 5, 2002; or 2226

(2) If the trust was created after June 4, 2002, or if the 2227
trust became irrevocable after June 4, 2002, then at least 2228
eighty per cent of the assets transferred to the trust must have 2229
been previously owned by related persons to the trust or by a 2230
trust created prior to June 5, 2002, under which the creator did 2231
not retain the power to change beneficiaries, amend the trust, 2232
or revoke the trust. For purposes of division (B) (2) of this 2233
section, the power to substitute property of equal value shall 2234
not be considered to be a power to change beneficiaries, amend 2235
the trust, or revoke the trust. 2236

(C) For the purposes of this section, "related persons" 2237
means the family of a qualifying individual beneficiary, as 2238
defined in division (A) (5) of section 5747.011 of the Revised 2239
Code. For the purposes of this division, "family" has the same 2240
meaning as in division (A) (6) of section 5747.011 of the Revised 2241
Code. 2242

(D) For the purposes of applying divisions (A) (2) (c), (A) 2243

(2) (d), and (B) (2) of this section, the related persons or the 2244
qualifying section 5747.012 trust, as the case may be, shall be 2245
deemed to own the equity of the investment pass-through entity 2246
after the application of division (B) of section 5747.011 of the 2247
Revised Code. 2248

(E) "Irrevocable" has the same meaning as in division (I) 2249
(3) (b) of section 5747.01 of the Revised Code. 2250

(F) Nothing in this section requires any item of income, 2251
gain, or loss not satisfying the definition of qualifying 2252
investment income to be treated as modified nonbusiness income. 2253
Any item of income, gain, or loss that is not qualifying 2254
investment income is modified business income, modified 2255
nonbusiness income, or a qualifying trust amount, as the case 2256
may be. 2257

(G) For the purposes of this section, an investment in a 2258
pass-through entity shall be deemed to be an investment in an 2259
intangible asset, and section 5747.231 of the Revised Code shall 2260
not apply for the purpose of making the determinations required 2261
by division (A) (2) of this section. 2262

Sec. 5747.03. (A) All money ~~collected under this chapter~~ 2263
~~arising from the taxes imposed by section 5747.02 or 5747.41 of~~ 2264
~~the Revised Code~~ taxes imposed by this chapter shall be credited 2265
to the general revenue fund, except that the treasurer of state 2266
shall, at the beginning of each calendar quarter, credit to the 2267
Ohio political party fund, pursuant to section 3517.16 of the 2268
Revised Code, an amount equal to the total dollar value realized 2269
from the taxpayer exercise of the income tax checkoff option on 2270
tax forms processed during the preceding calendar quarter. 2271

(B) (1) Following the crediting of moneys pursuant to 2272

division (A) of this section, the remainder deposited in the 2273
general revenue fund shall be distributed pursuant to division 2274
(F) of section 321.24 and section 323.156 of the Revised Code; 2275
to make subsidy payments to institutions of higher education 2276
from appropriations to the Ohio board of regents; to support 2277
expenditures for programs and services for the mentally ill, 2278
mentally retarded, developmentally disabled, and elderly; for 2279
primary and secondary education; for medical assistance; and for 2280
any other purposes authorized by law, subject to the limitation 2281
that at least fifty per cent of the income tax collected by the 2282
state from the tax imposed by section 5747.02 of the Revised 2283
Code shall be returned pursuant to Section 9 of Article XII, 2284
Ohio Constitution. 2285

(2) To ensure that such constitutional requirement is 2286
satisfied the tax commissioner shall, on or before the thirtieth 2287
day of June of each year, from the best information available to 2288
the tax commissioner, determine and certify for each county to 2289
the director of budget and management the amount of taxes 2290
collected under this chapter from the tax imposed under section 2291
5747.02 of the Revised Code during the preceding calendar year 2292
that are required to be returned to the county by Section 9 of 2293
Article XII, Ohio Constitution. The director shall provide for 2294
payment from the general revenue fund to the county in the 2295
amount, if any, that the sum of the amount so certified for that 2296
county exceeds the sum of the following: 2297

(a) The sum of the payments from the general revenue fund 2298
for the preceding calendar year credited to the county's 2299
undivided income tax fund pursuant to division (F) of section 2300
321.24 and section 323.156 of the Revised Code or made directly 2301
from the general revenue fund to political subdivisions located 2302
in the county; 2303

(b) The sum of the amounts from the general revenue fund 2304
distributed in the county during the preceding calendar year for 2305
subsidy payments to institutions of higher education from 2306
appropriations to the Ohio board of regents; for programs and 2307
services for mentally ill, mentally retarded, developmentally 2308
disabled, and elderly persons; for primary and secondary 2309
education; and for medical assistance. 2310

(c) In the case of payments made by the director under 2311
this division in 2007, the total amount distributed to the 2312
county during the preceding calendar year from the local 2313
government fund and the local government revenue assistance 2314
fund, and, in the case of payments made by the director under 2315
this division in subsequent calendar years, the amount 2316
distributed to the county from the local government fund; 2317

(d) In the case of payments made by the director under 2318
this division, the total amount distributed to the county during 2319
the preceding calendar year from the public library fund. 2320

Payments under this division shall be credited to the 2321
county's undivided income tax fund, except that, notwithstanding 2322
section 5705.14 of the Revised Code, such payments may be 2323
transferred by the board of county commissioners to the county 2324
general fund by resolution adopted with the affirmative vote of 2325
two-thirds of the members thereof. 2326

(C) All payments received in each month from taxes imposed 2327
under Chapter 5748. of the Revised Code and any penalties or 2328
interest thereon shall be paid into the school district income 2329
tax fund, which is hereby created in the state treasury, except 2330
that an amount equal to the following portion of such payments 2331
shall be paid into the general school district income tax 2332
administrative fund, which is hereby created in the state 2333

treasury: 2334

(1) One and three-quarters of one per cent of those 2335
received in fiscal year 1996; 2336

(2) One and one-half per cent of those received in fiscal 2337
year 1997 and thereafter. 2338

Money in the school district income tax administrative 2339
fund shall be used by the tax commissioner to defray costs 2340
incurred in administering the school district's income tax, 2341
including the cost of providing employers with information 2342
regarding the rate of tax imposed by any school district. Any 2343
moneys remaining in the fund after such use shall be deposited 2344
in the school district income tax fund. 2345

All interest earned on moneys in the school district 2346
income tax fund shall be credited to the fund. 2347

(D) (1) (a) Within thirty days of the end of each calendar 2348
quarter ending on the last day of March, June, September, and 2349
December, the director of budget and management shall make a 2350
payment from the school district income tax fund to each school 2351
district for which school district income tax revenue was 2352
received during that quarter. The amount of the payment shall 2353
equal the balance in the school district's account at the end of 2354
that quarter. 2355

(b) After a school district ceases to levy an income tax, 2356
the director of budget and management shall adjust the payments 2357
under division (D) (1) (a) of this section to retain sufficient 2358
money in the school district's account to pay refunds. For the 2359
calendar quarters ending on the last day of March and December 2360
of the calendar year following the last calendar year the tax is 2361
levied, the director shall make the payments in the amount 2362

required under division (D) (1) (a) of this section. For the 2363
calendar quarter ending on the last day of June of the calendar 2364
year following the last calendar year the tax is levied, the 2365
director shall make a payment equal to nine-tenths of the 2366
balance in the account at the end of that quarter. For the 2367
calendar quarter ending on the last day of September of the 2368
calendar year following the last calendar year the tax is 2369
levied, the director shall make no payment. For the second and 2370
succeeding calendar years following the last calendar year the 2371
tax is levied, the director shall make one payment each year, 2372
within thirty days of the last day of June, in an amount equal 2373
to the balance in the district's account on the last day of 2374
June. 2375

(2) Moneys paid to a school district under this division 2376
shall be deposited in its school district income tax fund. All 2377
interest earned on moneys in the school district income tax fund 2378
shall be apportioned by the tax commissioner pro rata among the 2379
school districts in the proportions and at the times the 2380
districts are entitled to receive payments under this division. 2381

Sec. 5747.08. An annual return with respect to the tax 2382
imposed by section 5747.02 of the Revised Code and each tax 2383
imposed under Chapter 5748. of the Revised Code shall be made by 2384
every taxpayer for any taxable year for which the taxpayer is 2385
liable for the tax imposed by that section or under that 2386
chapter, unless the total credits allowed under division (E) of 2387
section 5747.05 and divisions (F) and (G) of section 5747.055 of 2388
the Revised Code for the year are equal to or exceed the tax 2389
imposed by section 5747.02 of the Revised Code, in which case no 2390
return shall be required unless the taxpayer is liable for a tax 2391
imposed pursuant to Chapter 5748. of the Revised Code. 2392

(A) If an individual is deceased, any return or notice 2393
required of that individual under this chapter shall be made and 2394
filed by that decedent's executor, administrator, or other 2395
person charged with the property of that decedent. 2396

(B) If an individual is unable to make a return or notice 2397
required by this chapter, the return or notice required of that 2398
individual shall be made and filed by the individual's duly 2399
authorized agent, guardian, conservator, fiduciary, or other 2400
person charged with the care of the person or property of that 2401
individual. 2402

(C) Returns or notices required of an estate or a trust 2403
shall be made and filed by the fiduciary of the estate or trust. 2404

~~(D) (1) (a) Except as otherwise provided in division (D) (1) 2405
(b) of this section, any pass-through entity may file a single 2406
return on behalf of one or more of the entity's investors other 2407
than an investor that is a person subject to the tax imposed 2408
under section 5733.06 of the Revised Code. The single return 2409
shall set forth the name, address, and social security number or 2410
other identifying number of each of those pass-through entity 2411
investors and shall indicate the distributive share of each of 2412
those pass-through entity investor's income taxable in this 2413
state in accordance with sections 5747.20 to 5747.231 of the 2414
Revised Code. Such pass-through entity investors for whom the 2415
pass-through entity elects to file a single return are not 2416
entitled to the exemption or credit provided for by sections 2417
5747.02 and 5747.022 of the Revised Code; shall calculate the 2418
tax before business credits at the highest rate of tax set forth 2419
in section 5747.02 of the Revised Code for the taxable year for 2420
which the return is filed; and are entitled to only their 2421
distributive share of the business credits as defined in 2422~~

~~division (D) (2) of this section. A single check drawn by the~~ 2423
~~pass-through entity shall accompany the return in full payment~~ 2424
~~of the tax due, as shown on the single return, for such~~ 2425
~~investors, other than investors who are persons subject to the~~ 2426
~~tax imposed under section 5733.06 of the Revised Code.~~ 2427

~~(b) (i) A pass-through entity shall not include in such a~~ 2428
~~single return any investor that is a trust to the extent that~~ 2429
~~any direct or indirect current, future, or contingent~~ 2430
~~beneficiary of the trust is a person subject to the tax imposed~~ 2431
~~under section 5733.06 of the Revised Code.~~ 2432

~~(ii) A pass-through entity shall not include in such a~~ 2433
~~single return any investor that is itself a pass-through entity~~ 2434
~~to the extent that any direct or indirect investor in the second~~ 2435
~~pass-through entity is a person subject to the tax imposed under~~ 2436
~~section 5733.06 of the Revised Code.~~ 2437

~~(c) Nothing in division (D) of this section precludes the~~ 2438
~~tax commissioner from requiring such investors to file the~~ 2439
~~return and make the payment of taxes and related interest,~~ 2440
~~penalty, and interest penalty required by this section or~~ 2441
~~section 5747.02, 5747.09, or 5747.15 of the Revised Code.~~ 2442
~~Nothing in division (D) of this section precludes such an~~ 2443
~~investor from filing the annual return under this section,~~ 2444
~~utilizing the refundable credit equal to the investor's~~ 2445
~~proportionate share of the tax paid by the pass-through entity~~ 2446
~~on behalf of the investor under division (I) of this section,~~ 2447
~~and making the payment of taxes imposed under section 5747.02 of~~ 2448
~~the Revised Code. Nothing in division (D) of this section shall~~ 2449
~~be construed to provide to such an investor or pass-through~~ 2450
~~entity any additional deduction or credit, other than the credit~~ 2451
~~provided by division (I) of this section, solely on account of~~ 2452

~~the entity's filing a return in accordance with this section. 2453~~
~~Such a pass-through entity also shall make the filing and 2454~~
~~payment of estimated taxes on behalf of the pass-through entity 2455~~
~~investors other than an investor that is a person subject to the 2456~~
~~tax imposed under section 5733.06 of the Revised Code. 2457~~

~~(2) For the purposes of this section, "business credits" 2458~~
~~means the credits listed in section 5747.98 of the Revised Code 2459~~
~~excluding the following credits: 2460~~

~~(a) The retirement income credit under division (B) of 2461~~
~~section 5747.055 of the Revised Code; 2462~~

~~(b) The senior citizen credit under division (F) of 2463~~
~~section 5747.055 of the Revised Code; 2464~~

~~(c) The lump sum distribution credit under division (G) of 2465~~
~~section 5747.055 of the Revised Code; 2466~~

~~(d) The dependent care credit under section 5747.054 of 2467~~
~~the Revised Code; 2468~~

~~(e) The lump sum retirement income credit under division 2469~~
~~(C) of section 5747.055 of the Revised Code; 2470~~

~~(f) The lump sum retirement income credit under division 2471~~
~~(D) of section 5747.055 of the Revised Code; 2472~~

~~(g) The lump sum retirement income credit under division 2473~~
~~(E) of section 5747.055 of the Revised Code; 2474~~

~~(h) The credit for displaced workers who pay for job 2475~~
~~training under section 5747.27 of the Revised Code; 2476~~

~~(i) The twenty-dollar personal exemption credit under 2477~~
~~section 5747.022 of the Revised Code; 2478~~

