

As Introduced

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S. B. No. 125

Senators Hottinger, Brenner

Cosponsors: Senators Terhar, Wilson, Fedor

A BILL

To amend sections 5747.01 and 5747.70 of the 1
Revised Code to expand the income tax deduction 2
allowed for contributions to Ohio's 529 3
education savings plans to include contributions 4
to 529 plans established by other states. 5

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

Section 1. That sections 5747.01 and 5747.70 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 made to 81
~~variable college savings program accounts made or~~ tuition units 82
~~purchased pursuant to Chapter 3334. of the Revised Code~~ under a 83
qualified tuition program established pursuant to section 529 of 84
the Internal Revenue Code. 85

(11) (a) Deduct, to the extent not otherwise allowable as a 86
deduction or exclusion in computing federal or Ohio adjusted 87
gross income for the taxable year, the amount the taxpayer paid 88
during the taxable year for medical care insurance and qualified 89
long-term care insurance for the taxpayer, the taxpayer's 90
spouse, and dependents. No deduction for medical care insurance 91
under division (A) (11) of this section shall be allowed either 92
to any taxpayer who is eligible to participate in any subsidized 93
health plan maintained by any employer of the taxpayer or of the 94
taxpayer's spouse, or to any taxpayer who is entitled to, or on 95
application would be entitled to, benefits under part A of Title 96
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 97
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 98
of this section, "subsidized health plan" means a health plan 99
for which the employer pays any portion of the plan's cost. The 100
deduction allowed under division (A) (11) (a) of this section 101
shall be the net of any related premium refunds, related premium 102
reimbursements, or related insurance premium dividends received 103
during the taxable year. 104

(b) Deduct, to the extent not otherwise deducted or 105
excluded in computing federal or Ohio adjusted gross income 106
during the taxable year, the amount the taxpayer paid during the 107

taxable year, not compensated for by any insurance or otherwise, 108
for medical care of the taxpayer, the taxpayer's spouse, and 109
dependents, to the extent the expenses exceed seven and one-half 110
per cent of the taxpayer's federal adjusted gross income. 111

(c) Deduct, to the extent not otherwise deducted or 112
excluded in computing federal or Ohio adjusted gross income, any 113
amount included in federal adjusted gross income under section 114
105 or not excluded under section 106 of the Internal Revenue 115
Code solely because it relates to an accident and health plan 116
for a person who otherwise would be a "qualifying relative" and 117
thus a "dependent" under section 152 of the Internal Revenue 118
Code but for the fact that the person fails to meet the income 119
and support limitations under section 152(d)(1)(B) and (C) of 120
the Internal Revenue Code. 121

(d) For purposes of division (A)(11) of this section, 122
"medical care" has the meaning given in section 213 of the 123
Internal Revenue Code, subject to the special rules, 124
limitations, and exclusions set forth therein, and "qualified 125
long-term care" has the same meaning given in section 7702B(c) 126
of the Internal Revenue Code. Solely for purposes of divisions 127
(A)(11)(a) and (c) of this section, "dependent" includes a 128
person who otherwise would be a "qualifying relative" and thus a 129
"dependent" under section 152 of the Internal Revenue Code but 130
for the fact that the person fails to meet the income and 131
support limitations under section 152(d)(1)(B) and (C) of the 132
Internal Revenue Code. 133

(12)(a) Deduct any amount included in federal adjusted 134
gross income solely because the amount represents a 135
reimbursement or refund of expenses that in any year the 136
taxpayer had deducted as an itemized deduction pursuant to 137

section 63 of the Internal Revenue Code and applicable United States department of the treasury regulations. The deduction otherwise allowed under division (A) (12) (a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer deducted under this section in any taxable year.

