

As Introduced

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

H. B. No. 751

Representative Smith, T.

A BILL

To amend sections 5747.01 and 5747.06 of the 1
Revised Code to authorize an income tax 2
deduction for volunteer firefighters and to 3
exempt certain income received by volunteer 4
firefighters from withholding requirements. 5

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

Section 1. That sections 5747.01 and 5747.06 of the 6
Revised Code be amended to read as follows: 7

Sec. 5747.01. Except as otherwise expressly provided or 8
clearly appearing from the context, any term used in this 9
chapter that is not otherwise defined in this section has the 10
same meaning as when used in a comparable context in the laws of 11
the United States relating to federal income taxes or if not 12
used in a comparable context in those laws, has the same meaning 13
as in section 5733.40 of the Revised Code. Any reference in this 14
chapter to the Internal Revenue Code includes other laws of the 15
United States relating to federal income taxes. 16

As used in this chapter: 17

(A) "Adjusted gross income" or "Ohio adjusted gross 18
income" means federal adjusted gross income, as defined and used 19

in the Internal Revenue Code, adjusted as provided in this 20
section: 21

(1) Add interest or dividends on obligations or securities 22
of any state or of any political subdivision or authority of any 23
state, other than this state and its subdivisions and 24
authorities. 25

(2) Add interest or dividends on obligations of any 26
authority, commission, instrumentality, territory, or possession 27
of the United States to the extent that the interest or 28
dividends are exempt from federal income taxes but not from 29
state income taxes. 30

(3) Deduct interest or dividends on obligations of the 31
United States and its territories and possessions or of any 32
authority, commission, or instrumentality of the United States 33
to the extent that the interest or dividends are included in 34
federal adjusted gross income but exempt from state income taxes 35
under the laws of the United States. 36

(4) Deduct disability and survivor's benefits to the 37
extent included in federal adjusted gross income. 38

(5) Deduct benefits under Title II of the Social Security 39
Act and tier 1 railroad retirement benefits to the extent 40
included in federal adjusted gross income under section 86 of 41
the Internal Revenue Code. 42

(6) In the case of a taxpayer who is a beneficiary of a 43
trust that makes an accumulation distribution as defined in 44
section 665 of the Internal Revenue Code, add, for the 45
beneficiary's taxable years beginning before 2002, the portion, 46
if any, of such distribution that does not exceed the 47
undistributed net income of the trust for the three taxable 48

years preceding the taxable year in which the distribution is 49
made to the extent that the portion was not included in the 50
trust's taxable income for any of the trust's taxable years 51
beginning in 2002 or thereafter. "Undistributed net income of a 52
trust" means the taxable income of the trust increased by (a) (i) 53
the additions to adjusted gross income required under division 54
(A) of this section and (ii) the personal exemptions allowed to 55
the trust pursuant to section 642(b) of the Internal Revenue 56
Code, and decreased by (b) (i) the deductions to adjusted gross 57
income required under division (A) of this section, (ii) the 58
amount of federal income taxes attributable to such income, and 59
(iii) the amount of taxable income that has been included in the 60
adjusted gross income of a beneficiary by reason of a prior 61
accumulation distribution. Any undistributed net income included 62
in the adjusted gross income of a beneficiary shall reduce the 63
undistributed net income of the trust commencing with the 64
earliest years of the accumulation period. 65

(7) Deduct the amount of wages and salaries, if any, not 66
otherwise allowable as a deduction but that would have been 67
allowable as a deduction in computing federal adjusted gross 68
income for the taxable year, had the targeted jobs credit 69
allowed and determined under sections 38, 51, and 52 of the 70
Internal Revenue Code not been in effect. 71

(8) Deduct any interest or interest equivalent on public 72
obligations and purchase obligations to the extent that the 73
interest or interest equivalent is included in federal adjusted 74
gross income. 75

(9) Add any loss or deduct any gain resulting from the 76
sale, exchange, or other disposition of public obligations to 77
the extent that the loss has been deducted or the gain has been 78

included in computing federal adjusted gross income. 79

(10) Deduct or add amounts, as provided under section 80
5747.70 of the Revised Code, related to contributions to 81
variable college savings program accounts made or tuition units 82
purchased pursuant to Chapter 3334. of the Revised Code. 83

(11) (a) Deduct, to the extent not otherwise allowable as a 84
deduction or exclusion in computing federal or Ohio adjusted 85
gross income for the taxable year, the amount the taxpayer paid 86
during the taxable year for medical care insurance and qualified 87
long-term care insurance for the taxpayer, the taxpayer's 88
spouse, and dependents. No deduction for medical care insurance 89
under division (A) (11) of this section shall be allowed either 90
to any taxpayer who is eligible to participate in any subsidized 91
health plan maintained by any employer of the taxpayer or of the 92
taxpayer's spouse, or to any taxpayer who is entitled to, or on 93
application would be entitled to, benefits under part A of Title 94
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 95
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 96
of this section, "subsidized health plan" means a health plan 97
for which the employer pays any portion of the plan's cost. The 98
deduction allowed under division (A) (11) (a) of this section 99
shall be the net of any related premium refunds, related premium 100
reimbursements, or related insurance premium dividends received 101
during the taxable year. 102

(b) Deduct, to the extent not otherwise deducted or 103
excluded in computing federal or Ohio adjusted gross income 104
during the taxable year, the amount the taxpayer paid during the 105
taxable year, not compensated for by any insurance or otherwise, 106
for medical care of the taxpayer, the taxpayer's spouse, and 107
dependents, to the extent the expenses exceed seven and one-half 108

per cent of the taxpayer's federal adjusted gross income. 109

(c) Deduct, to the extent not otherwise deducted or 110
excluded in computing federal or Ohio adjusted gross income, any 111
amount included in federal adjusted gross income under section 112
105 or not excluded under section 106 of the Internal Revenue 113
Code solely because it relates to an accident and health plan 114
for a person who otherwise would be a "qualifying relative" and 115
thus a "dependent" under section 152 of the Internal Revenue 116
Code but for the fact that the person fails to meet the income 117
and support limitations under section 152(d)(1)(B) and (C) of 118
the Internal Revenue Code. 119

(d) For purposes of division (A)(11) of this section, 120
"medical care" has the meaning given in section 213 of the 121
Internal Revenue Code, subject to the special rules, 122
limitations, and exclusions set forth therein, and "qualified 123
long-term care" has the same meaning given in section 7702B(c) 124
of the Internal Revenue Code. Solely for purposes of divisions 125
(A)(11)(a) and (c) of this section, "dependent" includes a 126
person who otherwise would be a "qualifying relative" and thus a 127
"dependent" under section 152 of the Internal Revenue Code but 128
for the fact that the person fails to meet the income and 129
support limitations under section 152(d)(1)(B) and (C) of the 130
Internal Revenue Code. 131

(12)(a) Deduct any amount included in federal adjusted 132
gross income solely because the amount represents a 133
reimbursement or refund of expenses that in any year the 134
taxpayer had deducted as an itemized deduction pursuant to 135
section 63 of the Internal Revenue Code and applicable United 136
States department of the treasury regulations. The deduction 137
otherwise allowed under division (A)(12)(a) of this section 138

shall be reduced to the extent the reimbursement is attributable 139
to an amount the taxpayer deducted under this section in any 140
taxable year. 141