~~(j) The joint filing credit under division (E) of section 2479~~

5747.05 of the Revised Code;	2480
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	2481
5747.05 of the Revised Code;	2482
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	2483
5747.05 of the Revised Code;	2484
(m) The low income credit under section 5747.056 of the Revised Code;	2485
5747.056 of the Revised Code;	2486
(n) The earned income tax credit under section 5747.71 of the Revised Code.	2487
5747.71 of the Revised Code.	2488
(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.	2489
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.	2490
Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made.	2491
provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made.	2492
irrevocable for the taxable year for which the election is made.	2493
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.	2494
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.	2495
deduction or credit that would not be allowable if a nonresident pass through entity investor were to file an annual return.	2496
(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 that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2497
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 that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2498
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 that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2499
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 that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2500
commissioner finds that the single return does not reflect the correct tax due by the pass through entity investors covered by that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2501
correct tax due by the pass through entity investors covered by that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2502
that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2503
limit or alter the liability, if any, imposed on pass through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2504
entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2505
interest penalty, or penalties as a result of the pass through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2506
entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section,	2507
For the purposes of division (D) of this section,	2508

~~"correct tax due" means the tax that would have been paid by the
pass-through entity had the single return been filed in a manner
reflecting the commissioner's findings. Nothing in division (D)
of this section shall be construed to make or hold a pass-
through entity liable for tax attributable to a pass-through
entity investor's income from a source other than the pass-
through entity electing to file the single return. Returns or
notices required of a pass-through entity shall be made and
filed pursuant to sections 5747.40 to 5747.44 of the Revised
Code.~~

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

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

(F) Each return or notice required to be filed under this
section shall contain the signature of the taxpayer or the
taxpayer's duly authorized agent and of the person who prepared
the return for the taxpayer, and shall include the taxpayer's
social security number. Each return shall be verified by a

declaration under the penalties of perjury. The tax commissioner 2539
shall prescribe the form that the signature and declaration 2540
shall take. 2541

(G) Each return or notice required to be filed under this 2542
section shall be made and filed as required by section 5747.04 2543
of the Revised Code, on or before the fifteenth day of April of 2544
each year, on forms that the tax commissioner shall prescribe, 2545
together with remittance made payable to the treasurer of state 2546
in the combined amount of the state and all school district 2547
income taxes shown to be due on the form. 2548

Upon good cause shown, the commissioner may extend the 2549
period for filing any notice or return required to be filed 2550
under this section and may adopt rules relating to extensions. 2551
If the extension results in an extension of time for the payment 2552
of any state or school district income tax liability with 2553
respect to which the return is filed, the taxpayer shall pay at 2554
the time the tax liability is paid an amount of interest 2555
computed at the rate per annum prescribed by section 5703.47 of 2556
the Revised Code on that liability from the time that payment is 2557
due without extension to the time of actual payment. Except as 2558
provided in section 5747.132 of the Revised Code, in addition to 2559
all other interest charges and penalties, all taxes imposed 2560
under this chapter or Chapter 5748. of the Revised Code and 2561
remaining unpaid after they become due, except combined amounts 2562
due of one dollar or less, bear interest at the rate per annum 2563
prescribed by section 5703.47 of the Revised Code until paid or 2564
until the day an assessment is issued under section 5747.13 of 2565
the Revised Code, whichever occurs first. 2566

If the commissioner considers it necessary in order to 2567
ensure the payment of the tax imposed by section 5747.02 of the 2568

Revised Code or any tax imposed under Chapter 5748. of the 2569
Revised Code, the commissioner may require returns and payments 2570
to be made otherwise than as provided in this section. 2571

To the extent that any provision in this division 2572
conflicts with any provision in section 5747.026 of the Revised 2573
Code, the provision in that section prevails. 2574

(H) The amounts withheld by an employer pursuant to 2575
section 5747.06 of the Revised Code, a casino operator pursuant 2576
to section 5747.063 of the Revised Code, or a lottery sales 2577
agent pursuant to section 5747.064 of the Revised Code shall be 2578
allowed to the recipient of the compensation casino winnings, or 2579
lottery prize award as credits against payment of the 2580
appropriate taxes imposed on the recipient by section 5747.02 2581
and under Chapter 5748. of the Revised Code. 2582

~~(I) If a pass through entity elects to file a single 2583
return under division (D) of this section and if any investor is 2584
required to file the annual return and make the payment of taxes 2585
required by this chapter on account of the investor's other 2586
income that is not included in a single return filed by a pass- 2587
through entity or any other investor elects to file the annual 2588
return, the investor is entitled to a refundable credit equal to 2589
the investor's proportionate share of the tax paid by the pass- 2590
through entity on behalf of the investor. The investor shall 2591
claim the credit for the investor's taxable year in which or 2592
with which ends the taxable year of the pass through entity. 2593
Nothing in this chapter shall be construed to allow any credit 2594
provided in this chapter to be claimed more than once. For the 2595
purpose of computing any interest, penalty, or interest penalty, 2596
the investor shall be deemed to have paid the refundable credit 2597
provided by this division on the day that the pass through 2598~~

~~entity paid the estimated tax or the tax giving rise to the~~ 2599
~~credit.~~ 2600

~~(J)~~The tax commissioner shall ensure that each return 2601
required to be filed under this section includes a box that the 2602
taxpayer may check to authorize a paid tax preparer who prepared 2603
the return to communicate with the department of taxation about 2604
matters pertaining to the return. The return or instructions 2605
accompanying the return shall indicate that by checking the box 2606
the taxpayer authorizes the department of taxation to contact 2607
the preparer concerning questions that arise during the 2608
processing of the return and authorizes the preparer only to 2609
provide the department with information that is missing from the 2610
return, to contact the department for information about the 2611
processing of the return or the status of the taxpayer's refund 2612
or payments, and to respond to notices about mathematical 2613
errors, offsets, or return preparation that the taxpayer has 2614
received from the department and has shown to the preparer. 2615

~~(K)~~(J) The tax commissioner shall permit individual 2616
taxpayers to instruct the department of taxation to cause any 2617
refund of overpaid taxes to be deposited directly into a 2618
checking account, savings account, or an individual retirement 2619
account or individual retirement annuity, or preexisting college 2620
savings plan or program account offered by the Ohio tuition 2621
trust authority under Chapter 3334. of the Revised Code, as 2622
designated by the taxpayer, when the taxpayer files the annual 2623
return required by this section electronically. 2624

~~(L)~~(K) The tax commissioner may adopt rules to administer 2625
this section. 2626

Sec. 5747.082. (A) As used in this section: 2627

(1) "Electronic technology" means electronic technology 2628
acceptable to the tax commissioner under division (B) of this 2629
section. 2630

(2) "Original tax return" means any report, return, or 2631
other tax document required to be filed under this chapter for 2632
the purpose of reporting the taxes due under, and withholdings 2633
required by, this chapter. "Original tax return" does not 2634
include an amended return or any declaration or form required by 2635
or filed in connection with section 5747.09 of the Revised Code. 2636

~~(3) "Related member" has the same meaning as in section-~~ 2637
~~5733.042 of the Revised Code.~~ 2638

~~(4)~~ "Tax return preparer" means any person that operates a 2639
business that prepares, or directly or indirectly employs 2640
another person to prepare, for a taxpayer an original tax return 2641
in exchange for compensation or remuneration from the taxpayer 2642
or the taxpayer's related member. With respect to the 2643
preparation of a return or application for refund under this 2644
chapter, "tax return preparer" does not include an individual 2645
who performs only one or more of the following activities: 2646

(a) Furnishes typing, reproducing, or other mechanical 2647
assistance; 2648

(b) Prepares an application for refund or a return on 2649
behalf of an employer by whom the individual is regularly and 2650
continuously employed, or on behalf of an officer or employee of 2651
that employer; 2652

(c) Prepares as a fiduciary an application for refund or a 2653
return; 2654

(d) Prepares an application for refund or a return for a 2655
taxpayer in response to a notice of deficiency issued to the 2656

taxpayer or the taxpayer's related member, or in response to a 2657
waiver of restriction after the commencement of an audit of the 2658
taxpayer or the taxpayer's related member. 2659

(B) Divisions (C) and (D) of this section apply to the 2660
filing of original tax returns that are due in a calendar year 2661
only if the tax commissioner, by the last day of the calendar 2662
year immediately preceding the calendar year in which such 2663
returns are due, has published on the department of taxation's 2664
official internet web site at least one method of electronic 2665
technology acceptable to the commissioner for filing such 2666
returns. 2667

(C) A tax return preparer that prepares more than seventy- 2668
five original tax returns during any calendar year that ends 2669
before January 1, 2013, or that prepares more than eleven 2670
original tax returns during any calendar year that begins on or 2671
after January 1, 2013, shall use electronic technology to file 2672
with the tax commissioner all original tax returns prepared by 2673
the tax return preparer. This division does not apply to a tax 2674
return preparer in any calendar year that ends before January 1, 2675
2013, if, during the previous calendar year, the tax return 2676
preparer prepared no more than twenty-five original tax returns. 2677
This division does not apply to a tax return preparer in any 2678
calendar year that begins on or after January 1, 2013, if, 2679
during the previous calendar year, the tax return preparer 2680
prepared not more than ten original tax returns. 2681

(D) If a tax return preparer required by this section to 2682
submit original tax returns by electronic technology files an 2683
original tax return by some means other than by electronic 2684
technology, the tax commissioner shall impose a penalty of fifty 2685
dollars for each return, in excess of seventy-five in calendar 2686

year 2010, 2011, or 2012, or in excess of eleven in any calendar 2687
year thereafter, that is not filed by electronic technology. 2688
Upon good cause shown by the tax return preparer, the tax 2689
commissioner may waive all or any portion of the penalty or may 2690
refund all or any portion of the penalty the tax return preparer 2691
has paid. 2692

Sec. 5747.11. (A) The tax commissioner shall refund ~~to~~ 2693
~~employers, qualifying entities, or taxpayers subject to a tax~~ 2694
~~imposed under section 5733.41, 5747.02, or 5747.41, or Chapter~~ 2695
~~5748. of the Revised Code the amount of any overpayment of such~~ 2696
the tax imposed under this chapter or Chapter 5748. of the 2697
Revised Code. 2698

(B) ~~Except as otherwise provided under divisions (D) and~~ 2699
~~(E) of this section, applications~~ Applications for refund shall 2700
be filed with the tax commissioner, on the form prescribed by 2701
the commissioner, within four years from the date of the 2702
illegal, erroneous, or excessive payment of the tax, or within 2703
any additional period allowed by division (B) (3) (b) of section 2704
5747.05, division (B) of section 5747.10, or division (A) of 2705
section 5747.13, ~~or division (C) of section 5747.45~~ of the 2706
Revised Code. 2707

On filing of the refund application, the commissioner 2708
shall determine the amount of refund due and, if that amount 2709
exceeds one dollar, certify such amount to the director of 2710
budget and management and treasurer of state for payment from 2711
the tax refund fund created by section 5703.052 of the Revised 2712
Code. Payment shall be made as provided in division (C) of 2713
section 126.35 of the Revised Code. 2714

(C) ~~(1)~~ Interest shall be allowed and paid at the rate per 2715
annum prescribed by section 5703.47 of the Revised Code on 2716

amounts refunded with respect to the tax imposed under ~~section-~~ 2717
~~5747.02 or this chapter or~~ Chapter 5748. of the Revised Code 2718
from the date of the overpayment until the date of the refund of 2719
the overpayment, except that if any overpayment is refunded 2720
within ninety days after the final filing date of the annual 2721
return or ninety days after the return is filed, whichever is 2722
later, no interest shall be allowed on such overpayment. If the 2723
overpayment results from the carryback of a net operating loss 2724
or net capital loss to a previous taxable year, the overpayment 2725
is deemed not to have been made prior to the filing date, 2726
including any extension thereof, for the taxable year in which 2727
the net operating loss or net capital loss arises. For purposes 2728
of the payment of interest on overpayments, no amount of tax, 2729
for any taxable year, shall be treated as having been paid 2730
before the date on which the tax return for that year was due 2731
without regard to any extension of time for filing such return. 2732

~~(2) Interest shall be allowed at the rate per annum-~~ 2733
~~prescribed by section 5703.47 of the Revised Code on amounts-~~ 2734
~~refunded with respect to the taxes imposed under sections-~~ 2735
~~5733.41 and 5747.41 of the Revised Code. The interest shall run-~~ 2736
~~from whichever of the following days is the latest until the day-~~ 2737
~~the refund is paid: the day the illegal, erroneous, or excessive-~~ 2738
~~payment was made; the ninetieth day after the final day the-~~ 2739
~~annual report was required to be filed under section 5747.42 of-~~ 2740
~~the Revised Code; or the ninetieth day after the day that report-~~ 2741
~~was filed.~~ 2742

~~(D) "Ninety days" shall be substituted for "four years" in-~~ 2743
~~division (B) of this section if the taxpayer satisfies both of-~~ 2744
~~the following conditions:~~ 2745

~~(1) The taxpayer has applied for a refund based in whole-~~ 2746

~~or in part upon section 5747.059 of the Revised Code;~~ 2747

~~(2) The taxpayer asserts that either the imposition or collection of the tax imposed or charged by this chapter or any portion of such tax violates the Constitution of the United States or the Constitution of Ohio.~~ 2748
2749
2750
2751

~~(E) (1) Division (E) (2) of this section applies only if all of the following conditions are satisfied:~~ 2752
2753

~~(a) A qualifying entity pays an amount of the tax imposed by section 5733.41 or 5747.41 of the Revised Code;~~ 2754
2755

~~(b) The taxpayer is a qualifying investor as to that qualifying entity;~~ 2756
2757

~~(c) The taxpayer did not claim the credit provided for in section 5747.059 of the Revised Code as to the tax described in division (E) (1) (a) of this section;~~ 2758
2759
2760

~~(d) The four year period described in division (E) of this section has ended as to the taxable year for which the taxpayer otherwise would have claimed that credit.~~ 2761
2762
2763

~~(2) A taxpayer shall file an application for refund pursuant to division (E) of this section within one year after the date the payment described in division (E) (1) (a) of this section is made. An application filed under division (E) (2) of this section shall claim refund only of overpayments resulting from the taxpayer's failure to claim the credit described in division (E) (1) (c) of this section. Nothing in division (E) of this section shall be construed to relieve a taxpayer from complying with division (A) (16) of section 5747.01 of the Revised Code.~~ 2764
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Sec. 5747.13. (A) If any employer collects the tax imposed 2774

by section 5747.02 or under Chapter 5748. of the Revised Code 2775
and fails to remit the tax as required by law, or fails to 2776
collect the tax, the employer is personally liable for any 2777
amount collected that the employer fails to remit, or any amount 2778
that the employer fails to collect. If any taxpayer fails to 2779
file a return or fails to pay the tax imposed by section 5747.02 2780
or under Chapter 5748. of the Revised Code, the taxpayer is 2781
personally liable for the amount of the tax. 2782