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

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

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

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

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

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

medical savings account during the taxable year, and the net 167
investment earnings on those funds, when the funds withdrawn 168
were used for any purpose other than to reimburse an account 169
holder for, or to pay, eligible medical expenses, in accordance 170
with section 3924.66 of the Revised Code; 171

(b) Add the amounts distributed from a medical savings 172
account under division (A) (2) of section 3924.68 of the Revised 173
Code during the taxable year. 174

(16) Add any amount claimed as a credit under section 175
5747.059 or 5747.65 of the Revised Code to the extent that such 176
amount satisfies either of the following: 177

(a) The amount was deducted or excluded from the 178
computation of the taxpayer's federal adjusted gross income as 179
required to be reported for the taxpayer's taxable year under 180
the Internal Revenue Code; 181

(b) The amount resulted in a reduction of the taxpayer's 182
federal adjusted gross income as required to be reported for any 183
of the taxpayer's taxable years under the Internal Revenue Code. 184

(17) Deduct the amount contributed by the taxpayer to an 185
individual development account program established by a county 186
department of job and family services pursuant to sections 187
329.11 to 329.14 of the Revised Code for the purpose of matching 188
funds deposited by program participants. On request of the tax 189
commissioner, the taxpayer shall provide any information that, 190
in the tax commissioner's opinion, is necessary to establish the 191
amount deducted under division (A) (17) of this section. 192

(18) Beginning in taxable year 2001 but not for any 193
taxable year beginning after December 31, 2005, if the taxpayer 194
is married and files a joint return and the combined federal 195

adjusted gross income of the taxpayer and the taxpayer's spouse 196
for the taxable year does not exceed one hundred thousand 197
dollars, or if the taxpayer is single and has a federal adjusted 198
gross income for the taxable year not exceeding fifty thousand 199
dollars, deduct amounts paid during the taxable year for 200
qualified tuition and fees paid to an eligible institution for 201
the taxpayer, the taxpayer's spouse, or any dependent of the 202
taxpayer, who is a resident of this state and is enrolled in or 203
attending a program that culminates in a degree or diploma at an 204
eligible institution. The deduction may be claimed only to the 205
extent that qualified tuition and fees are not otherwise 206
deducted or excluded for any taxable year from federal or Ohio 207
adjusted gross income. The deduction may not be claimed for 208
educational expenses for which the taxpayer claims a credit 209
under section 5747.27 of the Revised Code. 210

(19) Add any reimbursement received during the taxable 211
year of any amount the taxpayer deducted under division (A) (18) 212
of this section in any previous taxable year to the extent the 213
amount is not otherwise included in Ohio adjusted gross income. 214

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 215
(v) of this section, add five-sixths of the amount of 216
depreciation expense allowed by subsection (k) of section 168 of 217
the Internal Revenue Code, including the taxpayer's 218
proportionate or distributive share of the amount of 219
depreciation expense allowed by that subsection to a pass- 220
through entity in which the taxpayer has a direct or indirect 221
ownership interest. 222

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 223
of this section, add five-sixths of the amount of qualifying 224
section 179 depreciation expense, including the taxpayer's 225

proportionate or distributive share of the amount of qualifying 226
section 179 depreciation expense allowed to any pass-through 227
entity in which the taxpayer has a direct or indirect ownership 228
interest. 229

(iii) Subject to division (A) (20) (a) (v) of this section, 230
for taxable years beginning in 2012 or thereafter, if the 231
increase in income taxes withheld by the taxpayer is equal to or 232
greater than ten per cent of income taxes withheld by the 233
taxpayer during the taxpayer's immediately preceding taxable 234
year, "two-thirds" shall be substituted for "five-sixths" for 235
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 236

(iv) Subject to division (A) (20) (a) (v) of this section, 237
for taxable years beginning in 2012 or thereafter, a taxpayer is 238
not required to add an amount under division (A) (20) of this 239
section if the increase in income taxes withheld by the taxpayer 240
and by any pass-through entity in which the taxpayer has a 241
direct or indirect ownership interest is equal to or greater 242
than the sum of (I) the amount of qualifying section 179 243
depreciation expense and (II) the amount of depreciation expense 244
allowed to the taxpayer by subsection (k) of section 168 of the 245
Internal Revenue Code, and including the taxpayer's 246
proportionate or distributive shares of such amounts allowed to 247
any such pass-through entities. 248

(v) If a taxpayer directly or indirectly incurs a net 249
operating loss for the taxable year for federal income tax 250
purposes, to the extent such loss resulted from depreciation 251
expense allowed by subsection (k) of section 168 of the Internal 252
Revenue Code and by qualifying section 179 depreciation expense, 253
"the entire" shall be substituted for "five-sixths of the" for 254
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 255

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

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

(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.