(b) Add any amount not otherwise included in Ohio adjusted 142
gross income for any taxable year to the extent that the amount 143
is attributable to the recovery during the taxable year of any 144
amount deducted or excluded in computing federal or Ohio 145
adjusted gross income in any taxable year. 146

(13) Deduct any portion of the deduction described in 147
section 1341(a)(2) of the Internal Revenue Code, for repaying 148
previously reported income received under a claim of right, that 149
meets both of the following requirements: 150

(a) It is allowable for repayment of an item that was 151
included in the taxpayer's adjusted gross income for a prior 152
taxable year and did not qualify for a credit under division (A) 153
or (B) of section 5747.05 of the Revised Code for that year; 154

(b) It does not otherwise reduce the taxpayer's adjusted 155
gross income for the current or any other taxable year. 156

(14) Deduct an amount equal to the deposits made to, and 157
net investment earnings of, a medical savings account during the 158
taxable year, in accordance with section 3924.66 of the Revised 159
Code. The deduction allowed by division (A)(14) of this section 160
does not apply to medical savings account deposits and earnings 161
otherwise deducted or excluded for the current or any other 162
taxable year from the taxpayer's federal adjusted gross income. 163

(15) (a) Add an amount equal to the funds withdrawn from a 164
medical savings account during the taxable year, and the net 165
investment earnings on those funds, when the funds withdrawn 166
were used for any purpose other than to reimburse an account 167

holder for, or to pay, eligible medical expenses, in accordance	168
with section 3924.66 of the Revised Code;	169
(b) Add the amounts distributed from a medical savings	170
account under division (A) (2) of section 3924.68 of the Revised	171
Code during the taxable year.	172
(16) Add any amount claimed as a credit under section	173
5747.059 or 5747.65 of the Revised Code to the extent that such	174
amount satisfies either of the following:	175
(a) The amount was deducted or excluded from the	176
computation of the taxpayer's federal adjusted gross income as	177
required to be reported for the taxpayer's taxable year under	178
the Internal Revenue Code;	179
(b) The amount resulted in a reduction of the taxpayer's	180
federal adjusted gross income as required to be reported for any	181
of the taxpayer's taxable years under the Internal Revenue Code.	182
(17) Deduct the amount contributed by the taxpayer to an	183
individual development account program established by a county	184
department of job and family services pursuant to sections	185
329.11 to 329.14 of the Revised Code for the purpose of matching	186
funds deposited by program participants. On request of the tax	187
commissioner, the taxpayer shall provide any information that,	188
in the tax commissioner's opinion, is necessary to establish the	189
amount deducted under division (A) (17) of this section.	190
(18) Beginning in taxable year 2001 but not for any	191
taxable year beginning after December 31, 2005, if the taxpayer	192
is married and files a joint return and the combined federal	193
adjusted gross income of the taxpayer and the taxpayer's spouse	194
for the taxable year does not exceed one hundred thousand	195
dollars, or if the taxpayer is single and has a federal adjusted	196

gross income for the taxable year not exceeding fifty thousand 197
dollars, deduct amounts paid during the taxable year for 198
qualified tuition and fees paid to an eligible institution for 199
the taxpayer, the taxpayer's spouse, or any dependent of the 200
taxpayer, who is a resident of this state and is enrolled in or 201
attending a program that culminates in a degree or diploma at an 202
eligible institution. The deduction may be claimed only to the 203
extent that qualified tuition and fees are not otherwise 204
deducted or excluded for any taxable year from federal or Ohio 205
adjusted gross income. The deduction may not be claimed for 206
educational expenses for which the taxpayer claims a credit 207
under section 5747.27 of the Revised Code. 208

(19) Add any reimbursement received during the taxable 209
year of any amount the taxpayer deducted under division (A) (18) 210
of this section in any previous taxable year to the extent the 211
amount is not otherwise included in Ohio adjusted gross income. 212

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 213
(v) of this section, add five-sixths of the amount of 214
depreciation expense allowed by subsection (k) of section 168 of 215
the Internal Revenue Code, including the taxpayer's 216
proportionate or distributive share of the amount of 217
depreciation expense allowed by that subsection to a pass- 218
through entity in which the taxpayer has a direct or indirect 219
ownership interest. 220

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 221
of this section, add five-sixths of the amount of qualifying 222
section 179 depreciation expense, including the taxpayer's 223
proportionate or distributive share of the amount of qualifying 224
section 179 depreciation expense allowed to any pass-through 225
entity in which the taxpayer has a direct or indirect ownership 226

interest.	227
(iii) Subject to division (A) (20) (a) (v) of this section,	228
for taxable years beginning in 2012 or thereafter, if the	229
increase in income taxes withheld by the taxpayer is equal to or	230
greater than ten per cent of income taxes withheld by the	231
taxpayer during the taxpayer's immediately preceding taxable	232
year, "two-thirds" shall be substituted for "five-sixths" for	233
the purpose of divisions (A) (20) (a) (i) and (ii) of this section.	234
(iv) Subject to division (A) (20) (a) (v) of this section,	235
for taxable years beginning in 2012 or thereafter, a taxpayer is	236
not required to add an amount under division (A) (20) of this	237
section if the increase in income taxes withheld by the taxpayer	238
and by any pass-through entity in which the taxpayer has a	239
direct or indirect ownership interest is equal to or greater	240
than the sum of (I) the amount of qualifying section 179	241
depreciation expense and (II) the amount of depreciation expense	242
allowed to the taxpayer by subsection (k) of section 168 of the	243
Internal Revenue Code, and including the taxpayer's	244
proportionate or distributive shares of such amounts allowed to	245
any such pass-through entities.	246
(v) If a taxpayer directly or indirectly incurs a net	247
operating loss for the taxable year for federal income tax	248
purposes, to the extent such loss resulted from depreciation	249
expense allowed by subsection (k) of section 168 of the Internal	250
Revenue Code and by qualifying section 179 depreciation expense,	251
"the entire" shall be substituted for "five-sixths of the" for	252
the purpose of divisions (A) (20) (a) (i) and (ii) of this section.	253
The tax commissioner, under procedures established by the	254
commissioner, may waive the add-backs related to a pass-through	255
entity if the taxpayer owns, directly or indirectly, less than	256

five per cent of the pass-through entity.	257
(b) Nothing in division (A) (20) of this section shall be construed to adjust or modify the adjusted basis of any asset.	258 259
(c) To the extent the add-back required under division (A) (20) (a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be situated to the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.	260 261 262 263 264 265 266 267 268 269
(d) For the purposes of division (A) (20) (a) (v) of this section, net operating loss carryback and carryforward shall not include the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount.	270 271 272 273 274 275 276
(e) For the purposes of divisions (A) (20) and (21) of this section:	277 278
(i) "Income taxes withheld" means the total amount withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year.	279 280 281
(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's	282 283 284 285