If any employer, ~~or taxpayer, or qualifying entity~~ 2783
required to file a return under this chapter fails to file the 2784
return within the time prescribed, files an incorrect return, 2785
fails to remit the full amount of the taxes due for the period 2786
covered by the return, or fails to remit any additional tax due 2787
as a result of a reduction in the amount of the credit allowed 2788
under division (B) of section 5747.05 of the Revised Code 2789
together with interest on the additional tax within the time 2790
prescribed by that division, the tax commissioner may make an 2791
assessment against any person liable for any deficiency for the 2792
period for which the return is or taxes are due, based upon any 2793
information in the commissioner's possession. 2794

An assessment issued against either the employer or the 2795
taxpayer pursuant to this section shall not be considered an 2796
election of remedies or a bar to an assessment against the other 2797
for failure to report or pay the same tax. No assessment shall 2798
be issued against any person if the tax actually has been paid 2799
by another. 2800

No assessment shall be made or issued against an employer, ~~or~~ 2801
~~or taxpayer, or qualifying entity~~ more than four years after the 2802
final date the return subject to assessment was required to be 2803
filed or the date the return was filed, whichever is later. 2804

However, the commissioner may assess any balance due as the 2805
result of a reduction in the credit allowed under section 2806
5747.65 or division (B) of section 5747.05 of the Revised Code, 2807
including applicable penalty and interest, Any such balance 2808
shall be assessed within four years of the date on which the 2809
taxpayer reports a change ~~in either the portion of the~~ 2810
~~taxpayer's adjusted gross income subjected to an income tax or~~ 2811
~~tax measured by income in another state or the District of~~ 2812
~~Columbia, or the amount of liability for an income tax or tax~~ 2813
~~measured by income to another state or the District of Columbia,~~ 2814
affecting the taxpayer's liability as required by division (B) 2815
(3) of section 5747.05 or division (D) (2) of section 5747.65 of 2816
the Revised Code, as applicable. Such time limits may be 2817
extended if both the employer, or taxpayer, ~~or qualifying entity~~ 2818
and the commissioner consent in writing to the extension or if 2819
an agreement waiving or extending the time limits has been 2820
entered into pursuant to section 122.171 of the Revised Code. 2821
Any such extension shall extend the four-year time limit in 2822
division (B) of section 5747.11 of the Revised Code for the same 2823
period of time. There shall be no bar or limit to an assessment 2824
against an employer for taxes withheld from employees and not 2825
remitted to the state, against an employer, or taxpayer, ~~or~~ 2826
~~qualifying entity~~ that fails to file a return subject to 2827
assessment as required by this chapter, or against an employer, ~~or~~ 2828
or taxpayer, ~~or qualifying entity~~ that files a fraudulent 2829
return. 2830

The commissioner shall give the party assessed written 2831
notice of the assessment in the manner provided in section 2832
5703.37 of the Revised Code. With the notice, the commissioner 2833
shall provide instructions on how to petition for reassessment 2834
and request a hearing on the petition. 2835

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

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

Immediately upon the filing of the entry, the clerk shall enter a judgment against the party assessed in the amount shown on the entry. The judgment shall be filed by the clerk in ~~one of two loose leaf books~~ the official records, ~~one entitled under the title of "special judgments for state and school district income taxes," and the other entitled "special judgments for qualifying entity taxes."~~ one entitled under the title of "special judgments for state and school district income taxes," and the other entitled "special judgments for qualifying entity taxes." The judgment shall have the same

effect as other judgments. Execution shall issue upon the 2867
judgment upon the request of the tax commissioner, and all laws 2868
applicable to sales on execution shall apply to sales made under 2869
the judgment. 2870

If the assessment is not paid in its entirety within sixty 2871
days after the assessment was issued, the portion of the 2872
assessment consisting of tax due shall bear interest at the rate 2873
per annum prescribed by section 5703.47 of the Revised Code from 2874
the day the tax commissioner issues the assessment until it is 2875
paid or until it is certified to the attorney general for 2876
collection under section 131.02 of the Revised Code, whichever 2877
comes first. If the unpaid portion of the assessment is 2878
certified to the attorney general for collection, the entire 2879
unpaid portion of the assessment shall bear interest at the rate 2880
per annum prescribed by section 5703.47 of the Revised Code from 2881
the date of certification until the date it is paid in its 2882
entirety. Interest shall be paid in the same manner as the tax 2883
and may be collected by the issuance of an assessment under this 2884
section. 2885

(D) All money collected under this section shall be 2886
considered as revenue arising from the taxes imposed by this 2887
chapter or Chapter ~~5733. or~~ 5748. of the Revised Code, as 2888
appropriate. 2889

(E) If the party assessed files a petition for 2890
reassessment under division (B) of this section, the person, on 2891
or before the last day the petition may be filed, shall pay the 2892
assessed amount, including assessed interest and assessed 2893
penalties, if any of the following conditions exists: 2894

(1) The person files a tax return reporting Ohio adjusted 2895
gross income, less the exemptions allowed by section 5747.025 of 2896

the Revised Code, in an amount less than one cent, and the 2897
reported amount is not based on the computations required under 2898
division (A) of section 5747.01 or section 5747.025 of the 2899
Revised Code. 2900

(2) The person files a tax return that the tax 2901
commissioner determines to be incomplete, false, fraudulent, or 2902
frivolous. 2903

(3) The person fails to file a tax return, and the basis 2904
for this failure is not either of the following: 2905

(a) An assertion that the person has no nexus with this 2906
state; 2907

(b) The computations required under division (A) of 2908
section 5747.01 of the Revised Code or the application of 2909
credits allowed under this chapter has the result that the 2910
person's tax liability is less than one dollar and one cent. 2911

(F) Notwithstanding the fact that a petition for 2912
reassessment is pending, the petitioner may pay all or a portion 2913
of the assessment that is the subject of the petition. The 2914
acceptance of a payment by the treasurer of state does not 2915
prejudice any claim for refund upon final determination of the 2916
petition. 2917

If upon final determination of the petition an error in 2918
the assessment is corrected by the tax commissioner, upon 2919
petition so filed or pursuant to a decision of the board of tax 2920
appeals or any court to which the determination or decision has 2921
been appealed, so that the amount due from the party assessed 2922
under the corrected assessment is less than the portion paid, 2923
there shall be issued to the petitioner or to the petitioner's 2924
assigns or legal representative a refund in the amount of the 2925

overpayment as provided by section 5747.11 of the Revised Code, 2926
with interest on that amount as provided by such section, 2927
subject to section 5747.12 of the Revised Code. 2928

Sec. 5747.132. (A) As used in this section: 2929

(1) "Qualifying taxpayer" means a taxpayer, ~~or employer,~~ 2930
~~or qualifying entity.~~ 2931

(2) "Qualifying refund overpayment" means an amount 2932
received by a qualifying taxpayer in excess of a refund or 2933
request for payment claimed or made by or on behalf of the 2934
qualifying taxpayer on a return, report, or other document filed 2935
with the tax commissioner. 2936

(B) A qualifying taxpayer is not liable for any interest 2937
or penalty with respect to the repayment of a qualifying refund 2938
overpayment if the taxpayer pays the entire amount of the 2939
overpayment to the tax commissioner not later than thirty days 2940
after the taxpayer receives an assessment for it. If the 2941
taxpayer does not pay the entire amount of the overpayment to 2942
the commissioner within the time prescribed by this section, 2943
interest shall accrue on the amount of the deficiency pursuant 2944
to section 5747.13 of the Revised Code from the day the 2945
commissioner issues the assessment until the deficiency is paid. 2946

Sec. 5747.14. If the tax commissioner finds that an 2947
employer, ~~qualifying entity,~~ or taxpayer liable for any tax 2948
imposed under ~~section 5733.41,~~ this chapter, ~~or~~ Chapter 5748. of 2949
the Revised Code is about to depart from the state, to remove 2950
the employer's, ~~qualifying entity's,~~ or taxpayer's property 2951
therefrom, to conceal the employer's, ~~qualifying entity's,~~ or 2952
taxpayer's self or the employer's, ~~qualifying entity's,~~ or 2953
taxpayer's property, or to do any other act tending to prejudice 2954

or render wholly or partly ineffectual proceedings to collect 2955
such tax, unless such proceedings are brought without delay, or 2956
if the commissioner believes that the collection of the amount 2957
due from any employer, ~~qualifying entity~~, or taxpayer will be 2958
jeopardized by delay, the commissioner shall give notice of such 2959
findings to such employer, ~~qualifying entity~~, or taxpayer 2960
together with the demand for an immediate return and immediate 2961
payment of such tax, with an assessment and penalty, if 2962
applicable as provided in section 5747.13 of the Revised Code, 2963
whereupon such tax shall become immediately due and payable. In 2964
such cases the commissioner may immediately file the 2965
commissioner's entry with the clerk of the court of common pleas 2966
in the same manner and with the same effect as provided in 2967
section 5747.13 of the Revised Code, provided that if such 2968
employer, ~~qualifying entity~~, or taxpayer, within five days from 2969
notice of the assessment, furnishes evidence satisfactory to the 2970
commissioner, under the rules prescribed by the commissioner, 2971
that the employer, ~~qualifying entity~~, or taxpayer is not in 2972
default in making returns or paying or collecting any tax 2973
prescribed by this chapter or that the employer, ~~qualifying~~ 2974
~~entity~~, or taxpayer will duly return and pay, or post bond 2975
satisfactory to the commissioner conditioned upon payment of the 2976
tax finally determined to be due, such tax shall not be payable 2977
prior to the time and manner otherwise fixed for payment under 2978
section 5747.13 of the Revised Code, and the person assessed 2979
shall be restored to the rights granted the person under such 2980
section. Upon satisfaction of the assessment the commissioner 2981
shall order the bond canceled, securities released, and judgment 2982
vacated. 2983

Sec. 5747.15. (A) In addition to any other penalty imposed 2984
by this chapter or Chapter 5703. of the Revised Code, the 2985

following penalties shall apply: 2986

(1) If a taxpayer, ~~qualifying entity,~~ or employer required 2987
to file any report or return, including an informational notice, 2988
report, or return, under this chapter fails to make and file the 2989
report or return within the time prescribed, including any 2990
extensions of time granted by the tax commissioner, a penalty 2991
may be imposed not exceeding the greater of fifty dollars per 2992
month or fraction of a month, not to exceed five hundred 2993
dollars, or five per cent per month or fraction of a month, not 2994
to exceed fifty per cent, of the sum of the taxes required to be 2995
shown on the report or return, for each month or fraction of a 2996
month elapsing between the due date, including extensions of the 2997
due date, and the date on which filed. 2998

(2) If a taxpayer fails to pay any amount of tax required 2999
to be paid under ~~section 5733.41 or Chapters 5747. or this~~ 3000
chapter or Chapter 5748. of the Revised Code, except estimated 3001
tax under section 5747.09 ~~or 5747.43~~ of the Revised Code, by the 3002
dates prescribed for payment, a penalty may be imposed not 3003
exceeding twice the applicable interest charged under division 3004
(G) of section 5747.08 of the Revised Code for the delinquent 3005
payment. 3006

(3) ~~(a)~~ If an employer fails to pay any amount of tax 3007
imposed by section 5747.02 of the Revised Code and required to 3008
be paid under this chapter by the dates prescribed for payment, 3009
a penalty may be imposed not exceeding the sum of ten per cent 3010
of the delinquent payment plus twice the interest charged under 3011
division (F) (5) of section 5747.07 of the Revised Code for the 3012
delinquent payment. 3013

~~(b) If a qualifying entity fails to pay any amount of tax~~ 3014
~~imposed by section 5733.41 or 5747.41 of the Revised Code and~~ 3015

~~required to be paid under this chapter by the dates prescribed~~ 3016
~~for payment, a penalty may be imposed not exceeding the sum of~~ 3017
~~ten per cent of the delinquent payment plus twice the applicable~~ 3018
~~interest charged under division (C) of section 5747.08 of the~~ 3019
~~Revised Code for the delinquent payment.~~ 3020

(4) ~~(a)~~ If an employer withholds from employees the tax 3021
imposed by section 5747.02 of the Revised Code and fails to 3022
remit the tax withheld to the state as required by this chapter 3023
on or before the dates prescribed for payment, a penalty may be 3024
imposed not exceeding fifty per cent of the delinquent payment. 3025

~~(b) If a qualifying entity withholds any amount of tax~~ 3026
~~imposed under section 5747.41 of the Revised Code from an~~ 3027
~~individual's qualifying amount and fails to remit that amount to~~ 3028
~~the state as required by sections 5747.42 to 5747.453 of the~~ 3029
~~Revised Code on or before the dates prescribed for payment, a~~ 3030
~~penalty may be imposed not exceeding fifty per cent of the~~ 3031
~~delinquent payment.~~ 3032

(5) If a taxpayer, ~~qualifying entity,~~ or employer files 3033
what purports to be a return required by this chapter that does 3034
not contain information upon which the substantial correctness 3035
of the return may be judged or contains information that on its 3036
face indicates that the return is substantially incorrect, and 3037
the filing of the return in that manner is due to a position 3038
that is frivolous or a desire that is apparent from the return 3039
to delay or impede the administration of the tax levied by 3040
~~section 5733.41, 5747.02, or 5747.41, this chapter~~ or Chapter 3041
5748. of the Revised Code, a penalty of up to five hundred 3042
dollars may be imposed. 3043

(6) If a taxpayer ~~or qualifying entity~~ makes a fraudulent 3044
attempt to evade the reporting or payment of the tax required to 3045

be shown on any return required under this chapter, a penalty 3046
may be imposed not exceeding the greater of one thousand dollars 3047
or one hundred per cent of the tax required to be shown on the 3048
return. 3049