(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.

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

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

(ii) "Increase in income taxes withheld" means the amount

by which the amount of income taxes withheld by an employer 285
during the employer's current taxable year exceeds the amount of 286
income taxes withheld by that employer during the employer's 287
immediately preceding taxable year. 288

(iii) "Qualifying section 179 depreciation expense" means 289
the difference between (I) the amount of depreciation expense 290
directly or indirectly allowed to a taxpayer under section 179 291
of the Internal Revised Code, and (II) the amount of 292
depreciation expense directly or indirectly allowed to the 293
taxpayer under section 179 of the Internal Revenue Code as that 294
section existed on December 31, 2002. 295

(21) (a) If the taxpayer was required to add an amount 296
under division (A) (20) (a) of this section for a taxable year, 297
deduct one of the following: 298

(i) One-fifth of the amount so added for each of the five 299
succeeding taxable years if the amount so added was five-sixths 300
of qualifying section 179 depreciation expense or depreciation 301
expense allowed by subsection (k) of section 168 of the Internal 302
Revenue Code; 303

(ii) One-half of the amount so added for each of the two 304
succeeding taxable years if the amount so added was two-thirds 305
of such depreciation expense; 306

(iii) One-sixth of the amount so added for each of the six 307
succeeding taxable years if the entire amount of such 308
depreciation expense was so added. 309

(b) If the amount deducted under division (A) (21) (a) of 310
this section is attributable to an add-back allocated under 311
division (A) (20) (c) of this section, the amount deducted shall 312
be situated to the same location. Otherwise, the add-back shall 313

be apportioned using the apportionment factors for the taxable 314
year in which the deduction is taken, subject to one or more of 315
the four alternative methods of apportionment enumerated in 316
section 5747.21 of the Revised Code. 317

(c) No deduction is available under division (A) (21) (a) of 318
this section with regard to any depreciation allowed by section 319
168(k) of the Internal Revenue Code and by the qualifying 320
section 179 depreciation expense amount to the extent that such 321
depreciation results in or increases a federal net operating 322
loss carryback or carryforward. If no such deduction is 323
available for a taxable year, the taxpayer may carry forward the 324
amount not deducted in such taxable year to the next taxable 325
year and add that amount to any deduction otherwise available 326
under division (A) (21) (a) of this section for that next taxable 327
year. The carryforward of amounts not so deducted shall continue 328
until the entire addition required by division (A) (20) (a) of 329
this section has been deducted. 330

(d) No refund shall be allowed as a result of adjustments 331
made by division (A) (21) of this section. 332

(22) Deduct, to the extent not otherwise deducted or 333
excluded in computing federal or Ohio adjusted gross income for 334
the taxable year, the amount the taxpayer received during the 335
taxable year as reimbursement for life insurance premiums under 336
section 5919.31 of the Revised Code. 337

(23) Deduct, to the extent not otherwise deducted or 338
excluded in computing federal or Ohio adjusted gross income for 339
the taxable year, the amount the taxpayer received during the 340
taxable year as a death benefit paid by the adjutant general 341
under section 5919.33 of the Revised Code. 342

(24) Deduct, to the extent included in federal adjusted 343
gross income and not otherwise allowable as a deduction or 344
exclusion in computing federal or Ohio adjusted gross income for 345
the taxable year, military pay and allowances received by the 346
taxpayer during the taxable year for active duty service in the 347
United States army, air force, navy, marine corps, or coast 348
guard or reserve components thereof or the national guard. The 349
deduction may not be claimed for military pay and allowances 350
received by the taxpayer while the taxpayer is stationed in this 351
state. 352