immediately preceding taxable year.	286
(iii) "Qualifying section 179 depreciation expense" means	287
the difference between (I) the amount of depreciation expense	288
directly or indirectly allowed to a taxpayer under section 179	289
of the Internal Revised Code, and (II) the amount of	290
depreciation expense directly or indirectly allowed to the	291
taxpayer under section 179 of the Internal Revenue Code as that	292
section existed on December 31, 2002.	293
(21) (a) If the taxpayer was required to add an amount	294
under division (A) (20) (a) of this section for a taxable year,	295
deduct one of the following:	296
(i) One-fifth of the amount so added for each of the five	297
succeeding taxable years if the amount so added was five-sixths	298
of qualifying section 179 depreciation expense or depreciation	299
expense allowed by subsection (k) of section 168 of the Internal	300
Revenue Code;	301
(ii) One-half of the amount so added for each of the two	302
succeeding taxable years if the amount so added was two-thirds	303
of such depreciation expense;	304
(iii) One-sixth of the amount so added for each of the six	305
succeeding taxable years if the entire amount of such	306
depreciation expense was so added.	307
(b) If the amount deducted under division (A) (21) (a) of	308
this section is attributable to an add-back allocated under	309
division (A) (20) (c) of this section, the amount deducted shall	310
be situated to the same location. Otherwise, the add-back shall	311
be apportioned using the apportionment factors for the taxable	312
year in which the deduction is taken, subject to one or more of	313
the four alternative methods of apportionment enumerated in	314

section 5747.21 of the Revised Code.	315
(c) No deduction is available under division (A) (21) (a) of this section with regard to any depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount to the extent that such depreciation results in or increases a federal net operating loss carryback or carryforward. If no such deduction is available for a taxable year, the taxpayer may carry forward the amount not deducted in such taxable year to the next taxable year and add that amount to any deduction otherwise available under division (A) (21) (a) of this section for that next taxable year. The carryforward of amounts not so deducted shall continue until the entire addition required by division (A) (20) (a) of this section has been deducted.	316 317 318 319 320 321 322 323 324 325 326 327 328
(d) No refund shall be allowed as a result of adjustments made by division (A) (21) of this section.	329 330
(22) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as reimbursement for life insurance premiums under section 5919.31 of the Revised Code.	331 332 333 334 335
(23) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as a death benefit paid by the adjutant general under section 5919.33 of the Revised Code.	336 337 338 339 340
(24) Deduct, to the extent included in federal adjusted gross income and not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for	341 342 343

the taxable year, military pay and allowances received by the 344
taxpayer during the taxable year for active duty service in the 345
United States army, air force, navy, marine corps, or coast 346
guard or reserve components thereof or the national guard. The 347
deduction may not be claimed for military pay and allowances 348
received by the taxpayer while the taxpayer is stationed in this 349
state. 350

(25) Deduct, to the extent not otherwise allowable as a 351
deduction or exclusion in computing federal or Ohio adjusted 352
gross income for the taxable year and not otherwise compensated 353
for by any other source, the amount of qualified organ donation 354
expenses incurred by the taxpayer during the taxable year, not 355
to exceed ten thousand dollars. A taxpayer may deduct qualified 356
organ donation expenses only once for all taxable years 357
beginning with taxable years beginning in 2007. 358

For the purposes of division (A) (25) of this section: 359

(a) "Human organ" means all or any portion of a human 360
liver, pancreas, kidney, intestine, or lung, and any portion of 361
human bone marrow. 362

(b) "Qualified organ donation expenses" means travel 363
expenses, lodging expenses, and wages and salary forgone by a 364
taxpayer in connection with the taxpayer's donation, while 365
living, of one or more of the taxpayer's human organs to another 366
human being. 367

(26) Deduct, to the extent not otherwise deducted or 368
excluded in computing federal or Ohio adjusted gross income for 369
the taxable year, amounts received by the taxpayer as retired 370
personnel pay for service in the uniformed services or reserve 371
components thereof, or the national guard, or received by the 372

surviving spouse or former spouse of such a taxpayer under the 373
survivor benefit plan on account of such a taxpayer's death. If 374
the taxpayer receives income on account of retirement paid under 375
the federal civil service retirement system or federal employees 376
retirement system, or under any successor retirement program 377
enacted by the congress of the United States that is established 378
and maintained for retired employees of the United States 379
government, and such retirement income is based, in whole or in 380
part, on credit for the taxpayer's uniformed service, the 381
deduction allowed under this division shall include only that 382
portion of such retirement income that is attributable to the 383
taxpayer's uniformed service, to the extent that portion of such 384
retirement income is otherwise included in federal adjusted 385
gross income and is not otherwise deducted under this section. 386
Any amount deducted under division (A) (26) of this section is 387
not included in a taxpayer's adjusted gross income for the 388
purposes of section 5747.055 of the Revised Code. No amount may 389
be deducted under division (A) (26) of this section on the basis 390
of which a credit was claimed under section 5747.055 of the 391
Revised Code. 392

(27) Deduct, to the extent not otherwise deducted or 393
excluded in computing federal or Ohio adjusted gross income for 394
the taxable year, the amount the taxpayer received during the 395
taxable year from the military injury relief fund created in 396
section 5902.05 of the Revised Code. 397

(28) Deduct, to the extent not otherwise deducted or 398
excluded in computing federal or Ohio adjusted gross income for 399
the taxable year, the amount the taxpayer received as a veterans 400
bonus during the taxable year from the Ohio department of 401
veterans services as authorized by Section 2r of Article VIII, 402
Ohio Constitution. 403

(29) Deduct, to the extent not otherwise deducted or 404
excluded in computing federal or Ohio adjusted gross income for 405
the taxable year, any income derived from a transfer agreement 406
or from the enterprise transferred under that agreement under 407
section 4313.02 of the Revised Code. 408

(30) Deduct, to the extent not otherwise deducted or 409
excluded in computing federal or Ohio adjusted gross income for 410
the taxable year, Ohio college opportunity or federal Pell grant 411
amounts received by the taxpayer or the taxpayer's spouse or 412
dependent pursuant to section 3333.122 of the Revised Code or 20 413
U.S.C. 1070a, et seq., and used to pay room or board furnished 414
by the educational institution for which the grant was awarded 415
at the institution's facilities, including meal plans 416
administered by the institution. For the purposes of this 417
division, receipt of a grant includes the distribution of a 418
grant directly to an educational institution and the crediting 419
of the grant to the enrollee's account with the institution. 420

(31) (a) For taxable years beginning in 2015, deduct from 421
the portion of an individual's adjusted gross income that is 422
business income, to the extent not otherwise deducted or 423
excluded in computing federal or Ohio adjusted gross income for 424
the taxable year, the lesser of the following amounts: 425

(i) Seventy-five per cent of the individual's business 426
income; 427

(ii) Ninety-three thousand seven hundred fifty dollars for 428
each spouse if spouses file separate returns under section 429
5747.08 of the Revised Code or one hundred eighty-seven thousand 430
five hundred dollars for all other individuals. 431

(b) For taxable years beginning in 2016 or thereafter, 432

deduct from the portion of an individual's adjusted gross income 433
that is business income, to the extent not otherwise deducted or 434
excluded in computing federal adjusted gross income for the 435
taxable year, one hundred twenty-five thousand dollars for each 436
spouse if spouses file separate returns under section 5747.08 of 437
the Revised Code or two hundred fifty thousand dollars for all 438
other individuals. 439