(7) If any person makes a false or fraudulent claim for a 3050
refund under this chapter, a penalty may be imposed not 3051
exceeding the greater of one thousand dollars or one hundred per 3052
cent of the claim. The penalty imposed under division (A) (7) of 3053
this section, any refund issued on the claim, and interest on 3054
any refund from the date of the refund, may be assessed under 3055
section 5747.13 of the Revised Code as tax, penalty, or interest 3056
imposed under ~~section 5733.41, 5747.02, or 5747.41 of the~~ 3057
~~Revised Code, without regard to whether the person making the~~ 3058
~~claim is otherwise subject to the provisions of this chapter or~~ 3059
~~Chapter 5733. of the Revised Code, and this chapter without~~ 3060
regard to any time limitation for the assessment imposed by 3061
division (A) of section 5747.13 of the Revised Code. 3062

(B) For purposes of this section, the taxes required to be 3063
shown on the return shall be reduced by the amount of any part 3064
of the taxes paid on or before the date, including any 3065
extensions of the date, prescribed for filing the return. 3066

(C) Any penalty imposed under this section shall be in 3067
addition to all other penalties imposed under this section. All 3068
or part of any penalty imposed under this section may be abated 3069
by the commissioner. All or part of any penalty imposed under 3070
this section may be abated by the commissioner if the taxpayer, ~~or~~ 3071
~~qualifying entity,~~ or employer shows that the failure to comply 3072
with the provisions of this chapter is due to reasonable cause 3073
and not willful neglect. 3074

Sec. 5747.20. This section applies solely for the purposes 3075

of computing the credit allowed under division (A) of section 3076
5747.05 of the Revised Code and computing income taxable in this 3077
state under ~~division (D) of section 5747.08~~ 5747.40 of the 3078
Revised Code. 3079

All items of nonbusiness income or deduction shall be 3080
allocated in this state as follows: 3081

(A) All items of nonbusiness income or deduction taken 3082
into account in the computation of adjusted gross income for the 3083
taxable year by a resident shall be allocated to this state. 3084

(B) All items of nonbusiness income or deduction taken 3085
into account in the computation of adjusted gross income for the 3086
taxable year by a nonresident shall be allocated to this state 3087
as follows: 3088

(1) All items of compensation paid to an individual for 3089
personal services performed in this state who was a nonresident 3090
at the time of payment and all items of deduction directly 3091
allocated thereto shall be allocated to this state. 3092

(2) All gains or losses from the sale of real property, 3093
tangible personal property, or intangible property shall be 3094
allocated as follows: 3095

(a) Capital gains or losses from the sale or other 3096
transfer of real property are allocable to this state if the 3097
property is located physically in this state. 3098

(b) Capital gains or losses from the sale or other 3099
transfer of tangible personal property are allocable to this 3100
state if, at the time of such sale or other transfer, the 3101
property had its physical location in this state. 3102

(c) Capital gains or losses from the sale or other 3103

transfer of intangible personal property are allocable to this 3104
state if the taxpayer's domicile was in this state at the time 3105
of such sale or other transfer. 3106

(3) All rents and royalties of real or tangible personal 3107
property shall be allocated to this state as follows: 3108

(a) Rents and royalties derived from real property are 3109
allocable to this state if the property is physically located in 3110
this state. 3111

(b) Rents and royalties derived from tangible personal 3112
property are allocable to this state to the extent that such 3113
property is utilized in this state. 3114

The extent of utilization of tangible personal property in 3115
a state is determined by multiplying the rents or royalties 3116
derived from such property by a fraction, the numerator of which 3117
is the number of days of physical location of the property in 3118
this state during the rental or royalty period in the taxable 3119
year and the denominator of which is the number of days of 3120
physical location of the property everywhere during all rental 3121
or royalty periods in the taxable year. If the physical location 3122
of the property during the rental or royalty period is unknown 3123
or unascertainable by the nonresident, tangible personal 3124
property is utilized in the state in which the property was 3125
located at the time the rental or royalty payor obtained 3126
possession. 3127

(4) All patent and copyright royalties shall be allocated 3128
to this state to the extent the patent or copyright was utilized 3129
by the payor in this state. 3130

A patent is utilized in a state to the extent that it is 3131
employed in production, fabrication, manufacturing, or other 3132

processing in the state, or to the extent that a patented 3133
product is produced in the state. If the basis of receipts from 3134
patent royalties does not permit allocation to states or if the 3135
accounting procedures do not reflect states of utilization, the 3136
patent is utilized in this state if the taxpayer's domicile was 3137
in this state at the time such royalties were paid or accrued. 3138

A copyright is utilized in a state to the extent that 3139
printing or other publication originates in the state. If the 3140
basis of receipts from copyright royalties does not permit 3141
allocation to states or if the accounting procedures do not 3142
reflect states of utilization, the copyright is utilized in this 3143
state if the taxpayer's domicile was in this state at the time 3144
such royalties were paid or accrued. 3145

(5) (a) All lottery prize awards paid by the state lottery 3146
commission pursuant to Chapter 3770. of the Revised Code shall 3147
be allocated to this state. 3148

(b) All earnings, profit, income, and gain from the sale, 3149
exchange, or other disposition of lottery prize awards paid or 3150
to be paid to any person by the state lottery commission 3151
pursuant to Chapter 3770. of the Revised Code shall be allocated 3152
to this state. 3153

(c) All earnings, profit, income, and gain from the direct 3154
or indirect ownership of lottery prize awards paid or to be paid 3155
to any person by the state lottery commission pursuant to 3156
Chapter 3770. of the Revised Code shall be allocated to this 3157
state. 3158

(d) All earnings, profit, income, and gain from the direct 3159
or indirect interest in any right in or to any lottery prize 3160
awards paid or to be paid to any person by the state lottery 3161

commission pursuant to Chapter 3770. of the Revised Code shall 3162
be allocated to this state. 3163

(6) Any item of income or deduction which has been taken 3164
into account in the computation of adjusted gross income for the 3165
taxable year by a nonresident and which is not otherwise 3166
specifically allocated or apportioned pursuant to sections 3167
5747.20 to 5747.23 of the Revised Code, including, without 3168
limitation, interest, dividends and distributions, items of 3169
income taken into account under the provisions of sections 401 3170
to 425 of the Internal Revenue Code, and benefit payments 3171
received by a beneficiary of a supplemental unemployment trust 3172
which is referred to in section 501(c)(17) of the Internal 3173
Revenue Code, shall not be allocated to this state unless the 3174
taxpayer's domicile was in this state at the time such income 3175
was paid or accrued. 3176

(7) All casino gaming winnings paid by any person licensed 3177
by the Ohio casino control commission shall be allocated to the 3178
state. 3179

(C) If an individual is a resident for part of the taxable 3180
year and a nonresident for the remainder of the taxable year, 3181
all items of nonbusiness income or deduction shall be allocated 3182
under division (A) of this section for the part of the taxable 3183
year that the individual is a resident and under division (B) of 3184
this section for the part of the taxable year that the 3185
individual is a nonresident. 3186

Sec. 5747.21. (A) This section applies solely for the 3187
purposes of computing the credit allowed under division (A) of 3188
section 5747.05 of the Revised Code and computing income taxable 3189
in this state under ~~division (D) of section 5747.08-5747.40~~ of 3190
the Revised Code. For the purposes of this section, "business 3191

income" includes all amounts described in division (A) (30) of 3192
section 5747.01 and divisions (A) (2) (a), (b), and (c) of section 3193
5747.40 of the Revised Code. 3194

(B) Except as otherwise provided under section 5747.212 of 3195
the Revised Code, all items of business income and business 3196
deduction shall be apportioned to this state by multiplying 3197
business income by ~~the a fraction calculated under division (B)~~ 3198
~~(2) of section 5733.05 and section 5733.057 of the Revised Code~~ 3199
~~as if the taxpayer's business were a corporation subject to the~~ 3200
~~tax imposed by section 5733.06 of the Revised Code. The~~ 3201
numerator of the fraction is the sum of the following products: 3202
the property factor multiplied by twenty, the payroll factor 3203
multiplied by twenty, and the sales factor multiplied by sixty. 3204
The denominator of the fraction is one hundred, provided that 3205
the denominator shall be reduced by twenty if the property 3206
factor has a denominator of zero, by twenty if the payroll 3207
factor has a denominator of zero, and by sixty if the sales 3208
factor has a denominator of zero. 3209

The property, payroll, and sales factors of a person shall 3210
be determined as provided in divisions (B) (1), (2), and (3) of 3211
this section, but the numerator and the denominator of the 3212
factors shall not include the portion of any property, payroll, 3213
and sales otherwise includible in the factors to the extent that 3214
the portion relates to, or is used in connection with, the 3215
production of nonbusiness income allocated under section 5747.20 3216
of the Revised Code: 3217

(1) The property factor is a fraction computed as follows: 3218

The numerator of the fraction is the average value of the 3219
person's real and tangible personal property owned or rented, 3220
and used in the trade or business in this state during the 3221

taxable year, and the denominator of the fraction is the average 3222
value of all the person's real and tangible personal property 3223
owned or rented, and used in the trade or business everywhere 3224
during such year. Real and tangible personal property used in 3225
the trade or business includes, but is not limited to, real and 3226
tangible personal property that the person rents, subrents, 3227
leases, or subleases to others if the income or loss from such 3228
rentals, subrentals, leases, or subleases is business income, 3229
and also includes those amounts required to be added back as an 3230
expense paid to a related member pursuant to division (A) (2) (a) 3231
of section 5747.40 of the Revised Code. There shall be excluded 3232
from the numerator and denominator of the fraction the original 3233
cost of all of the following property within Ohio: property with 3234
respect to which a pollution control facility certificate has 3235
been issued pursuant to section 5709.21 of the Revised Code; 3236
property with respect to which an industrial water pollution 3237
control certificate has been issued pursuant to that section or 3238
former section 6111.31 of the Revised Code; and property used 3239
exclusively during the taxable year for qualified research. 3240

(a) Property owned by the person is valued at its original 3241
cost. Property rented by the person is valued at eight times the 3242
net annual rental rate. "Net annual rental rate" means the 3243
annual rental rate paid by the person less any annual rental 3244
rate received by the person from subrentals. 3245

(b) The average value of property shall be determined by 3246
averaging the values at the beginning and the end of the taxable 3247
year, but the tax commissioner may require the averaging of 3248
monthly values during the taxable year, if reasonably required 3249
to reflect properly the average value of the person's property. 3250

(2) The payroll factor is a fraction computed as follows: 3251

The numerator of the fraction is the total amount paid in 3252
this state during the taxable year by the person for 3253
compensation, and the denominator of the fraction is the total 3254
compensation paid everywhere by the person during such year. 3255
There shall be excluded from the numerator and the denominator 3256
of the payroll factor the total compensation paid in this state 3257
to employees who are primarily engaged in qualified research. 3258

(a) Compensation means any form of remuneration paid to an 3259
employee for personal services, and includes those amounts 3260
required to be added back as an expense paid to a related member 3261
pursuant to division (A)(2)(a) of section 5747.40 of the Revised 3262
Code, but does not include those amounts reclassified as a 3263
distributive share of income pursuant to division (A)(2)(b) of 3264
that section. 3265

(b) Compensation is paid in this state if: (i) the 3266
recipient's service is performed entirely within this state, 3267
(ii) the recipient's service is performed both within and 3268
without this state, but the service performed without this state 3269
is incidental to the recipient's service within this state, 3270
(iii) some of the service is performed within this state and 3271
either the base of operations or, if there is no base of 3272
operations, the place from which the service is directed or 3273
controlled is within this state, or the base of operations or 3274
the place from which the service is directed or controlled is 3275
not in any state in which some part of the service is performed, 3276
but the recipient's residence is in this state. 3277

(c) Compensation is paid in this state to any employee of 3278
a common or contract motor carrier if the employee performs the 3279
employee's regularly assigned duties on a motor vehicle in more 3280
than one state, in the same ratio by which the mileage traveled 3281

by such employee within the state bears to the total mileage 3282
traveled by such employee everywhere during the taxable year. 3283

(3) The sales factor is a fraction computed as follows: 3284

Except as provided in this section, the numerator of the 3285
fraction is the total sales in this state by the person during 3286
the taxable year or part thereof, and the denominator of the 3287
fraction is the total sales by the person everywhere during such 3288
year or part thereof. In computing the numerator and denominator 3289
of the fraction, the following shall be eliminated from the 3290
fraction: receipts and any related gains or losses from the sale 3291
or other disposal of excluded assets; dividends or 3292
distributions; and interest or other similar amounts received 3293
for the use of, or for the forbearance of the use of, money. In 3294
computing the numerator and denominator of the sales factor, if 3295
a person owns at least eighty per cent of the issued and 3296
outstanding common stock of one or more insurance companies or 3297
public utilities, except an electric company or a telephone 3298
company, or owns at least twenty-five per cent of the issued and 3299
outstanding common stock of one or more financial institutions, 3300
receipts received by the person from such utilities, insurance 3301
companies, and financial institutions shall be eliminated. As 3302
used in this division, "excluded assets" means property that is 3303
either: intangible property, other than trademarks, trade names, 3304
patents, copyrights, and similar intellectual property; or 3305
tangible personal property or real property where that property 3306
is a capital asset or an asset described in section 1231 of the 3307
Internal Revenue Code, without regard to the holding period 3308
specified therein. 3309

(a) For the purpose of this section, receipts not 3310
eliminated or excluded from the fraction shall be sitused as 3311

follows: 3312

(i) Receipts from rents and royalties from real property 3313
located in this state shall be situated to this state. 3314

(ii) Receipts from rents and royalties of tangible 3315
personal property, to the extent the tangible personal property 3316
is used in this state, shall be situated to this state. 3317

(iii) Receipts from the sale of electricity and of 3318
electric transmission and distribution services shall be situated 3319
to this state in the manner provided under division (B) (4) of 3320
this section. 3321

(iv) Receipts from the sale of real property located in 3322
this state shall be situated to this state. 3323