(25) Deduct, to the extent not otherwise allowable as a 353
deduction or exclusion in computing federal or Ohio adjusted 354
gross income for the taxable year and not otherwise compensated 355
for by any other source, the amount of qualified organ donation 356
expenses incurred by the taxpayer during the taxable year, not 357
to exceed ten thousand dollars. A taxpayer may deduct qualified 358
organ donation expenses only once for all taxable years 359
beginning with taxable years beginning in 2007. 360

For the purposes of division (A) (25) of this section: 361

(a) "Human organ" means all or any portion of a human 362
liver, pancreas, kidney, intestine, or lung, and any portion of 363
human bone marrow. 364

(b) "Qualified organ donation expenses" means travel 365
expenses, lodging expenses, and wages and salary forgone by a 366
taxpayer in connection with the taxpayer's donation, while 367
living, of one or more of the taxpayer's human organs to another 368
human being. 369

(26) Deduct, to the extent not otherwise deducted or 370
excluded in computing federal or Ohio adjusted gross income for 371

the taxable year, amounts received by the taxpayer as retired 372
personnel pay for service in the uniformed services or reserve 373
components thereof, or the national guard, or received by the 374
surviving spouse or former spouse of such a taxpayer under the 375
survivor benefit plan on account of such a taxpayer's death. If 376
the taxpayer receives income on account of retirement paid under 377
the federal civil service retirement system or federal employees 378
retirement system, or under any successor retirement program 379
enacted by the congress of the United States that is established 380
and maintained for retired employees of the United States 381
government, and such retirement income is based, in whole or in 382
part, on credit for the taxpayer's uniformed service, the 383
deduction allowed under this division shall include only that 384
portion of such retirement income that is attributable to the 385
taxpayer's uniformed service, to the extent that portion of such 386
retirement income is otherwise included in federal adjusted 387
gross income and is not otherwise deducted under this section. 388
Any amount deducted under division (A) (26) of this section is 389
not included in a taxpayer's adjusted gross income for the 390
purposes of section 5747.055 of the Revised Code. No amount may 391
be deducted under division (A) (26) of this section on the basis 392
of which a credit was claimed under section 5747.055 of the 393
Revised Code. 394

(27) Deduct, to the extent not otherwise deducted or 395
excluded in computing federal or Ohio adjusted gross income for 396
the taxable year, the amount the taxpayer received during the 397
taxable year from the military injury relief fund created in 398
section 5902.05 of the Revised Code. 399

(28) Deduct, to the extent not otherwise deducted or 400
excluded in computing federal or Ohio adjusted gross income for 401
the taxable year, the amount the taxpayer received as a veterans 402

bonus during the taxable year from the Ohio department of 403
veterans services as authorized by Section 2r of Article VIII, 404
Ohio Constitution. 405

(29) Deduct, to the extent not otherwise deducted or 406
excluded in computing federal or Ohio adjusted gross income for 407
the taxable year, any income derived from a transfer agreement 408
or from the enterprise transferred under that agreement under 409
section 4313.02 of the Revised Code. 410

(30) Deduct, to the extent not otherwise deducted or 411
excluded in computing federal or Ohio adjusted gross income for 412
the taxable year, Ohio college opportunity or federal Pell grant 413
amounts received by the taxpayer or the taxpayer's spouse or 414
dependent pursuant to section 3333.122 of the Revised Code or 20 415
U.S.C. 1070a, et seq., and used to pay room or board furnished 416
by the educational institution for which the grant was awarded 417
at the institution's facilities, including meal plans 418
administered by the institution. For the purposes of this 419
division, receipt of a grant includes the distribution of a 420
grant directly to an educational institution and the crediting 421
of the grant to the enrollee's account with the institution. 422