(32) Deduct, as provided under section 5747.78 of the 440
Revised Code, contributions to ABLE savings accounts made in 441
accordance with sections 113.50 to 113.56 of the Revised Code. 442

(33) (a) Deduct, to the extent not otherwise deducted or 443
excluded in computing federal or Ohio adjusted gross income 444
during the taxable year, all of the following: 445

(i) Compensation paid to a qualifying employee described 446
in division (A) (14) (a) of section 5703.94 of the Revised Code to 447
the extent such compensation is for disaster work conducted in 448
this state during a disaster response period pursuant to a 449
qualifying solicitation received by the employee's employer; 450

(ii) Compensation paid to a qualifying employee described 451
in division (A) (14) (b) of section 5703.94 of the Revised Code to 452
the extent such compensation is for disaster work conducted in 453
this state by the employee during the disaster response period 454
on critical infrastructure owned or used by the employee's 455
employer; 456

(iii) Income received by an out-of-state disaster business 457
for disaster work conducted in this state during a disaster 458
response period, or, if the out-of-state disaster business is a 459
pass-through entity, a taxpayer's distributive share of the 460
pass-through entity's income from the business conducting 461

disaster work in this state during a disaster response period, 462
if, in either case, the disaster work is conducted pursuant to a 463
qualifying solicitation received by the business. 464

(b) All terms used in division (A) (33) of this section 465
have the same meanings as in section 5703.94 of the Revised 466
Code. 467

(34) Deduct, to the extent not otherwise deducted or 468
excluded in computing federal or Ohio adjusted gross income for 469
the taxable year, an amount paid by a municipal corporation, 470
township, township fire district, nonprofit fire company, or 471
joint fire district to a taxpayer that is a volunteer 472
firefighter as compensation or reimbursement for the provision 473
of firefighting services. The deduction applies to only one 474
payment per municipal corporation, township, township fire 475
district, nonprofit fire company, or joint fire district per 476
taxable year. The total amount deducted by a taxpayer under this 477
division for a taxable year shall not exceed one thousand five 478
hundred dollars. 479

(B) "Business income" means income, including gain or 480
loss, arising from transactions, activities, and sources in the 481
regular course of a trade or business and includes income, gain, 482
or loss from real property, tangible property, and intangible 483
property if the acquisition, rental, management, and disposition 484
of the property constitute integral parts of the regular course 485
of a trade or business operation. "Business income" includes 486
income, including gain or loss, from a partial or complete 487
liquidation of a business, including, but not limited to, gain 488
or loss from the sale or other disposition of goodwill. 489

(C) "Nonbusiness income" means all income other than 490
business income and may include, but is not limited to, 491

compensation, rents and royalties from real or tangible personal 492
property, capital gains, interest, dividends and distributions, 493
patent or copyright royalties, or lottery winnings, prizes, and 494
awards. 495

(D) "Compensation" means any form of remuneration paid to 496
an employee for personal services. 497

(E) "Fiduciary" means a guardian, trustee, executor, 498
administrator, receiver, conservator, or any other person acting 499
in any fiduciary capacity for any individual, trust, or estate. 500

(F) "Fiscal year" means an accounting period of twelve 501
months ending on the last day of any month other than December. 502

(G) "Individual" means any natural person. 503

(H) "Internal Revenue Code" means the "Internal Revenue 504
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 505

(I) "Resident" means any of the following, provided that 506
division (I) (3) of this section applies only to taxable years of 507
a trust beginning in 2002 or thereafter: 508

(1) An individual who is domiciled in this state, subject 509
to section 5747.24 of the Revised Code; 510

(2) The estate of a decedent who at the time of death was 511
domiciled in this state. The domicile tests of section 5747.24 512
of the Revised Code are not controlling for purposes of division 513
(I) (2) of this section. 514

(3) A trust that, in whole or part, resides in this state. 515
If only part of a trust resides in this state, the trust is a 516
resident only with respect to that part. 517

For the purposes of division (I) (3) of this section: 518

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

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

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

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

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

Code.	549
(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e) (2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code.	550 551 552 553 554 555 556 557 558 559
(d) For the purposes of division (I) (3) (a) of this section, the extent to which a trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred directly or indirectly, in whole or part, to the trust by any of the sources enumerated in that division shall be ascertained by multiplying the fair market value of the trust's assets, net of related liabilities, by the qualifying ratio, which shall be computed as follows:	560 561 562 563 564 565 566 567
(i) The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time, net of any related liabilities, from sources enumerated in division (I) (3) (a) of this section. The denominator of the qualifying ratio is the fair market value of all the trust's assets at that time, net of any related liabilities.	568 569 570 571 572 573 574
(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent	575 576 577 578

transfer, net of any related liabilities, multiplied by the 579
qualifying ratio last computed without regard to the subsequent 580
transfer, and (2) the fair market value of the subsequently 581
transferred assets at the time transferred, net of any related 582
liabilities, from sources enumerated in division (I) (3) (a) of 583
this section. The denominator of the revised qualifying ratio is 584
the fair market value of all the trust's assets immediately 585
after the subsequent transfer, net of any related liabilities. 586

(iii) Whether a transfer to the trust is by or from any of 587
the sources enumerated in division (I) (3) (a) of this section 588
shall be ascertained without regard to the domicile of the 589
trust's beneficiaries. 590

(e) For the purposes of division (I) (3) (a) (i) of this 591
section: 592

(i) A trust is described in division (I) (3) (e) (i) of this 593
section if the trust is a testamentary trust and the testator of 594
that testamentary trust was domiciled in this state at the time 595
of the testator's death for purposes of the taxes levied under 596
Chapter 5731. of the Revised Code. 597

(ii) A trust is described in division (I) (3) (e) (ii) of 598
this section if the transfer is a qualifying transfer described 599
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 600
trust is an irrevocable inter vivos trust, and at least one of 601
the trust's qualifying beneficiaries is domiciled in this state 602
for purposes of this chapter during all or some portion of the 603
trust's current taxable year. 604

(f) For the purposes of division (I) (3) (e) (ii) of this 605
section, a "qualifying transfer" is a transfer of assets, net of 606
any related liabilities, directly or indirectly to a trust, if 607

the transfer is described in any of the following: 608

(i) The transfer is made to a trust, created by the 609
decedent before the decedent's death and while the decedent was 610
domiciled in this state for the purposes of this chapter, and, 611
prior to the death of the decedent, the trust became irrevocable 612
while the decedent was domiciled in this state for the purposes 613
of this chapter. 614

(ii) The transfer is made to a trust to which the 615
decedent, prior to the decedent's death, had directly or 616
indirectly transferred assets, net of any related liabilities, 617
while the decedent was domiciled in this state for the purposes 618
of this chapter, and prior to the death of the decedent the 619
trust became irrevocable while the decedent was domiciled in 620
this state for the purposes of this chapter. 621