(v) Receipts from the sale of tangible personal property 3324
shall be situated to this state if such property is received in 3325
this state by the purchaser. In the case of delivery of tangible 3326
personal property by common carrier or by other means of 3327
transportation, the place at which such property is ultimately 3328
received after all transportation has been completed shall be 3329
considered as the place at which such property is received by 3330
the purchaser. Direct delivery in this state, other than for 3331
purposes of transportation, to a person or firm designated by a 3332
purchaser constitutes delivery to the purchaser in this state, 3333
and direct delivery outside this state to a person or firm 3334
designated by a purchaser does not constitute delivery to the 3335
purchaser in this state, regardless of where title passes or 3336
other conditions of sale. 3337

(vi) Receipts from the sale, exchange, disposition, or 3338
other grant of the right to use trademarks, trade names, 3339
patents, copyrights, and similar intellectual property shall be 3340

sitused to this state to the extent that the receipts are based 3341
on the amount of use of that property in this state. If the 3342
receipts are not based on the amount of use of that property, 3343
but rather on the right to use the property and the payor has 3344
the right to use the property in this state, then the receipts 3345
from the sale, exchange, disposition, or other grant of the 3346
right to use such property shall be sitused to this state to the 3347
extent the receipts are based on the right to use the property 3348
in this state. 3349

(vii) Receipts from the sale of services, and receipts 3350
from any other sales not eliminated or excluded from the sales 3351
factor and not otherwise sitused under division (B) (3) of this 3352
section, shall be sitused to this state in the proportion to the 3353
purchaser's benefit, with respect to the sale, in this state to 3354
the purchaser's benefit, with respect to the sale, everywhere. 3355
The physical location where the purchaser ultimately uses or 3356
receives the benefit of what was purchased shall be paramount in 3357
determining the proportion of the benefit in this state to the 3358
benefit everywhere. 3359

(b) Income from receipts eliminated or excluded from the 3360
sales factor under division (B) (3) of this section shall not be 3361
presumed to be nonbusiness income. 3362

(4) (a) As provided in division (B) (3) (a) (iii) of this 3363
section, for a person whose primary receipts are from the sale 3364
of electricity and of electric transmission and distribution 3365
services, receipts shall be sitused to this state as follows: 3366

(i) Sales of the transmission of electricity are in this 3367
state in proportion to the ratio of the wire mileage of the 3368
person's transmission lines located in this state divided by the 3369
wire mileage of the person's transmission lines located 3370

everywhere. Transmission wire mileage shall be weighted for the 3371
voltage capacity of each line. 3372

(ii) Sales of the distribution of electricity are in this 3373
state in proportion to the ratio of the wire mileage of the 3374
person's distribution lines located in this state divided by the 3375
wire mileage of the person's distribution lines located 3376
everywhere. Distribution wire mileage shall not be weighted for 3377
the voltage capacity of each line. 3378

(b) Division (B) (4) (b) of this section applies only to a 3379
person that has transmission or distribution lines in this 3380
state. If a contract for the sale of electricity includes the 3381
seller's or the seller's related member's obligation to transmit 3382
or distribute the electricity and if the sales contract 3383
separately identifies the price charged for the transmission or 3384
distribution of electricity, the price charged for the 3385
transmission and distribution of electricity shall be 3386
apportioned to this state in accordance with division (B) (4) (a) 3387
of this section. Any remaining portion of the sales price of the 3388
electricity shall be sitused to this state in accordance with 3389
division (B) (4) (c) of this section. 3390

If the sales contract does not separately identify the 3391
price charged for the transmission or distribution of 3392
electricity, the sales price of the electricity shall be sitused 3393
to this state in accordance with division (B) (4) (c) of this 3394
section. 3395

(c) Any person who makes a sale of electricity shall situs 3396
the following to this state: 3397

(i) A sale of electricity directly or indirectly to a 3398
customer to the extent the customer consumes the electricity in 3399

this state; 3400

(ii) A sale of electricity directly or indirectly to a 3401
related member where the related member directly or indirectly 3402
sells electricity to a customer to the extent the customer 3403
consumes the electricity in this state; 3404

(iii) A sale of electricity if the seller or the seller's 3405
related member directly or indirectly delivers the electricity 3406
to a location in this state or directly or indirectly delivers 3407
the electricity exactly to the border of this state and another 3408
state; 3409

(iv) A sale of electricity if the seller or the seller's 3410
related member directly or indirectly directs the delivery of 3411
the electricity to a location in this state or directly or 3412
indirectly directs the delivery of the electricity exactly to 3413
the border of this state and another state. 3414

For the purposes of division (B) (4) (c) of this section, 3415
"customer" means a person who purchases electricity for 3416
consumption either by that person or by the person's related 3417
member and the electricity is not for resale directly or 3418
indirectly to any person other than a related member. 3419

(d) Notwithstanding section 5703.56 of the Revised Code, 3420
for the purposes of division (B) (4) of this section a person 3421
situsing a sale outside this state has the burden to establish 3422
by a preponderance of the evidence that the doctrines enumerated 3423
in that section do not apply. 3424

(5) As used in division (B) of this section, "qualified 3425
research" means laboratory research, experimental research, and 3426
other similar types of research; research in developing or 3427
improving a product; or research in developing or improving the 3428

means of producing a product. It does not include market 3429
research, consumer surveys, efficiency surveys, management 3430
studies, ordinary testing or inspection of materials or products 3431
for quality control, historical research, or literary research. 3432
"Product," as used in this division, does not include services 3433
or intangible property. 3434

(C) If the allocation and apportionment provisions of 3435
sections 5747.20 to 5747.23 of the Revised Code or of any rule 3436
adopted by the tax commissioner, do not fairly represent the 3437
extent of business activity in this state of a taxpayer or pass- 3438
through entity, the taxpayer or pass-through entity may request, 3439
which request must be in writing accompanying a timely filed 3440
return or timely filed amended return, or the tax commissioner 3441
may require, in respect of all or any part of the business 3442
activity, if reasonable, any one or more of the following: 3443

(1) Separate accounting; 3444

(2) The exclusion of one or more factors; 3445

(3) The inclusion of one or more additional factors which 3446
will fairly represent the business activity in this state; 3447

(4) The employment of any other method to effectuate an 3448
equitable allocation and apportionment of such business in this 3449
state. An alternative method will be effective only with 3450
approval of the tax commissioner. 3451

(D) The tax commissioner may adopt rules in the manner 3452
provided by sections 5703.14 and 5747.18 of the Revised Code 3453
providing for alternative methods of calculating business income 3454
and nonbusiness income or situsing of sales applicable to all 3455
taxpayers and pass-through entities, to classes of taxpayers and 3456
pass-through entities, or only to taxpayers and pass-through 3457

entities within a certain industry. 3458

Sec. 5747.212. (A) This section applies solely for the 3459
purpose of computing the credit allowed under division (A) of 3460
section 5747.05 of the Revised Code and computing income taxable 3461
in this state under ~~division (D) of section 5747.08~~ 5747.40 of 3462
the Revised Code. 3463

(B) A taxpayer, directly or indirectly, owning at any time 3464
during the three-year period ending on the last day of the 3465
taxpayer's taxable year at least twenty per cent of the equity 3466
voting rights of a section 5747.212 entity shall apportion any 3467
income, including gain or loss, realized from each sale, 3468
exchange, or other disposition of a debt or equity interest in 3469
that entity as prescribed in this section. For such purposes, in 3470
lieu of using the method prescribed by sections 5747.20 and 3471
5747.21 of the Revised Code, the investor shall apportion the 3472
income using the average of the section 5747.212 entity's 3473
apportionment fractions otherwise applicable under section 3474
~~5733.05, 5733.056, or~~ 5747.21 of the Revised Code for the 3475
current and two preceding taxable years. If the section 5747.212 3476
entity was not in business for one or more of those years, each 3477
year that the entity was not in business shall be excluded in 3478
determining the average. 3479

(C) For the purposes of this section: 3480

(1) A "section 5747.212 entity" is any qualifying person 3481
if, on at least one day of the three-year period ending on the 3482
last day of the taxpayer's taxable year, any of the following 3483
apply: 3484

(a) The qualifying person is a pass-through entity; 3485

(b) Five or fewer persons directly or indirectly own all 3486

the equity interests, with voting rights, of the qualifying person; 3487
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(c) One person directly or indirectly owns at least fifty per cent of the qualifying person's equity interests with voting rights. 3489
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(2) A "qualifying person" is any person other than an individual, estate, or trust. 3492
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(3) "Estate" and "trust" do not include any person classified for federal income tax purposes as an association taxable as a corporation. 3494
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Sec. 5747.22. (A) This section applies solely for the purposes of computing the credit allowed under division (A) of section 5747.05 of the Revised Code and computing income taxable in this state under ~~division (D) of section 5747.08~~ 5747.40 of the Revised Code. 3497
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(B) With respect to a pass-through entity, one or more of the pass-through entity investors of which are liable for the tax imposed by section 5747.02 of the Revised Code, the business income and deductions of the pass-through entity shall be apportioned to this state in the hands of the pass-through entity investors pursuant to section 5747.21 of the Revised Code. The business income and deductions as thus apportioned to this state then shall be allocated to the pass-through entity investors in proportion to their right to share in that business income. 3502
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(C) With respect to a pass-through entity described in division (B) of this section, the nonbusiness income and deductions of the pass-through entity shall be allocated to the pass-through entity investors in proportion to their right to 3512
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share in the nonbusiness income, and then the pass-through 3516
entity shares shall be allocated to this state in the hands of 3517
each pass-through entity investor pursuant to section 5747.20 of 3518
the Revised Code. 3519

Sec. 5747.221. (A) Divisions (D) and (E) of this section 3520
apply solely for the purposes of computing the credit allowed 3521
under division (A) of section 5747.05 of the Revised Code and 3522
computing income taxable in this state under section 5747.40 of 3523
the Revised Code. 3524

(B) As used in this section, "investment pass-through 3525
entity" has the same meaning as in section 5733.401 of the 3526
Revised Code: 3527

(1) "Investment income" means the portion of a pass- 3528
through entity's net income attributable to transaction fees in 3529
connection with the acquisition, ownership, or disposition of 3530
intangible property; loan fees; financing fees; consent fees; 3531
waiver fees; application fees; net management fees; dividend 3532
income; interest income; net capital gains from the sale, 3533
exchange, or other disposition of intangible property; and 3534
distributive shares of income from pass-through entities. 3535

(2) "Net management fees" means management fees that a 3536
pass-through entity earns or receives from all sources, reduced 3537
by management fees that the pass-through entity incurs or pays 3538
to any person. 3539

(3) "Investment pass-through entity" means a pass-through 3540
entity that meets both of the following criteria: 3541

(a) At least ninety per cent of the pass-through entity's 3542
gross income constitutes investment income. 3543

(b) At least ninety per cent of the net book value of the 3544

pass-through entity's assets are intangible assets. 3545

Such percentages shall be the quarterly average of those 3546
percentages as calculated during the pass-through entity's 3547
taxable year. 3548

(C) For the purposes of this section only, investment in a 3549
pass-through entity shall be deemed to be an investment in an 3550
intangible asset, and section 5747.231 of the Revised Code shall 3551
not apply for the purpose of making the determination required 3552
by division (B) (3) of this section or for the purposes of 3553
division (D) of this section. 3554

~~(B) (D) (1) Except as provided in division (C) divisions~~ 3555
~~(D) (2) and (E) of this section, for the purposes of sections~~ 3556
~~5747.20, 5747.21, and 5747.22 of the Revised Code, no item of~~ 3557
~~income or deduction shall be allocated or apportioned to this~~ 3558
~~state to the extent that such item represents the portion of an~~ 3559
~~adjusted qualifying amount for which the withholding tax is not~~ 3560
~~imposed under section 5747.41 of the Revised Code by reason of~~ 3561
~~division (C) of section 5733.401 of the Revised Code. This~~ 3562
~~section shall be applied without regard to division (I) of~~ 3563
~~section 5733.40 of the Revised Code investment income of an~~ 3564
~~investment pass-through entity. Nothing in this division shall~~ 3565
~~be construed to provide for an exclusion of any item of income~~ 3566
~~more than once.~~ 3567

(2) The portion of an investment pass-through entity's net 3568
income attributable to net management fees shall be subject to 3569
the allocation and apportionment provisions of sections 5747.20, 3570
5747.21, and 5747.22 of the Revised Code if such net management 3571
fees exceed five per cent of the entity's net income calculated 3572
in accordance with generally accepted accounting principles. 3573

~~(C)~~ (E) If a taxpayer has a direct or indirect investment 3574
in an investment pass-through entity that has a direct or 3575
indirect investment in any other pass-through entity, division 3576
~~(B)~~ (D) of this section does not apply to any item of income, 3577
gain, deduction, or loss where, under section 5747.231 of the 3578
Revised Code, the item is directly or indirectly attributable to 3579
either of the following: 3580

(1) A distributive share of income or gain from a pass- 3581
through entity that does not qualify as an investment pass- 3582
through entity; 3583

(2) A pass-through entity's income or gain ~~to which~~ 3584
~~division (C) of section 5733.401 of the Revised Code does not~~ 3585
~~apply that does not constitute investment income.~~ 3586

An indirect investment includes any interest that a person 3587
constructively owns on account of the attribution rules set 3588
forth in section 267, 318, or 1563 of the Internal Revenue Code. 3589

Sec. 5747.231. ~~As used in this section, "adjusted~~ 3590
~~qualifying amount" has the same meaning as in section 5733.40 of~~ 3591
~~the Revised Code.~~ 3592

This section does not apply to division (BB) (5) (a) (ii) of 3593
section 5747.01 of the Revised Code. 3594