(31) (a) For taxable years beginning in 2015, deduct from 423
the portion of an individual's adjusted gross income that is 424
business income, to the extent not otherwise deducted or 425
excluded in computing federal or Ohio adjusted gross income for 426
the taxable year, the lesser of the following amounts: 427

(i) Seventy-five per cent of the individual's business 428
income; 429

(ii) Ninety-three thousand seven hundred fifty dollars for 430
each spouse if spouses file separate returns under section 431

5747.08 of the Revised Code or one hundred eighty-seven thousand 432
five hundred dollars for all other individuals. 433

(b) For taxable years beginning in 2016 or thereafter, 434
deduct from the portion of an individual's adjusted gross income 435
that is business income, to the extent not otherwise deducted or 436
excluded in computing federal adjusted gross income for the 437
taxable year, one hundred twenty-five thousand dollars for each 438
spouse if spouses file separate returns under section 5747.08 of 439
the Revised Code or two hundred fifty thousand dollars for all 440
other individuals. 441

(32) Deduct, as provided under section 5747.78 of the 442
Revised Code, contributions to ABLE savings accounts made in 443
accordance with sections 113.50 to 113.56 of the Revised Code. 444

(33) (a) Deduct, to the extent not otherwise deducted or 445
excluded in computing federal or Ohio adjusted gross income 446
during the taxable year, all of the following: 447

(i) Compensation paid to a qualifying employee described 448
in division (A) (14) (a) of section 5703.94 of the Revised Code to 449
the extent such compensation is for disaster work conducted in 450
this state during a disaster response period pursuant to a 451
qualifying solicitation received by the employee's employer; 452

(ii) Compensation paid to a qualifying employee described 453
in division (A) (14) (b) of section 5703.94 of the Revised Code to 454
the extent such compensation is for disaster work conducted in 455
this state by the employee during the disaster response period 456
on critical infrastructure owned or used by the employee's 457
employer; 458

(iii) Income received by an out-of-state disaster business 459
for disaster work conducted in this state during a disaster 460

response period, or, if the out-of-state disaster business is a 461
pass-through entity, a taxpayer's distributive share of the 462
pass-through entity's income from the business conducting 463
disaster work in this state during a disaster response period, 464
if, in either case, the disaster work is conducted pursuant to a 465
qualifying solicitation received by the business. 466

(b) All terms used in division (A) (33) of this section 467
have the same meanings as in section 5703.94 of the Revised 468
Code. 469

(B) "Business income" means income, including gain or 470
loss, arising from transactions, activities, and sources in the 471
regular course of a trade or business and includes income, gain, 472
or loss from real property, tangible property, and intangible 473
property if the acquisition, rental, management, and disposition 474
of the property constitute integral parts of the regular course 475
of a trade or business operation. "Business income" includes 476
income, including gain or loss, from a partial or complete 477
liquidation of a business, including, but not limited to, gain 478
or loss from the sale or other disposition of goodwill. 479

(C) "Nonbusiness income" means all income other than 480
business income and may include, but is not limited to, 481
compensation, rents and royalties from real or tangible personal 482
property, capital gains, interest, dividends and distributions, 483
patent or copyright royalties, or lottery winnings, prizes, and 484
awards. 485

(D) "Compensation" means any form of remuneration paid to 486
an employee for personal services. 487

(E) "Fiduciary" means a guardian, trustee, executor, 488
administrator, receiver, conservator, or any other person acting 489

in any fiduciary capacity for any individual, trust, or estate.	490
(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	491 492
(G) "Individual" means any natural person.	493
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	494 495
(I) "Resident" means any of the following, provided that division (I) (3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:	496 497 498
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	499 500
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I) (2) of this section.	501 502 503 504
(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.	505 506 507
For the purposes of division (I) (3) of this section:	508
(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:	509 510 511 512 513 514
(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only	515 516

if the trust is described in division (I) (3) (e) (i) or (ii) of 517
this section; 518