(iii) The transfer is made on account of a contractual 622
relationship existing directly or indirectly between the 623
transferor and either the decedent or the estate of the decedent 624
at any time prior to the date of the decedent's death, and the 625
decedent was domiciled in this state at the time of death for 626
purposes of the taxes levied under Chapter 5731. of the Revised 627
Code. 628

(iv) The transfer is made to a trust on account of a 629
contractual relationship existing directly or indirectly between 630
the transferor and another person who at the time of the 631
decedent's death was domiciled in this state for purposes of 632
this chapter. 633

(v) The transfer is made to a trust on account of the will 634
of a testator who was domiciled in this state at the time of the 635
testator's death for purposes of the taxes levied under Chapter 636

5731. of the Revised Code. 637

(vi) The transfer is made to a trust created by or caused 638
to be created by a court, and the trust was directly or 639
indirectly created in connection with or as a result of the 640
death of an individual who, for purposes of the taxes levied 641
under Chapter 5731. of the Revised Code, was domiciled in this 642
state at the time of the individual's death. 643

(g) The tax commissioner may adopt rules to ascertain the 644
part of a trust residing in this state. 645

(J) "Nonresident" means an individual or estate that is 646
not a resident. An individual who is a resident for only part of 647
a taxable year is a nonresident for the remainder of that 648
taxable year. 649

(K) "Pass-through entity" has the same meaning as in 650
section 5733.04 of the Revised Code. 651

(L) "Return" means the notifications and reports required 652
to be filed pursuant to this chapter for the purpose of 653
reporting the tax due and includes declarations of estimated tax 654
when so required. 655

(M) "Taxable year" means the calendar year or the 656
taxpayer's fiscal year ending during the calendar year, or 657
fractional part thereof, upon which the adjusted gross income is 658
calculated pursuant to this chapter. 659

(N) "Taxpayer" means any person subject to the tax imposed 660
by section 5747.02 of the Revised Code or any pass-through 661
entity that makes the election under division (D) of section 662
5747.08 of the Revised Code. 663

(O) "Dependents" means dependents as defined in the 664

Internal Revenue Code and as claimed in the taxpayer's federal 665
income tax return for the taxable year or which the taxpayer 666
would have been permitted to claim had the taxpayer filed a 667
federal income tax return. 668

(P) "Principal county of employment" means, in the case of 669
a nonresident, the county within the state in which a taxpayer 670
performs services for an employer or, if those services are 671
performed in more than one county, the county in which the major 672
portion of the services are performed. 673

(Q) As used in sections 5747.50 to 5747.55 of the Revised 674
Code: 675

(1) "Subdivision" means any county, municipal corporation, 676
park district, or township. 677

(2) "Essential local government purposes" includes all 678
functions that any subdivision is required by general law to 679
exercise, including like functions that are exercised under a 680
charter adopted pursuant to the Ohio Constitution. 681

(R) "Overpayment" means any amount already paid that 682
exceeds the figure determined to be the correct amount of the 683
tax. 684

(S) "Taxable income" or "Ohio taxable income" applies only 685
to estates and trusts, and means federal taxable income, as 686
defined and used in the Internal Revenue Code, adjusted as 687
follows: 688

(1) Add interest or dividends, net of ordinary, necessary, 689
and reasonable expenses not deducted in computing federal 690
taxable income, on obligations or securities of any state or of 691
any political subdivision or authority of any state, other than 692
this state and its subdivisions and authorities, but only to the 693

extent that such net amount is not otherwise includible in Ohio 694
taxable income and is described in either division (S) (1) (a) or 695
(b) of this section: 696

(a) The net amount is not attributable to the S portion of 697
an electing small business trust and has not been distributed to 698
beneficiaries for the taxable year; 699

(b) The net amount is attributable to the S portion of an 700
electing small business trust for the taxable year. 701

(2) Add interest or dividends, net of ordinary, necessary, 702
and reasonable expenses not deducted in computing federal 703
taxable income, on obligations of any authority, commission, 704
instrumentality, territory, or possession of the United States 705
to the extent that the interest or dividends are exempt from 706
federal income taxes but not from state income taxes, but only 707
to the extent that such net amount is not otherwise includible 708
in Ohio taxable income and is described in either division (S) 709
(1) (a) or (b) of this section; 710

(3) Add the amount of personal exemption allowed to the 711
estate pursuant to section 642(b) of the Internal Revenue Code; 712

(4) Deduct interest or dividends, net of related expenses 713
deducted in computing federal taxable income, on obligations of 714
the United States and its territories and possessions or of any 715
authority, commission, or instrumentality of the United States 716
to the extent that the interest or dividends are exempt from 717
state taxes under the laws of the United States, but only to the 718
extent that such amount is included in federal taxable income 719
and is described in either division (S) (1) (a) or (b) of this 720
section; 721

(5) Deduct the amount of wages and salaries, if any, not 722

otherwise allowable as a deduction but that would have been 723
allowable as a deduction in computing federal taxable income for 724
the taxable year, had the targeted jobs credit allowed under 725
sections 38, 51, and 52 of the Internal Revenue Code not been in 726
effect, but only to the extent such amount relates either to 727
income included in federal taxable income for the taxable year 728
or to income of the S portion of an electing small business 729
trust for the taxable year; 730

(6) Deduct any interest or interest equivalent, net of 731
related expenses deducted in computing federal taxable income, 732
on public obligations and purchase obligations, but only to the 733
extent that such net amount relates either to income included in 734
federal taxable income for the taxable year or to income of the 735
S portion of an electing small business trust for the taxable 736
year; 737

(7) Add any loss or deduct any gain resulting from sale, 738
exchange, or other disposition of public obligations to the 739
extent that such loss has been deducted or such gain has been 740
included in computing either federal taxable income or income of 741
the S portion of an electing small business trust for the 742
taxable year; 743

(8) Except in the case of the final return of an estate, 744
add any amount deducted by the taxpayer on both its Ohio estate 745
tax return pursuant to section 5731.14 of the Revised Code, and 746
on its federal income tax return in determining federal taxable 747
income; 748

(9) (a) Deduct any amount included in federal taxable 749
income solely because the amount represents a reimbursement or 750
refund of expenses that in a previous year the decedent had 751
deducted as an itemized deduction pursuant to section 63 of the 752

Internal Revenue Code and applicable treasury regulations. The 753
deduction otherwise allowed under division (S) (9) (a) of this 754
section shall be reduced to the extent the reimbursement is 755
attributable to an amount the taxpayer or decedent deducted 756
under this section in any taxable year. 757

(b) Add any amount not otherwise included in Ohio taxable 758
income for any taxable year to the extent that the amount is 759
attributable to the recovery during the taxable year of any 760
amount deducted or excluded in computing federal or Ohio taxable 761
income in any taxable year, but only to the extent such amount 762
has not been distributed to beneficiaries for the taxable year. 763

(10) Deduct any portion of the deduction described in 764
section 1341(a) (2) of the Internal Revenue Code, for repaying 765
previously reported income received under a claim of right, that 766
meets both of the following requirements: 767

(a) It is allowable for repayment of an item that was 768
included in the taxpayer's taxable income or the decedent's 769
adjusted gross income for a prior taxable year and did not 770
qualify for a credit under division (A) or (B) of section 771
5747.05 of the Revised Code for that year. 772