~~Except as set forth in this section and except as~~ 3595
~~otherwise provided in divisions (A) and (B) of section 5733.401~~ 3596
~~of the Revised Code, in~~ In making all apportionment, allocation, 3597
income, gain, loss, deduction, tax, and credit computations 3598
under this chapter, each person shall include in that person's 3599
items of business income, nonbusiness income, ~~adjusted~~ 3600
~~qualifying amounts,~~ allocable income or loss, apportionable 3601
income or loss, property, compensation, and sales, the person's 3602

entire distributive share or proportionate share of the items of 3603
business income, nonbusiness income, ~~adjusted qualifying~~ 3604
~~amounts~~, allocable income or loss, apportionable income or loss, 3605
property, compensation, and sales of any pass-through entity in 3606
which the person has a direct or indirect ownership interest at 3607
any time during the person's taxable year. A pass-through 3608
entity's direct or indirect distributive share or proportionate 3609
share of any other pass-through entity's items of business 3610
income, nonbusiness income, ~~adjusted qualifying amounts~~, 3611
allocable income or loss, apportionable income or loss, 3612
property, compensation, and sales shall be included for the 3613
purposes of computing the person's distributive share or 3614
proportionate share of the pass-through entity's items of 3615
business income, nonbusiness income, ~~adjusted qualifying~~ 3616
~~amounts~~, allocable income or loss, apportionable income or loss, 3617
property, compensation, and sales under this section. Those 3618
items shall ~~be in the same form~~ retain the same character as 3619
that which was originally recognized by the pass-through entity. 3620

Sec. 5747.28. (A) As used in this section: 3621

~~(1) "Qualifying"~~, "qualifying property" means any 3622
property, plant, or equipment used to produce grapes in this 3623
state, and includes but is not limited to land and improvements 3624
to land, grape seeds and vines, stakes, wiring, tractors, and 3625
other machinery used in the growth, harvesting, or producing of 3626
grapes. 3627

~~(2) "Related member" has the same meaning as in division~~ 3628
~~(A) (6) of section 5733.042 of the Revised Code, without regard~~ 3629
~~to division (B) of that section.~~ 3630

(B) A nonrefundable credit is allowed against a taxpayer's 3631
aggregate tax liability under section 5747.02 of the Revised 3632

Code for a taxpayer engaged in the business of producing grapes 3633
who purchases qualifying property on or after January 1, 1994. 3634
The amount of the credit equals ten per cent of the cost of 3635
purchasing and installing or constructing the qualifying 3636
property. The taxpayer shall claim the credit in the taxable 3637
year in which the qualifying property is placed in operation. 3638
The taxpayer shall claim the credit in the order required under 3639
section 5747.98 of the Revised Code. The taxpayer may carry 3640
forward for the ensuing seven taxable years any credit amount in 3641
excess of its aggregate tax due under section 5747.02 of the 3642
Revised Code in the taxable year in which the qualifying 3643
property is placed in operation after allowing for any other 3644
credits that precede the credit under this section in that 3645
order, and shall deduct the amount of the excess credit allowed 3646
in any such year from the balance carried forward to the next 3647
year. However, if the taxpayer is subject to a recapture tax 3648
under division (C)(1) of this section because the taxpayer 3649
disposes of the qualifying property or ceases to use it as 3650
qualifying property during the seven-year recapture period 3651
prescribed under that division, the taxpayer may claim no credit 3652
in connection with that property in the taxable year of disposal 3653
or cessation or any ensuing taxable year. 3654

(C)(1) If, within the seven-year period after qualifying 3655
property is placed in operation, the taxpayer disposes of the 3656
property or ceases to use it as qualifying property, the amount 3657
of tax otherwise imposed on the taxpayer by section 5747.02 of 3658
the Revised Code shall be increased in the taxable year in which 3659
the property is disposed of or ceases to be used as qualifying 3660
property. The amount of the increase shall equal the recapture 3661
percentage multiplied by the aggregate credit the taxpayer has 3662
been allowed under this section in all prior taxable years in 3663

connection with that property. The recapture percentage shall be 3664
determined in accordance with the following table: 3665

If the property is disposed of		3666
or ceases to be used as qualifying		3667
property within this amount of time	The recapture	3668
after being placed in operation:	percentage is:	3669
One year	100%	3670
Two years	86%	3671
Three years	72%	3672
Four years	58%	3673
Five years	44%	3674
Six years	30%	3675
Seven years	15%	3676

(2) Division (C) (1) of this section does not apply in any 3677
of the following circumstances: 3678

(a) The qualifying property is transferred to a related 3679
member and the related member continues to use the property to 3680
produce grapes in this state; 3681

(b) The qualifying property is transferred to a family 3682
member and the family member continues to use the property to 3683
produce grapes in this state; 3684

(c) There is an involuntary disposition of the qualifying 3685
property. The involuntary disposition may be due to, without 3686
limitation, a bankruptcy, a receivership, or destruction by 3687
natural forces. 3688

(D) The tax commissioner, by rule, may prescribe 3689
guidelines for taxpayers to use in determining if their property 3690
is qualifying property for the purposes of this section. 3691

Sec. 5747.30. (A) As used in this section: 3692

(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 commercial printing, but does not include a person primarily engaged in the business of providing duplicating services using photocopy machines or other xerographic processes.~~ 3693
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(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. "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.~~ 3701
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(3) "Contract for printing" means an oral or written agreement for the purchase of printed materials produced by a commercial printer. 3708
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(4) "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. 3711
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(5) "Printed material" means any tangible personal property produced or processed by a commercial printer pursuant to a contract for printing. 3716
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(B) Except as provided in divisions (C) and (D) of this section, a nonresident not otherwise subject to the tax imposed by section 5747.02 of the Revised Code for a taxable year does 3719
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not become subject to that tax for the taxable year solely by 3722
reason of any one or more of the following occurring in this 3723
state during all or any portion of the taxable year: 3724

(1) Ownership by the nonresident, a pass-through entity in 3725
which the nonresident has directly or indirectly invested, or a 3726
related member of the nonresident, of tangible personal property 3727
or intangible property located during all or any portion of the 3728
taxable year at the premises of a commercial printer with which 3729
the nonresident, pass-through entity, or nonresident's related 3730
member has a contract for printing with respect to such property 3731
or the premises of a commercial printer's related member with 3732
which the nonresident, pass-through entity, or nonresident's 3733
related member has a contract for printing with respect to such 3734
property; 3735

(2) Sales by the nonresident, a pass-through entity in 3736
which the nonresident has directly or indirectly invested, or a 3737
related member of the nonresident, of property produced at and 3738
shipped or distributed from the premises of a commercial printer 3739
with which the nonresident, pass-through entity, or 3740
nonresident's related member has a contract for printing with 3741
respect to such property or the premises of a commercial 3742
printer's related member with which the nonresident, pass- 3743
through entity, or nonresident's related member has a contract 3744
for printing with respect to such property; 3745

(3) Activities of employees, officers, agents, or 3746
contractors of the nonresident, a pass-through entity in which 3747
the nonresident has directly or indirectly invested, or a 3748
related member of the nonresident, on the premises of a 3749
commercial printer with which the nonresident, pass-through 3750
entity, or nonresident's related member has a contract for 3751

printing or the premises of a commercial printer's related 3752
member with which the nonresident, pass-through entity, or 3753
nonresident's related member has a contract for printing, where 3754
such activities are directly and solely related to quality 3755
control, distribution, or printing services, or any combination 3756
thereof, performed by or at the direction of the commercial 3757
printer or the commercial printer's related member. 3758

(C) The exemption under this section does not apply to a 3759
taxable year during any portion of which the individual or 3760
estate directly or indirectly owned or invested in a pass- 3761
through entity which during any portion of the taxable year of 3762
the individual or estate owned or used all or a portion of its 3763
property or capital in this state or earned or received income 3764
in this state or was doing business in this state. The exemption 3765
under this section also does not apply to any individual or 3766
estate for a taxable year during any portion of which the 3767
individual or estate directly or indirectly owned or invested in 3768
a pass-through entity which during any portion of such taxable 3769
year was a related member to any entity which during any portion 3770
of such taxable year owned or used all or a portion of its 3771
property or capital in this state or earned or received income 3772
in this state or was doing business in this state. 3773

(D) With respect to allowing the exemption under this 3774
section, the tax commissioner shall be guided by the doctrines 3775
of "economic reality," "sham transaction," "step transaction," 3776
and "substance over form." A nonresident shall bear the burden 3777
of establishing by a preponderance of the evidence that any 3778
transaction giving rise to an exemption claimed under this 3779
section did not have as a principal purpose the avoidance of any 3780
portion of the tax imposed by section 5747.02 of the Revised 3781
Code. 3782

Application of the doctrines listed in this division is	3783
not limited to this section.	3784
Sec. 5747.331. (A) As used in this section:	3785
(1) "Borrower" means any person that receives a loan from	3786
the director of development under section 166.21 of the Revised	3787
Code, regardless of whether the borrower is subject to the tax	3788
imposed by section 5747.02 of the Revised Code.	3789
(2) "Related member" has the same meaning as in section	3790
5733.042 of the Revised Code.	3791
(3) "Qualified research and development loan payments" has	3792
the same meaning as in section 166.21 of the Revised Code.	3793
(B) Beginning with taxable years beginning in 2003, a	3794
nonrefundable credit is allowed against a taxpayer's aggregate	3795
tax liability under section 5747.02 of the Revised Code equal to	3796
a borrower's qualified research and development loan payments	3797
made during the calendar year that includes the last day of the	3798
taxable year for which the credit is claimed. The amount of the	3799
credit for a taxable year shall not exceed one hundred fifty	3800
thousand dollars. No taxpayer is entitled to claim a credit	3801
under this section unless it has obtained a certificate issued	3802
by the director of development under division (D) of section	3803
166.21 of the Revised Code and submits a copy of the certificate	3804
with its report for the taxable year. Failure to submit a copy	3805
of the certificate with the report does not invalidate a claim	3806
for a credit if the taxpayer submits a copy of the certificate	3807
within sixty days after the tax commissioner requests it. The	3808
credit shall be claimed in the order required under section	3809
5747.98 of the Revised Code. No credit shall be allowed under	3810
this section if the credit was available against the tax imposed	3811

by Chapter 5751. of the Revised Code except to the extent the 3812
credit was not applied against that tax. The credit, to the 3813
extent it exceeds the taxpayer's aggregate tax liability for the 3814
taxable year after allowance for any other credits that precede 3815
the credit under this section in that order, shall be carried 3816
forward to the next succeeding taxable year or years until fully 3817
used. 3818

(C) A borrower entitled to a credit under this section may 3819
assign the credit, or a portion thereof, to any of the 3820
following: 3821

(1) A related member of that borrower; 3822

(2) The owner or lessee of the eligible research and 3823
development project; 3824

(3) A related member of the owner or lessee of the 3825
eligible research and development project. 3826

A borrower making an assignment under this division shall 3827
provide written notice of the assignment to the tax commissioner 3828
and the director of development, in such form as the tax 3829
commissioner prescribes, before the credit that was assigned is 3830
used. The assignor may not claim the credit to the extent it was 3831
assigned to an assignee. The assignee may claim the credit only 3832
to the extent the assignor has not claimed it. 3833

(D) If any taxpayer is a shareholder in an S corporation, 3834
a partner in a partnership, or a member in a limited liability 3835
company treated as a partnership for federal income tax 3836
purposes, the taxpayer shall be allowed the taxpayer's 3837
distributive or proportionate share of the credit available 3838
through the S corporation, partnership, or limited liability 3839
company. 3840

(E) The aggregate credit against the taxes imposed by 3841
section 5747.02 and Chapter 5751. of the Revised Code that may 3842
be claimed under this section and section 5751.52 of the Revised 3843
Code by a borrower as a result of qualified research and 3844
development loan payments attributable during a calendar year to 3845
any one loan shall not exceed one hundred fifty thousand 3846
dollars. 3847

Sec. 5747.40. (A) For the purpose of complementing and 3848
reinforcing the tax levied under section 5747.02 of the Revised 3849
Code, there is hereby levied a tax on every pass-through entity 3850
having nexus with this state, except as provided in division (E) 3851
of this section. Each such pass-through entity shall compute the 3852
tax due, before applying any business credits, as follows: 3853

(1) Aggregating the distributive shares of each of the 3854
pass-through entity's direct investors that are pass-through 3855
entities, estates, trusts, or nonresident individuals. A 3856
resident individual investor may elect to include the investor's 3857
distributive share in the amount aggregated under this division. 3858

(2) Adjusting the aggregate amount calculated under 3859
division (A)(1) of this section as follows: 3860

(a) Add all expenses, other than amounts described in 3861
division (A)(2)(b) of this section and amounts with respect to 3862
which a related member is otherwise subject to the tax imposed 3863
by section 5747.02 of the Revised Code, that the pass-through 3864
entity paid to or incurred with respect to direct or indirect 3865
transactions with one or more related members, excluding the 3866
cost of goods sold calculated in accordance with section 263A of 3867
the Internal Revenue Code and United States department of 3868
treasury regulations issued thereunder. 3869

(b) Add all guaranteed payments or compensation paid to 3870
investors by the pass-through entity if such payments or such 3871
compensation are paid to an investor who, at any time during the 3872
pass-through entity's taxable year, holds at least a twenty per 3873
cent direct or indirect interest in the profits or capital of 3874
the entity. Such amounts shall be considered a distributive 3875
share of income from the entity for the purposes of this 3876
chapter. 3877

(c) Add all recognized losses, other than losses from 3878
sales of inventory the cost of which is calculated in accordance 3879
with section 263A of the Internal Revenue Code and United States 3880
department of treasury regulations issued thereunder, with 3881
respect to all direct or indirect transactions with one or more 3882
related members. Losses from the sales of inventory shall be 3883
allowed only to the extent calculated in accordance with section 3884
482 of the Internal Revenue Code and United States department of 3885
treasury regulations issued thereunder. 3886

(d) Add interest or dividends on obligations or securities 3887
of any state or of any political subdivision or authority of any 3888
state, other than this state and its subdivisions and 3889
authorities; 3890

(e) Add interest or dividends on obligations of any 3891
authority, commission, instrumentality, territory, or possession 3892
of the United States to the extent that the interest or 3893
dividends are exempt from federal income taxes but not from 3894
state income taxes; 3895

(f) Add or deduct the amount the taxpayer would be 3896
required to add or deduct under divisions (A) (18) and (19) of 3897
section 5747.01 of the Revised Code if the taxpayer's income 3898
were computed in the same manner as an individual's Ohio 3899

adjusted gross income is computed under that section; 3900

(g) Add any loss or deduct any gain, in the same manner as 3901
an individual would in computing the individual's Ohio adjusted 3902
gross income, resulting from the sale, exchange, or other 3903
disposition of public obligations; 3904