(ii) A person who was domiciled in this state for the 519
purposes of this chapter when the person directly or indirectly 520
transferred assets to an irrevocable trust, but only if at least 521
one of the trust's qualifying beneficiaries is domiciled in this 522
state for the purposes of this chapter during all or some 523
portion of the trust's current taxable year; 524

(iii) A person who was domiciled in this state for the 525
purposes of this chapter when the trust document or instrument 526
or part of the trust document or instrument became irrevocable, 527
but only if at least one of the trust's qualifying beneficiaries 528
is a resident domiciled in this state for the purposes of this 529
chapter during all or some portion of the trust's current 530
taxable year. If a trust document or instrument became 531
irrevocable upon the death of a person who at the time of death 532
was domiciled in this state for purposes of this chapter, that 533
person is a person described in division (I) (3) (a) (iii) of this 534
section. 535

(b) A trust is irrevocable to the extent that the 536
transferor is not considered to be the owner of the net assets 537
of the trust under sections 671 to 678 of the Internal Revenue 538
Code. 539

(c) With respect to a trust other than a charitable lead 540
trust, "qualifying beneficiary" has the same meaning as 541
"potential current beneficiary" as defined in section 1361(e) (2) 542
of the Internal Revenue Code, and with respect to a charitable 543
lead trust "qualifying beneficiary" is any current, future, or 544
contingent beneficiary, but with respect to any trust 545
"qualifying beneficiary" excludes a person or a governmental 546

entity or instrumentality to any of which a contribution would 547
qualify for the charitable deduction under section 170 of the 548
Internal Revenue Code. 549

(d) For the purposes of division (I) (3) (a) of this 550
section, the extent to which a trust consists directly or 551
indirectly, in whole or in part, of assets, net of any related 552
liabilities, that were transferred directly or indirectly, in 553
whole or part, to the trust by any of the sources enumerated in 554
that division shall be ascertained by multiplying the fair 555
market value of the trust's assets, net of related liabilities, 556
by the qualifying ratio, which shall be computed as follows: 557

(i) The first time the trust receives assets, the 558
numerator of the qualifying ratio is the fair market value of 559
those assets at that time, net of any related liabilities, from 560
sources enumerated in division (I) (3) (a) of this section. The 561
denominator of the qualifying ratio is the fair market value of 562
all the trust's assets at that time, net of any related 563
liabilities. 564

(ii) Each subsequent time the trust receives assets, a 565
revised qualifying ratio shall be computed. The numerator of the 566
revised qualifying ratio is the sum of (1) the fair market value 567
of the trust's assets immediately prior to the subsequent 568
transfer, net of any related liabilities, multiplied by the 569
qualifying ratio last computed without regard to the subsequent 570
transfer, and (2) the fair market value of the subsequently 571
transferred assets at the time transferred, net of any related 572
liabilities, from sources enumerated in division (I) (3) (a) of 573
this section. The denominator of the revised qualifying ratio is 574
the fair market value of all the trust's assets immediately 575
after the subsequent transfer, net of any related liabilities. 576

(iii) Whether a transfer to the trust is by or from any of 577
the sources enumerated in division (I) (3) (a) of this section 578
shall be ascertained without regard to the domicile of the 579
trust's beneficiaries. 580

(e) For the purposes of division (I) (3) (a) (i) of this 581
section: 582

(i) A trust is described in division (I) (3) (e) (i) of this 583
section if the trust is a testamentary trust and the testator of 584
that testamentary trust was domiciled in this state at the time 585
of the testator's death for purposes of the taxes levied under 586
Chapter 5731. of the Revised Code. 587

(ii) A trust is described in division (I) (3) (e) (ii) of 588
this section if the transfer is a qualifying transfer described 589
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 590
trust is an irrevocable inter vivos trust, and at least one of 591
the trust's qualifying beneficiaries is domiciled in this state 592
for purposes of this chapter during all or some portion of the 593
trust's current taxable year. 594