(b) It does not otherwise reduce the taxpayer's taxable 773
income or the decedent's adjusted gross income for the current 774
or any other taxable year. 775

(11) Add any amount claimed as a credit under section 776
5747.059 or 5747.65 of the Revised Code to the extent that the 777
amount satisfies either of the following: 778

(a) The amount was deducted or excluded from the 779
computation of the taxpayer's federal taxable income as required 780
to be reported for the taxpayer's taxable year under the 781

Internal Revenue Code; 782

(b) The amount resulted in a reduction in the taxpayer's 783
federal taxable income as required to be reported for any of the 784
taxpayer's taxable years under the Internal Revenue Code. 785

(12) Deduct any amount, net of related expenses deducted 786
in computing federal taxable income, that a trust is required to 787
report as farm income on its federal income tax return, but only 788
if the assets of the trust include at least ten acres of land 789
satisfying the definition of "land devoted exclusively to 790
agricultural use" under section 5713.30 of the Revised Code, 791
regardless of whether the land is valued for tax purposes as 792
such land under sections 5713.30 to 5713.38 of the Revised Code. 793
If the trust is a pass-through entity investor, section 5747.231 794
of the Revised Code applies in ascertaining if the trust is 795
eligible to claim the deduction provided by division (S)(12) of 796
this section in connection with the pass-through entity's farm 797
income. 798

Except for farm income attributable to the S portion of an 799
electing small business trust, the deduction provided by 800
division (S)(12) of this section is allowed only to the extent 801
that the trust has not distributed such farm income. Division 802
(S)(12) of this section applies only to taxable years of a trust 803
beginning in 2002 or thereafter. 804

(13) Add the net amount of income described in section 805
641(c) of the Internal Revenue Code to the extent that amount is 806
not included in federal taxable income. 807

(14) Add or deduct the amount the taxpayer would be 808
required to add or deduct under division (A)(20) or (21) of this 809
section if the taxpayer's Ohio taxable income were computed in 810

the same manner as an individual's Ohio adjusted gross income is 811
computed under this section. In the case of a trust, division 812
(S) (14) of this section applies only to any of the trust's 813
taxable years beginning in 2002 or thereafter. 814

(T) "School district income" and "school district income 815
tax" have the same meanings as in section 5748.01 of the Revised 816
Code. 817

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 818
(7) of this section, "public obligations," "purchase 819
obligations," and "interest or interest equivalent" have the 820
same meanings as in section 5709.76 of the Revised Code. 821

(V) "Limited liability company" means any limited 822
liability company formed under Chapter 1705. of the Revised Code 823
or under the laws of any other state. 824

(W) "Pass-through entity investor" means any person who, 825
during any portion of a taxable year of a pass-through entity, 826
is a partner, member, shareholder, or equity investor in that 827
pass-through entity. 828

(X) "Banking day" has the same meaning as in section 829
1304.01 of the Revised Code. 830

(Y) "Month" means a calendar month. 831

(Z) "Quarter" means the first three months, the second 832
three months, the third three months, or the last three months 833
of the taxpayer's taxable year. 834

(AA) (1) "Eligible institution" means a state university or 835
state institution of higher education as defined in section 836
3345.011 of the Revised Code, or a private, nonprofit college, 837
university, or other post-secondary institution located in this 838

state that possesses a certificate of authorization issued by 839
the chancellor of higher education pursuant to Chapter 1713. of 840
the Revised Code or a certificate of registration issued by the 841
state board of career colleges and schools under Chapter 3332. 842
of the Revised Code. 843

(2) "Qualified tuition and fees" means tuition and fees 844
imposed by an eligible institution as a condition of enrollment 845
or attendance, not exceeding two thousand five hundred dollars 846
in each of the individual's first two years of post-secondary 847
education. If the individual is a part-time student, "qualified 848
tuition and fees" includes tuition and fees paid for the 849
academic equivalent of the first two years of post-secondary 850
education during a maximum of five taxable years, not exceeding 851
a total of five thousand dollars. "Qualified tuition and fees" 852
does not include: 853

(a) Expenses for any course or activity involving sports, 854
games, or hobbies unless the course or activity is part of the 855
individual's degree or diploma program; 856

(b) The cost of books, room and board, student activity 857
fees, athletic fees, insurance expenses, or other expenses 858
unrelated to the individual's academic course of instruction; 859

(c) Tuition, fees, or other expenses paid or reimbursed 860
through an employer, scholarship, grant in aid, or other 861
educational benefit program. 862

(BB) (1) "Modified business income" means the business 863
income included in a trust's Ohio taxable income after such 864
taxable income is first reduced by the qualifying trust amount, 865
if any. 866

(2) "Qualifying trust amount" of a trust means capital 867

gains and losses from the sale, exchange, or other disposition 868
of equity or ownership interests in, or debt obligations of, a 869
qualifying investee to the extent included in the trust's Ohio 870
taxable income, but only if the following requirements are 871
satisfied: 872

(a) The book value of the qualifying investee's physical 873
assets in this state and everywhere, as of the last day of the 874
qualifying investee's fiscal or calendar year ending immediately 875
prior to the date on which the trust recognizes the gain or 876
loss, is available to the trust. 877

(b) The requirements of section 5747.011 of the Revised 878
Code are satisfied for the trust's taxable year in which the 879
trust recognizes the gain or loss. 880

Any gain or loss that is not a qualifying trust amount is 881
modified business income, qualifying investment income, or 882
modified nonbusiness income, as the case may be. 883

(3) "Modified nonbusiness income" means a trust's Ohio 884
taxable income other than modified business income, other than 885
the qualifying trust amount, and other than qualifying 886
investment income, as defined in section 5747.012 of the Revised 887
Code, to the extent such qualifying investment income is not 888
otherwise part of modified business income. 889

(4) "Modified Ohio taxable income" applies only to trusts, 890
and means the sum of the amounts described in divisions (BB) (4) 891
(a) to (c) of this section: 892

(a) The fraction, calculated under section 5747.013, and 893
applying section 5747.231 of the Revised Code, multiplied by the 894
sum of the following amounts: 895

(i) The trust's modified business income; 896

(ii) The trust's qualifying investment income, as defined 897
in section 5747.012 of the Revised Code, but only to the extent 898
the qualifying investment income does not otherwise constitute 899
modified business income and does not otherwise constitute a 900
qualifying trust amount. 901

(b) The qualifying trust amount multiplied by a fraction, 902
the numerator of which is the sum of the book value of the 903
qualifying investee's physical assets in this state on the last 904
day of the qualifying investee's fiscal or calendar year ending 905
immediately prior to the day on which the trust recognizes the 906
qualifying trust amount, and the denominator of which is the sum 907
of the book value of the qualifying investee's total physical 908
assets everywhere on the last day of the qualifying investee's 909
fiscal or calendar year ending immediately prior to the day on 910
which the trust recognizes the qualifying trust amount. If, for 911
a taxable year, the trust recognizes a qualifying trust amount 912
with respect to more than one qualifying investee, the amount 913
described in division (BB) (4) (b) of this section shall equal the 914
sum of the products so computed for each such qualifying 915
investee. 916