(h) Deduct interest or dividends on obligations of the 3905
United States and its territories and possessions or of any 3906
authority, commission, or instrumentality of the United States 3907
to the extent that the interest or dividends are included in 3908
federal adjusted gross income but exempt from state income taxes 3909
under the laws of the United States; 3910

(i) Deduct any wage or salary expense, in the same manner 3911
as an individual would in computing the individual's Ohio 3912
adjusted gross income, that is not otherwise allowable as a 3913
deduction but that would have been allowable as a deduction in 3914
computing federal taxable income for the taxable year had the 3915
targeted jobs credit allowed under sections 38, 51, and 52 of 3916
the Internal Revenue Code not been in effect; 3917

(j) Deduct any interest or interest equivalent, in the 3918
same manner as an individual would in computing the individual's 3919
Ohio adjusted gross income, on public obligations and purchase 3920
obligations. 3921

(3) Allocating and apportioning to this state the adjusted 3922
amount obtained under division (A) (2) of this section in 3923
accordance with sections 5747.20 to 5747.231 of the Revised 3924
Code; 3925

(4) Multiplying the result obtained in division (A) (3) of 3926
this section by the rate specified in division (A) (4) (b) of 3927
section 5747.02 of the Revised Code. 3928

(B) A pass-through entity's method of accounting shall be 3929
the same as its method of accounting for federal income tax 3930
purposes. If a pass-through entity's method of accounting is 3931
changed for federal income tax purposes, its method of 3932
accounting for purposes of this chapter shall be changed 3933
accordingly. In the absence of any method of accounting for 3934
federal income tax purposes, income shall be computed under such 3935
method that the tax commissioner deems reasonably reflects 3936
income. 3937

(C) (1) Notwithstanding division (A) of this section, if, 3938
before the due date of the return, a pass-through entity 3939
receives from a direct or indirect investor documentation 3940
showing the investor is neither subject to the tax imposed under 3941
section 5747.02 of the Revised Code for the entity's entire 3942
taxable year nor is a pass-through entity, the entity required 3943
to file a return under this section is not required to include, 3944
in the calculation under division (A) (1) of this section, the 3945
distributive share of income of the investor not subject to the 3946
tax. 3947

(2) A pass-through entity shall not be subject to any 3948
interest or interest penalties for failure to include such 3949
amounts in its calculation of taxes, including estimated taxes, 3950
if the tax commissioner, upon request, receives the 3951
documentation described in division (C) (1) of this section. 3952

(D) Investors included on a return filed pursuant to 3953
section 5747.41 of the Revised Code are not entitled to the 3954
exemption allowed under section 5747.025 of the Revised Code, 3955
and are entitled only to their distributive share of business 3956
credits. 3957

(E) (1) A pass-through entity having nexus with this state 3958

is not subject to the complementary tax imposed by this section 3959
if any of the following conditions apply: 3960

(a) All of the entity's investors are resident 3961
individuals; 3962

(b) None of the entity's investors is either (i) a pass- 3963
through entity or (ii) a person subject to the tax imposed under 3964
section 5747.02 of the Revised Code; 3965

(c) The entity is subject to division (C) of section 3966
5747.41 of the Revised Code. 3967

(2) Nothing in division (E) of this section shall 3968
eliminate the imposition of the tax imposed on an individual 3969
under section 5747.02 of the Revised Code. 3970

(3) Nothing in division (E) of this section shall affect 3971
the computation of the tax that is levied on an individual under 3972
section 5747.02 of the Revised Code. 3973

(F) (1) For the purposes of sections 5747.40 to 5747.44 of 3974
the Revised Code, "business credits" means the following 3975
credits: 3976

(a) The campaign contribution credit under section 5747.29 3977
of the Revised Code; 3978

(b) The nonrefundable job retention credit under division 3979
(B) of section 5747.058 of the Revised Code; 3980

(c) The enterprise zone credit under section 5709.66 of 3981
the Revised Code; 3982

(d) The credit for purchases of qualifying grape 3983
production property under section 5747.28 of the Revised Code; 3984

(e) The small business investment credit under section 3985

<u>5747.81 of the Revised Code;</u>	3986
<u>(f) The enterprise zone credits under section 5709.65 of</u>	3987
<u>the Revised Code;</u>	3988
<u>(g) The research and development credit under section</u>	3989
<u>5747.331 of the Revised Code;</u>	3990
<u>(h) The credit for rehabilitating an historic building</u>	3991
<u>under section 5747.76 of the Revised Code;</u>	3992
<u>(i) The nonrefundable credit for financial institution</u>	3993
<u>taxes paid by a pass-through entity granted under section</u>	3994
<u>5747.65 of the Revised Code;</u>	3995
<u>(j) The refundable credit for rehabilitating an historic</u>	3996
<u>building under section 5747.76 of the Revised Code;</u>	3997
<u>(k) The refundable jobs creation credit or job retention</u>	3998
<u>credit under division (A) of section 5747.058 of the Revised</u>	3999
<u>Code;</u>	4000
<u>(l) The refundable credit under section 5747.80 of the</u>	4001
<u>Revised Code for losses on loans made to the Ohio venture</u>	4002
<u>capital program under sections 150.01 to 150.10 of the Revised</u>	4003
<u>Code;</u>	4004
<u>(m) The refundable motion picture production credit under</u>	4005
<u>section 5747.66 of the Revised Code;</u>	4006
<u>(n) The refundable credits for taxes paid by a pass-</u>	4007
<u>through entity under division (C) of section 5747.42 of the</u>	4008
<u>Revised Code.</u>	4009
<u>(2) Nothing in this chapter allows any credit to be</u>	4010
<u>claimed more than once or provides for any deduction or credit</u>	4011
<u>that would not be allowable if an investor were to file an</u>	4012

annual return. 4013

(3) Nothing in this section changes the order in which a 4014
pass-through entity claims business credits from the order 4015
prescribed in section 5747.98 of the Revised Code. 4016

Sec. 5747.41. (A) (1) Each pass-through entity subject to 4017
the tax imposed by section 5747.40 of the Revised Code shall 4018
file a single composite tax return on behalf of the entity's 4019
investors. 4020

(2) Each pass-through entity having nexus with this state 4021
shall file an informational return on behalf of the entity's 4022
investors unless any of the following conditions apply: 4023

(a) The entity is required to file a composite return 4024
under division (A) (1) of this section. 4025

(b) None of the investors is a person subject to the tax 4026
imposed under section 5747.02 of the Revised Code. 4027

(c) All of the investors are resident individuals and the 4028
entity did not claim any of the business credits listed in 4029
divisions (F) (1) (a) to (m) of section 5747.40 of the Revised 4030
Code. 4031

(B) Each of the returns required by division (A) of this 4032
section shall state the apportionment fraction calculated for 4033
the pass-through entity under section 5747.21 of the Revised 4034
Code and shall contain the following information for each of the 4035
pass-through entity's investors: 4036

(1) Investor name and type; 4037

(2) Investor social security number, federal employer 4038
identification number, or any other identifying number requested 4039
by the tax commissioner; 4040

<u>(3) Investor ownership percentage and, if different,</u>	4041
<u>investor distribution percentage;</u>	4042
<u>(4) Whether or not the investor is exempt from the</u>	4043
<u>calculation required under division (A)(1) of section 5747.40 of</u>	4044
<u>the Revised Code;</u>	4045
<u>(5) The allocation percentage for any business credit</u>	4046
<u>earned by the pass-through entity;</u>	4047
<u>(6) Any other information prescribed by the commissioner.</u>	4048
<u>(C) Notwithstanding divisions (A)(1) and (2) and (B) of</u>	4049
<u>this section:</u>	4050
<u>(1) A publicly traded partnership, as defined by section</u>	4051
<u>7704(b) of the Internal Revenue Code, that has nexus with this</u>	4052
<u>state and that is treated as a partnership for the purposes of</u>	4053
<u>the Internal Revenue Code shall be required to file only a</u>	4054
<u>statement of the apportionment fraction calculated for the</u>	4055
<u>partnership under section 5747.21 of the Revised Code and either</u>	4056
<u>of the following:</u>	4057
<u>(a) An informational return that includes the information</u>	4058
<u>required by divisions (B)(1) to (6) of this section only with</u>	4059
<u>respect to investors with Ohio-sourced income in excess of five</u>	4060
<u>hundred dollars, except as otherwise provided by division (C)(2)</u>	4061
<u>of this section;</u>	4062
<u>(b) A copy of any federal income tax form that includes</u>	4063
<u>the information described in divisions (B)(1) to (3) of this</u>	4064
<u>section.</u>	4065
<u>(2) A limited liability company or limited partnership</u>	4066
<u>that has nexus with this state and at least fifty per cent of</u>	4067
<u>the ownership interests of which are owned, directly or</u>	4068

indirectly, by a publicly traded partnership described in 4069
division (C) (1) of this section shall be required to file only 4070
either of the following: 4071

(a) An informational return that includes the information 4072
required by divisions (B) (1) to (6) of this section only with 4073
respect to investors with Ohio-sourced income in excess of five 4074
hundred dollars; 4075

(b) A copy of any federal income tax form that includes 4076
the information described in divisions (B) (1) to (3) of this 4077
section. 4078

(D) (1) Any nonresident individual investor directly or 4079
indirectly included on a return required to be filed under 4080
division (A) (1) of this section may elect to file an annual 4081
return under section 5747.08 of the Revised Code and to pay the 4082
tax imposed under section 5747.02 of the Revised Code. 4083

(2) Nothing in this section exempts a resident individual 4084
investor, directly or indirectly included on a return filed 4085
under division (A) of this section, from the individual filing 4086
requirement of section 5747.08 of the Revised Code. 4087

(3) Nothing in sections 5747.40 to 5747.44 of the Revised 4088
Code shall preclude the tax commissioner from requiring that 4089
investors included on a return under division (A) of this 4090
section file any return or make any payment of tax or related 4091
interest, penalty, or interest penalty required by this chapter. 4092

(E) A pass-through entity filing a composite return 4093
required under division (A) (1) of this section shall be liable 4094
for any additional taxes, interest, interest penalty, or 4095
penalties imposed by this chapter if the tax commissioner finds 4096
that the composite return does not reflect the correct tax due 4097

by the pass-through entity investors covered by that return. 4098
Nothing in this division limits or alters the liability, if any, 4099
imposed on pass-through entity investors for unpaid or underpaid 4100
taxes, interest, interest penalty, or penalties as a result of 4101
the pass-through entity's filing under this section. For the 4102
purposes of this division, "correct tax due" means the tax that 4103
would have been paid by the pass-through entity had the 4104
composite return been filed in a manner reflecting the 4105
commissioner's findings. Nothing in this section shall be 4106
construed to make or hold a pass-through entity liable for tax 4107
attributable to a pass-through entity investor's income from a 4108
source other than the pass-through entity electing to file the 4109
composite return. 4110

Sec. 5747.42. (A) (1) Except as provided in division (A) (2) 4111
of this section, each return required to be filed under division 4112
(A) (1) of section 5747.41 of the Revised Code shall be 4113
accompanied by a single check drawn by the pass-through entity, 4114
or by an electronic submission required under section 5747.44 of 4115
the Revised Code, for the full amount shown to be due on the 4116
return. 4117

(2) If the amount calculated under division (A) (1) of 4118
section 5747.40 of the Revised Code, less the business credits 4119
enumerated in divisions (F) (1) (a) to (i) of that section, is 4120
less than two hundred fifty dollars, no payment need accompany 4121
the return. 4122

(B) Each pass-through entity required to file a return 4123
under division (A) (1) of section 5747.41 of the Revised Code 4124
shall also file and pay estimated taxes, in accordance with 4125
section 5747.09 of the Revised Code, on behalf of the pass- 4126
through entity's investors with regard to the income included on 4127

that return. 4128

(C) (1) Except as provided in division (C) (2) of this 4129
section, a direct or indirect investor that either is required 4130
to file an annual return under division (A) (1) of section 4131
5747.41 of the Revised Code, or that elects to file an annual 4132
return under division (D) of that section, may claim a 4133
refundable credit equal to the investor's proportionate share of 4134
the tax actually paid by the pass-through entity on behalf of 4135
the investor. 4136

(2) An indirect investor shall not claim a credit for tax 4137
paid by a pass-through entity on behalf of the investor if an 4138
intermediate investor claims a credit that includes that amount. 4139
As used in this division, "intermediate investor" means an 4140
investor that has a direct or indirect investment interest in an 4141
entity, and in which one or more persons holds an investment 4142
interest. 4143

(D) The investor shall claim the credit for the investor's 4144
taxable year which ends in the taxable year of the pass-through 4145
entity. 4146

(E) For the purpose of computing any interest, penalty, or 4147
interest penalty, the investor shall be deemed to have paid tax 4148
in an amount equal to the refundable credit allowed by this 4149
section on the day that the pass-through entity paid the tax or 4150
estimated tax giving rise to the credit. 4151

(F) Nothing in sections 5747.40 to 5747.44 of the Revised 4152
Code prohibits an indirect investor who is not subject to the 4153
tax imposed under section 5747.02 of the Revised Code, but for 4154
whom taxes were paid on the investor's behalf under section 4155
5747.40 of the Revised Code, from filing a refund claim pursuant 4156

to section 5747.11 of the Revised Code. 4157

(G) Nothing in sections 5747.40 to 5747.44 of the Revised 4158
Code allows an investor or pass-through entity any additional 4159
deduction or credit, other than the credit provided by division 4160
(C) of this section, solely on account of the entity's filing a 4161
return in accordance with section 5747.41 of the Revised Code. 4162

Sec. 5747.43. (A) The retirement from business or 4163
voluntary dissolution of a pass-through entity does not exempt 4164
the entity from the requirements of sections 5747.40 to 5747.44 4165
of the Revised Code or from liability for the tax imposed under 4166
this chapter. 4167

(B) Notwithstanding any other provisions of this chapter, 4168
if any pass-through entity subject to the tax imposed under 4169
section 5747.40 of the Revised Code sells its business or stock 4170
of merchandise, or quits its business, the taxes required to be 4171
paid before that time, together with any interest or penalty 4172
thereon, become due and payable immediately. The entity shall 4173
make a final return within thirty days after the filing due date 4174
of the entity's final federal tax return. 4175