(f) For the purposes of division (I) (3) (e) (ii) of this 595
section, a "qualifying transfer" is a transfer of assets, net of 596
any related liabilities, directly or indirectly to a trust, if 597
the transfer is described in any of the following: 598

(i) The transfer is made to a trust, created by the 599
decedent before the decedent's death and while the decedent was 600
domiciled in this state for the purposes of this chapter, and, 601
prior to the death of the decedent, the trust became irrevocable 602
while the decedent was domiciled in this state for the purposes 603
of this chapter. 604

(ii) The transfer is made to a trust to which the 605

decedent, prior to the decedent's death, had directly or 606
indirectly transferred assets, net of any related liabilities, 607
while the decedent was domiciled in this state for the purposes 608
of this chapter, and prior to the death of the decedent the 609
trust became irrevocable while the decedent was domiciled in 610
this state for the purposes of this chapter. 611

(iii) The transfer is made on account of a contractual 612
relationship existing directly or indirectly between the 613
transferor and either the decedent or the estate of the decedent 614
at any time prior to the date of the decedent's death, and the 615
decedent was domiciled in this state at the time of death for 616
purposes of the taxes levied under Chapter 5731. of the Revised 617
Code. 618

(iv) The transfer is made to a trust on account of a 619
contractual relationship existing directly or indirectly between 620
the transferor and another person who at the time of the 621
decedent's death was domiciled in this state for purposes of 622
this chapter. 623

(v) The transfer is made to a trust on account of the will 624
of a testator who was domiciled in this state at the time of the 625
testator's death for purposes of the taxes levied under Chapter 626
5731. of the Revised Code. 627

(vi) The transfer is made to a trust created by or caused 628
to be created by a court, and the trust was directly or 629
indirectly created in connection with or as a result of the 630
death of an individual who, for purposes of the taxes levied 631
under Chapter 5731. of the Revised Code, was domiciled in this 632
state at the time of the individual's death. 633

(g) The tax commissioner may adopt rules to ascertain the 634

part of a trust residing in this state. 635

(J) "Nonresident" means an individual or estate that is 636
not a resident. An individual who is a resident for only part of 637
a taxable year is a nonresident for the remainder of that 638
taxable year. 639

(K) "Pass-through entity" has the same meaning as in 640
section 5733.04 of the Revised Code. 641

(L) "Return" means the notifications and reports required 642
to be filed pursuant to this chapter for the purpose of 643
reporting the tax due and includes declarations of estimated tax 644
when so required. 645

(M) "Taxable year" means the calendar year or the 646
taxpayer's fiscal year ending during the calendar year, or 647
fractional part thereof, upon which the adjusted gross income is 648
calculated pursuant to this chapter. 649

(N) "Taxpayer" means any person subject to the tax imposed 650
by section 5747.02 of the Revised Code or any pass-through 651
entity that makes the election under division (D) of section 652
5747.08 of the Revised Code. 653

(O) "Dependents" means dependents as defined in the 654
Internal Revenue Code and as claimed in the taxpayer's federal 655
income tax return for the taxable year or which the taxpayer 656
would have been permitted to claim had the taxpayer filed a 657
federal income tax return. 658

(P) "Principal county of employment" means, in the case of 659
a nonresident, the county within the state in which a taxpayer 660
performs services for an employer or, if those services are 661
performed in more than one county, the county in which the major 662
portion of the services are performed. 663

(Q) As used in sections 5747.50 to 5747.55 of the Revised Code: 664
665

(1) "Subdivision" means any county, municipal corporation, park district, or township. 666
667

(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a charter adopted pursuant to the Ohio Constitution. 668
669
670
671

(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax. 672
673
674

(S) "Taxable income" or "Ohio taxable income" applies only to estates and trusts, and means federal taxable income, as defined and used in the Internal Revenue Code, adjusted as follows: 675
676
677
678

(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section: 679
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(a) The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to beneficiaries for the taxable year; 687
688
689