(c) (i) With respect to a trust or portion of a trust that 917
is a resident as ascertained in accordance with division (I) (3) 918
(d) of this section, its modified nonbusiness income. 919

(ii) With respect to a trust or portion of a trust that is 920
not a resident as ascertained in accordance with division (I) (3) 921
(d) of this section, the amount of its modified nonbusiness 922
income satisfying the descriptions in divisions (B) (2) to (5) of 923
section 5747.20 of the Revised Code, except as otherwise 924
provided in division (BB) (4) (c) (ii) of this section. With 925
respect to a trust or portion of a trust that is not a resident 926

as ascertained in accordance with division (I) (3) (d) of this 927
section, the trust's portion of modified nonbusiness income 928
recognized from the sale, exchange, or other disposition of a 929
debt interest in or equity interest in a section 5747.212 930
entity, as defined in section 5747.212 of the Revised Code, 931
without regard to division (A) of that section, shall not be 932
allocated to this state in accordance with section 5747.20 of 933
the Revised Code but shall be apportioned to this state in 934
accordance with division (B) of section 5747.212 of the Revised 935
Code without regard to division (A) of that section. 936

If the allocation and apportionment of a trust's income 937
under divisions (BB) (4) (a) and (c) of this section do not fairly 938
represent the modified Ohio taxable income of the trust in this 939
state, the alternative methods described in division (C) of 940
section 5747.21 of the Revised Code may be applied in the manner 941
and to the same extent provided in that section. 942

(5) (a) Except as set forth in division (BB) (5) (b) of this 943
section, "qualifying investee" means a person in which a trust 944
has an equity or ownership interest, or a person or unit of 945
government the debt obligations of either of which are owned by 946
a trust. For the purposes of division (BB) (2) (a) of this section 947
and for the purpose of computing the fraction described in 948
division (BB) (4) (b) of this section, all of the following apply: 949

(i) If the qualifying investee is a member of a qualifying 950
controlled group on the last day of the qualifying investee's 951
fiscal or calendar year ending immediately prior to the date on 952
which the trust recognizes the gain or loss, then "qualifying 953
investee" includes all persons in the qualifying controlled 954
group on such last day. 955

(ii) If the qualifying investee, or if the qualifying 956

investee and any members of the qualifying controlled group of 957
which the qualifying investee is a member on the last day of the 958
qualifying investee's fiscal or calendar year ending immediately 959
prior to the date on which the trust recognizes the gain or 960
loss, separately or cumulatively own, directly or indirectly, on 961
the last day of the qualifying investee's fiscal or calendar 962
year ending immediately prior to the date on which the trust 963
recognizes the qualifying trust amount, more than fifty per cent 964
of the equity of a pass-through entity, then the qualifying 965
investee and the other members are deemed to own the 966
proportionate share of the pass-through entity's physical assets 967
which the pass-through entity directly or indirectly owns on the 968
last day of the pass-through entity's calendar or fiscal year 969
ending within or with the last day of the qualifying investee's 970
fiscal or calendar year ending immediately prior to the date on 971
which the trust recognizes the qualifying trust amount. 972

(iii) For the purposes of division (BB) (5) (a) (iii) of this 973
section, "upper level pass-through entity" means a pass-through 974
entity directly or indirectly owning any equity of another pass- 975
through entity, and "lower level pass-through entity" means that 976
other pass-through entity. 977

An upper level pass-through entity, whether or not it is 978
also a qualifying investee, is deemed to own, on the last day of 979
the upper level pass-through entity's calendar or fiscal year, 980
the proportionate share of the lower level pass-through entity's 981
physical assets that the lower level pass-through entity 982
directly or indirectly owns on the last day of the lower level 983
pass-through entity's calendar or fiscal year ending within or 984
with the last day of the upper level pass-through entity's 985
fiscal or calendar year. If the upper level pass-through entity 986
directly and indirectly owns less than fifty per cent of the 987

equity of the lower level pass-through entity on each day of the 988
upper level pass-through entity's calendar or fiscal year in 989
which or with which ends the calendar or fiscal year of the 990
lower level pass-through entity and if, based upon clear and 991
convincing evidence, complete information about the location and 992
cost of the physical assets of the lower pass-through entity is 993
not available to the upper level pass-through entity, then 994
solely for purposes of ascertaining if a gain or loss 995
constitutes a qualifying trust amount, the upper level pass- 996
through entity shall be deemed as owning no equity of the lower 997
level pass-through entity for each day during the upper level 998
pass-through entity's calendar or fiscal year in which or with 999
which ends the lower level pass-through entity's calendar or 1000
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 1001
shall be construed to provide for any deduction or exclusion in 1002
computing any trust's Ohio taxable income. 1003

(b) With respect to a trust that is not a resident for the 1004
taxable year and with respect to a part of a trust that is not a 1005
resident for the taxable year, "qualifying investee" for that 1006
taxable year does not include a C corporation if both of the 1007
following apply: 1008

(i) During the taxable year the trust or part of the trust 1009
recognizes a gain or loss from the sale, exchange, or other 1010
disposition of equity or ownership interests in, or debt 1011
obligations of, the C corporation. 1012

(ii) Such gain or loss constitutes nonbusiness income. 1013

(6) "Available" means information is such that a person is 1014
able to learn of the information by the due date plus 1015
extensions, if any, for filing the return for the taxable year 1016
in which the trust recognizes the gain or loss. 1017

(CC) "Qualifying controlled group" has the same meaning as	1018
in section 5733.04 of the Revised Code.	1019
(DD) "Related member" has the same meaning as in section	1020
5733.042 of the Revised Code.	1021
(EE) (1) For the purposes of division (EE) of this section:	1022
(a) "Qualifying person" means any person other than a	1023
qualifying corporation.	1024
(b) "Qualifying corporation" means any person classified	1025
for federal income tax purposes as an association taxable as a	1026
corporation, except either of the following:	1027
(i) A corporation that has made an election under	1028
subchapter S, chapter one, subtitle A, of the Internal Revenue	1029
Code for its taxable year ending within, or on the last day of,	1030
the investor's taxable year;	1031
(ii) A subsidiary that is wholly owned by any corporation	1032
that has made an election under subchapter S, chapter one,	1033
subtitle A of the Internal Revenue Code for its taxable year	1034
ending within, or on the last day of, the investor's taxable	1035
year.	1036
(2) For the purposes of this chapter, unless expressly	1037
stated otherwise, no qualifying person indirectly owns any asset	1038
directly or indirectly owned by any qualifying corporation.	1039
(FF) For purposes of this chapter and Chapter 5751. of the	1040
Revised Code:	1041
(1) "Trust" does not include a qualified pre-income tax	1042
trust.	1043
(2) A "qualified pre-income tax trust" is any pre-income	1044

tax trust that makes a qualifying pre-income tax trust election 1045
as described in division (FF) (3) of this section. 1046