Sec. 5747.44. (A) If a ~~qualifying entity's total liability~~ 4176
~~for taxes imposed under sections 5733.41 and 5747.41 pass-~~ 4177
~~through entity required to file a return under division (A)(1)~~ 4178
~~of section 5747.41 of the Revised Code exceeds reports tax due~~ 4179
~~exceeding one hundred eighty thousand dollars for the second-~~ 4180
~~preceding qualifying two consecutive taxable year years,~~ the 4181
~~qualifying~~ entity shall make all payments required under 4182
sections ~~5747.09 and 5747.42 and 5747.43~~ of the Revised Code in 4183
~~subsequent taxable years~~ by electronic ~~funds transfer as~~ 4184
~~prescribed by this section and rules adopted by the treasurer of~~ 4185
~~state under section 113.061 of the Revised Code means as~~ 4186

prescribed or as otherwise permitted by the tax commissioner. 4187

The ~~tax~~-commissioner shall notify each ~~qualifying~~-entity 4188
required to remit taxes by electronic ~~funds transfer means~~ of 4189
the entity's obligation to do so, and shall maintain an updated 4190
list of those entities, ~~and shall provide the list and any~~ 4191
~~additions thereto or deletions therefrom to the treasurer of~~ 4192
~~state.~~ Failure by the tax commissioner to notify a ~~qualifying an~~ 4193
entity subject to this section to remit taxes by electronic 4194
~~funds transfer means~~ does not relieve the ~~qualifying~~-entity of 4195
its ~~obligation to remit taxes by electronic funds transfer~~ 4196
obligations under this section. 4197

(B) Except as otherwise provided in this division, the 4198
payment of taxes by electronic ~~funds transfer means~~ does not 4199
affect a ~~qualifying an~~-entity's obligation to file the ~~returns~~- 4200
return required under ~~sections 5747.42 and 5747.43~~ section 4201
5747.41 of the Revised Code. The treasurer of state, in 4202
consultation with the tax commissioner, may adopt rules in 4203
addition to the rules adopted under section 113.061 of the 4204
Revised Code governing the format for filing returns by 4205
~~qualifying~~-entities that remit taxes by electronic ~~funds~~- 4206
~~transfer means~~. The rules may provide for the filing of returns 4207
at less frequent intervals than otherwise required if the 4208
treasurer of state and the ~~tax~~-commissioner determine that 4209
remittance by electronic funds transfer warrants less frequent 4210
filing of returns. 4211

(C) ~~A qualifying An~~-entity required by this section to 4212
remit taxes by electronic ~~funds transfer means~~ may apply to the 4213
~~treasurer of state~~-tax commissioner in the manner prescribed or 4214
otherwise permitted by the treasurer of state commissioner to be 4215
excused from that requirement. The ~~treasurer of state~~- 4216

~~commissioner~~ may excuse the ~~qualifying~~ entity from remittance by 4217
electronic ~~funds transfer means~~ for good cause shown for the 4218
period of time requested by the ~~qualifying~~ entity or for a 4219
portion of that period. ~~The treasurer of state shall notify the~~ 4220
~~tax commissioner and the qualifying entity of the treasurer of~~ 4221
~~state's decision as soon as is practicable.~~ 4222

(D) If ~~a qualifying an~~ entity required by this section to 4223
remit taxes by electronic ~~funds transfer means~~ remits those 4224
taxes by some means other than ~~by electronic funds transfer as~~ 4225
~~those prescribed or otherwise permitted by this section and the~~ 4226
~~rules adopted by the treasurer of state the tax commissioner,~~ 4227
and the ~~treasurer of state commissioner~~ determines that such 4228
failure was not due to reasonable cause or was due to willful 4229
neglect, the ~~treasurer of state shall notify the tax~~ 4230
~~commissioner of the failure to remit by electronic funds~~ 4231
~~transfer and shall provide the commissioner with any information~~ 4232
~~used in making that determination. The tax commissioner may~~ 4233
collect an additional charge by assessment in the manner 4234
prescribed by section 5747.13 of the Revised Code. The 4235
additional charge shall equal five per cent of the amount of the 4236
taxes required to be paid by ~~electronic funds transfer means,~~ 4237
but shall not exceed five thousand dollars. Any additional 4238
charge assessed under this section is in addition to any other 4239
penalty or charge imposed under this chapter ~~or Chapter 5733. of~~ 4240
~~the Revised Code, and shall be considered as revenue arising~~ 4241
~~from the taxes imposed under sections 5733.41 and 5747.41 of the~~ 4242
~~Revised Code. The tax commissioner may remit all or a portion of~~ 4243
such a charge and may adopt rules governing such remission. 4244

No additional charge shall be assessed under this division 4245
against ~~a qualifying an~~ entity that has been notified of its 4246
obligation to remit taxes under this section and that remits its 4247

first two tax payments after such notification by some means 4248
other than ~~electronic funds transfer~~ those prescribed or 4249
otherwise permitted by the commissioner. The additional charge 4250
may be assessed upon the remittance of any subsequent tax 4251
payment that the ~~qualifying~~ entity remits by some other means 4252
~~other than electronic funds transfer.~~ 4253

(E) The tax commissioner may promulgate rules as necessary 4254
to implement this section. 4255

Sec. 5747.65. (A) There is hereby allowed a ~~refundable~~ 4256
~~nonrefundable~~ credit against a taxpayer's aggregate tax 4257
liability under section 5747.02 of the Revised Code. The amount 4258
of the credit shall equal the taxpayer's proportionate share of 4259
the lesser of either the tax due or the tax paid for the tax 4260
imposed by section 5726.02 of the Revised Code by a pass-through 4261
entity for the pass-through entity's taxable year ending in the 4262
taxpayer's taxable year. 4263

(B) The taxpayer shall claim the credit for the taxpayer's 4264
taxable year that includes the last day of the pass-through 4265
entity's taxable year. For purposes of making tax payments under 4266
this chapter, taxes equal to the amount of the credit shall be 4267
considered to be paid by the taxpayer on the day the pass- 4268
through entity pays to the treasurer of state the amount due for 4269
the tax imposed by section 5726.02 of the Revised Code. The 4270
credit shall be claimed in the order required under section 4271
5747.98 of the Revised Code. 4272

(C) In claiming the credit and determining the taxpayer's 4273
proportionate share of the tax due and the tax paid by a pass- 4274
through entity, the taxpayer shall follow the concepts set forth 4275
in subchapters J and K of the Internal Revenue Code. 4276

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

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

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

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

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

(2) Either the senior citizen credit under division (F) of section 5747.055 of the Revised Code or the lump sum distribution credit under division (G) of that section;

(3) The dependent care credit under section 5747.054 of the Revised Code;	4306 4307
(4) The low-income credit under section 5747.056 of the Revised Code;	4308 4309
(5) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	4310 4311
(6) The campaign contribution credit under section 5747.29 of the Revised Code;	4312 4313
(7) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	4314 4315
(8) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	4316 4317
(9) The earned income credit under section 5747.71 of the Revised Code;	4318 4319
(10) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	4320 4321
(11) The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;	4322 4323
(12) The enterprise zone credit under section 5709.66 of the Revised Code;	4324 4325
(13) The ethanol plant investment credit under section 5747.75 of the Revised Code;	4326 4327
(14) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	4328 4329
(15) <u>(14)</u> The small business investment credit under section 5747.81 of the Revised Code;	4330 4331

<u>(15) The credit for financial institution taxes paid by a</u>	4332
<u>pass-through entity granted under section 5747.65 of the Revised</u>	4333
<u>Code;</u>	4334
(16) The enterprise zone credits under section 5709.65 of	4335
the Revised Code;	4336
(17) The research and development credit under section	4337
5747.331 of the Revised Code;	4338
(18) The credit for rehabilitating a historic building	4339
under section 5747.76 of the Revised Code;	4340
(19) The nonresident credit under division (A) of section	4341
5747.05 of the Revised Code;	4342
(20) The credit for a resident's out-of-state income under	4343
division (B) of section 5747.05 of the Revised Code;	4344
(21) The refundable motion picture production credit under	4345
section 5747.66 of the Revised Code;	4346
(22) The refundable jobs creation credit or job retention	4347
credit under division (A) of section 5747.058 of the Revised	4348
Code;	4349
(23) The refundable credit for taxes paid by a qualifying	4350
entity granted under section 5747.059 of the Revised Code;	4351
(24) The refundable credits for taxes paid by a qualifying	4352
pass-through entity granted under division (I)-(C) of section	4353
5747.08-5747.42 of the Revised Code;	4354
(25)-(24) The refundable credit under section 5747.80 of	4355
the Revised Code for losses on loans made to the Ohio venture	4356
capital program under sections 150.01 to 150.10 of the Revised	4357
Code;	4358

(26) <u>(25)</u> The refundable credit for rehabilitating a	4359
historic building under section 5747.76 of the Revised Code;	4360
(27) The refundable credit for financial institution taxes	4361
paid by a pass-through entity granted under section 5747.65 of	4362
the Revised Code.	4363
(B) For any credit, except the refundable credits	4364
enumerated in this section and the credit granted under division	4365
(H) of section 5747.08 of the Revised Code, the amount of the	4366
credit for a taxable year shall not exceed the taxpayer's	4367
aggregate amount of tax due under section 5747.02 of the Revised	4368
Code, after allowing for any other credit that precedes it in	4369
the order required under this section. Any excess amount of a	4370
particular credit may be carried forward if authorized under the	4371
section creating that credit. Nothing in this chapter shall be	4372
construed to allow a taxpayer to claim, directly or indirectly,	4373
a credit more than once for a taxable year.	4374
Sec. 5748.01. As used in this chapter:	4375
(A) "School district income tax" means an income tax	4376
adopted under one of the following:	4377
(1) Former section 5748.03 of the Revised Code as it	4378
existed prior to its repeal by Amended Substitute House Bill No.	4379
291 of the 115th general assembly;	4380
(2) Section 5748.03 of the Revised Code as enacted in	4381
Substitute Senate Bill No. 28 of the 118th general assembly;	4382
(3) Section 5748.08 of the Revised Code as enacted in	4383
Amended Substitute Senate Bill No. 17 of the 122nd general	4384
assembly;	4385
(4) Section 5748.021 of the Revised Code;	4386

(5) Section 5748.081 of the Revised Code;	4387
(6) Section 5748.09 of the Revised Code.	4388
(B) "Individual" means an individual subject to the tax levied by section 5747.02 of the Revised Code.	4389 4390
(C) "Estate" means an estate subject to the tax levied by section 5747.02 of the Revised Code.	4391 4392
(D) "Taxable year" means a taxable year as defined in division (M) of section 5747.01 of the Revised Code.	4393 4394
(E) "Taxable income" means:	4395
(1) In the case of an individual, one of the following, as specified in the resolution imposing the tax:	4396 4397
(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;	4398 4399 4400 4401 4402
(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.	4403 4404 4405 4406 4407 4408
(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.	4409 4410 4411
(F) "Resident" of the school district means:	4412
(1) An individual who is a resident of this state as	4413

defined in division (I) of section 5747.01 of the Revised Code 4414
during all or a portion of the taxable year and who, during all 4415
or a portion of such period of state residency, is domiciled in 4416
the school district or lives in and maintains a permanent place 4417
of abode in the school district; 4418

(2) An estate of a decedent who, at the time of death, was 4419
domiciled in the school district. 4420

(G) "School district income" means: 4421

(1) With respect to an individual, the portion of the 4422
taxable income of an individual that is received by the 4423
individual during the portion of the taxable year that the 4424
individual is a resident of the school district and the school 4425
district income tax is in effect in that school district. An 4426
individual may have school district income with respect to more 4427
than one school district. 4428

(2) With respect to an estate, the taxable income of the 4429
estate for the portion of the taxable year that the school 4430
district income tax is in effect in that school district. 4431

(H) "Taxpayer" means an individual or estate having school 4432
district income upon which a school district income tax is 4433
imposed. 4434

(I) "School district purposes" means any of the purposes 4435
for which a tax may be levied pursuant to division (A) of 4436
section 5705.21 of the Revised Code, including the combined 4437
purposes authorized by section 5705.217 of the Revised Code. 4438

Section 2. That existing sections 901.13, 5733.01, 4439
5733.04, 5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 5747.012, 4440
5747.03, 5747.08, 5747.082, 5747.11, 5747.13, 5747.132, 5747.14, 4441
5747.15, 5747.20, 5747.21, 5747.212, 5747.22, 5747.221, 4442

5747.231, 5747.28, 5747.30, 5747.331, 5747.44, 5747.65, 5747.98, 4443
and 5748.01 and sections 5733.0611, 5733.40, 5733.401, 5733.402, 4444
5733.41, 5747.059, 5747.40, 5747.401, 5747.41, 5747.42, 5747.43, 4445
5747.45, 5747.451, 5747.453, and 5747.75 of the Revised Code are 4446
hereby repealed. 4447

Section 3. The amendment by this act of existing division 4448
(A) (21) (d) of section 5747.01 of the Revised Code is intended to 4449
clarify and be declaratory of the law as it existed before the 4450
amendment. 4451

Section 4. The amendment, enactment, or repeal by this act 4452
of sections 901.13, 5733.01, 5733.04, 5733.057, 5733.0611, 4453
5733.09, 5733.12, 5733.40, 5733.401, 5733.402, 5733.41, 5733.98, 4454
5747.01, 5747.012, 5747.03, 5747.059, 5747.08, 5747.082, 4455
5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 5747.20, 5747.21, 4456
5747.212, 5747.22, 5747.221, 5747.231, 5747.28, 5747.30, 4457
5747.331, 5747.40, 5747.401, 5747.41, 5747.42, 5747.43, 5747.44, 4458
5747.45, 5747.451, 5747.453, 5747.65, 5747.75, 5747.98, and 4459
5748.01 of the Revised Code shall apply to taxable years ending 4460
on or after January 1, 2017. Those sections as they existed 4461
before the effective date of this act continue to apply to 4462
taxable years ending before January 1, 2017. 4463