(3) A "qualifying pre-income tax trust election" is an 1047
election by a pre-income tax trust to subject to the tax imposed 1048
by section 5751.02 of the Revised Code the pre-income tax trust 1049
and all pass-through entities of which the trust owns or 1050
controls, directly, indirectly, or constructively through 1051
related interests, five per cent or more of the ownership or 1052
equity interests. The trustee shall notify the tax commissioner 1053
in writing of the election on or before April 15, 2006. The 1054
election, if timely made, shall be effective on and after 1055
January 1, 2006, and shall apply for all tax periods and tax 1056
years until revoked by the trustee of the trust. 1057

(4) A "pre-income tax trust" is a trust that satisfies all 1058
of the following requirements: 1059

(a) The document or instrument creating the trust was 1060
executed by the grantor before January 1, 1972; 1061

(b) The trust became irrevocable upon the creation of the 1062
trust; and 1063

(c) The grantor was domiciled in this state at the time 1064
the trust was created. 1065

(GG) "Uniformed services" has the same meaning as in 10 1066
U.S.C. 101. 1067

(HH) "Taxable business income" means the amount by which 1068
an individual's business income that is included in federal 1069
adjusted gross income exceeds the amount of business income the 1070
individual is authorized to deduct under division (A) (31) of 1071
this section for the taxable year. 1072

(II) "Volunteer firefighter" means an individual who is 1073
authorized to act as a firefighter under section 3737.66 of the 1074
Revised Code, who serves as a firefighter on a less than full- 1075
time basis for a municipal corporation, township, township fire 1076
district, nonprofit fire company, or joint fire district, and 1077
who is not a part-time paid firefighter as defined in section 1078
4765.01 of the Revised Code. 1079

Sec. 5747.06. (A) Except as provided in division (E) (3) of 1080
this section, every employer, including the state and its 1081
political subdivisions, maintaining an office or transacting 1082
business within this state and making payment of any 1083
compensation to an employee who is a taxpayer shall deduct and 1084
withhold from such compensation for each payroll period a tax 1085
computed in such manner as to result, as far as practicable, in 1086
withholding from the employee's compensation during each 1087
calendar year an amount substantially equivalent to the tax 1088
reasonably estimated to be due from the employee under this 1089
chapter and Chapter 5748. of the Revised Code with respect to 1090
the amount of such compensation included in the employee's 1091
adjusted gross income during the calendar year. The employer 1092
shall deduct and withhold the tax on the date that the employer 1093
directly, indirectly, or constructively pays the compensation 1094
to, or credits the compensation to the benefit of, the employee. 1095

The method of determining the amount to be withheld shall 1096
be prescribed by rule of the tax commissioner. Notwithstanding 1097
section 5747.02 of the Revised Code, the rule prescribed by the 1098
commissioner shall require that taxes are withheld on the first 1099
ten thousand dollars of a taxpayer's compensation at rates 1100
sufficient to ensure payment of the appropriate amount of tax 1101
reasonably estimated to be due. 1102

In addition to any other exclusions from withholding 1103
permitted under this section, no tax shall be withheld by an 1104
employer from the compensation of an employee when such 1105
compensation is paid for: 1106

(1) Agricultural labor as defined in division G of section 1107
3121 of Title 26 of the United States Code; 1108

(2) Domestic service in a private home, local college 1109
club, or local chapter of a college fraternity or sorority; 1110

(3) Service performed in any calendar quarter by an 1111
employee unless the cash remuneration paid for such service is 1112
three hundred dollars or more and such service is performed by 1113
an individual who is regularly employed by such employer to 1114
perform such service; 1115

(4) Services performed for a foreign government or an 1116
international organization; 1117

(5) Services performed by an individual under the age of 1118
eighteen in the delivery or distribution of newspapers or 1119
shopping news, not including delivery or distribution to any 1120
point for subsequent delivery or distribution, or when performed 1121
by such individual under the age of eighteen under an 1122
arrangement where newspapers or magazines are to be sold by the 1123
individual at a fixed price, the individual's compensation being 1124
based on the retention of the excess of such price over the 1125
amount at which the newspapers or magazines are charged to the 1126
individual; 1127

(6) Services not in the course of the employer's trade or 1128
business to the extent paid in any medium other than cash; 1129

(7) Firefighting services performed by a volunteer 1130
firefighter. The exclusion allowed under division (A) (7) of this 1131

section applies only to one thousand five hundred dollars of the 1132
first payment made to the volunteer firefighter during the 1133
taxable year by the employer as compensation or reimbursement 1134
for firefighting services and only if the employer is a 1135
municipal corporation, township, township fire district, 1136
nonprofit fire company, or joint fire district. If the first 1137
such payment is less than one thousand five hundred dollars, the 1138
exclusion applies only to the amount of the payment. 1139

(B) Every employer required to deduct and withhold tax 1140
from the compensation of an employee under this chapter shall 1141
furnish to each employee, with respect to the compensation paid 1142
by such employer to such employee during the calendar year, on 1143
or before the thirty-first day of January of the succeeding 1144
year, or, if the employee's employment is terminated before the 1145
close of such calendar year, within thirty days from the date on 1146
which the last payment of compensation was made, a written 1147
statement as prescribed by the tax commissioner showing the 1148
amount of compensation paid by the employer to the employee, the 1149
amount deducted and withheld as state income tax, any amount 1150
deducted and withheld as school district income tax for each 1151
applicable school district, and any other information as the 1152
commissioner prescribes. 1153

(C) The failure of an employer to withhold tax as required 1154
by this section does not relieve an employee from the liability 1155
for the tax. The failure of an employer to remit the tax as 1156
required by law does not relieve an employee from liability for 1157
the tax if the tax commissioner ascertains that the employee 1158
colluded with the employer with respect to the failure to remit 1159
the tax. 1160

(D) If an employer fails to deduct and withhold any tax as 1161

required, and thereafter the tax is paid, the tax so required to 1162
be deducted and withheld shall not be collected from the 1163
employer, but the employer is not relieved from liability for 1164
penalties and interest otherwise applicable in respect to the 1165
failure to deduct and withhold the tax. 1166

(E) To ensure that taxes imposed pursuant to Chapter 5748. 1167
of the Revised Code are deducted and withheld as provided in 1168
this section: 1169

(1) An employer shall request that each employee furnish 1170
the name of the employee's school district of residence; 1171

(2) Each employee shall furnish the employer with 1172
sufficient and correct information to enable the employer to 1173
withhold the taxes imposed under Chapter 5748. of the Revised 1174
Code. The employee shall provide additional or corrected 1175
information whenever information previously provided to the 1176
employer becomes insufficient or incorrect. 1177

(3) If the employer complies with the requirements of 1178
division (E)(1) of this section and if the employee fails to 1179
comply with the requirements of division (E)(2) of this section, 1180
the employer is not required to withhold and pay the taxes 1181
imposed under Chapter 5748. of the Revised Code and is not 1182
subject to any penalties and interest otherwise applicable for 1183
failing to deduct and withhold such taxes. 1184

Section 2. That existing sections 5747.01 and 5747.06 of 1185
the Revised Code are hereby repealed. 1186

Section 3. The amendment by this act of sections 5747.01 1187
and 5747.06 of the Revised Code applies to taxable years ending 1188
on or after the effective date of this section. 1189