(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year. 690
691

(2) Add interest or dividends, net of ordinary, necessary, 692
and reasonable expenses not deducted in computing federal 693
taxable income, on obligations of any authority, commission, 694
instrumentality, territory, or possession of the United States 695
to the extent that the interest or dividends are exempt from 696
federal income taxes but not from state income taxes, but only 697
to the extent that such net amount is not otherwise includible 698
in Ohio taxable income and is described in either division (S) 699
(1) (a) or (b) of this section; 700

(3) Add the amount of personal exemption allowed to the 701
estate pursuant to section 642(b) of the Internal Revenue Code; 702

(4) Deduct interest or dividends, net of related expenses 703
deducted in computing federal taxable income, on obligations of 704
the United States and its territories and possessions or of any 705
authority, commission, or instrumentality of the United States 706
to the extent that the interest or dividends are exempt from 707
state taxes under the laws of the United States, but only to the 708
extent that such amount is included in federal taxable income 709
and is described in either division (S) (1) (a) or (b) of this 710
section; 711

(5) Deduct the amount of wages and salaries, if any, not 712
otherwise allowable as a deduction but that would have been 713
allowable as a deduction in computing federal taxable income for 714
the taxable year, had the targeted jobs credit allowed under 715
sections 38, 51, and 52 of the Internal Revenue Code not been in 716
effect, but only to the extent such amount relates either to 717
income included in federal taxable income for the taxable year 718
or to income of the S portion of an electing small business 719
trust for the taxable year; 720

(6) Deduct any interest or interest equivalent, net of 721

related expenses deducted in computing federal taxable income, 722
on public obligations and purchase obligations, but only to the 723
extent that such net amount relates either to income included in 724
federal taxable income for the taxable year or to income of the 725
S portion of an electing small business trust for the taxable 726
year; 727

(7) Add any loss or deduct any gain resulting from sale, 728
exchange, or other disposition of public obligations to the 729
extent that such loss has been deducted or such gain has been 730
included in computing either federal taxable income or income of 731
the S portion of an electing small business trust for the 732
taxable year; 733

(8) Except in the case of the final return of an estate, 734
add any amount deducted by the taxpayer on both its Ohio estate 735
tax return pursuant to section 5731.14 of the Revised Code, and 736
on its federal income tax return in determining federal taxable 737
income; 738

(9) (a) Deduct any amount included in federal taxable 739
income solely because the amount represents a reimbursement or 740
refund of expenses that in a previous year the decedent had 741
deducted as an itemized deduction pursuant to section 63 of the 742
Internal Revenue Code and applicable treasury regulations. The 743
deduction otherwise allowed under division (S) (9) (a) of this 744
section shall be reduced to the extent the reimbursement is 745
attributable to an amount the taxpayer or decedent deducted 746
under this section in any taxable year. 747

(b) Add any amount not otherwise included in Ohio taxable 748
income for any taxable year to the extent that the amount is 749
attributable to the recovery during the taxable year of any 750
amount deducted or excluded in computing federal or Ohio taxable 751

income in any taxable year, but only to the extent such amount 752
has not been distributed to beneficiaries for the taxable year. 753

(10) Deduct any portion of the deduction described in 754
section 1341(a)(2) of the Internal Revenue Code, for repaying 755
previously reported income received under a claim of right, that 756
meets both of the following requirements: 757

(a) It is allowable for repayment of an item that was 758
included in the taxpayer's taxable income or the decedent's 759
adjusted gross income for a prior taxable year and did not 760
qualify for a credit under division (A) or (B) of section 761
5747.05 of the Revised Code for that year. 762

(b) It does not otherwise reduce the taxpayer's taxable 763
income or the decedent's adjusted gross income for the current 764
or any other taxable year. 765

(11) Add any amount claimed as a credit under section 766
5747.059 or 5747.65 of the Revised Code to the extent that the 767
amount satisfies either of the following: 768

(a) The amount was deducted or excluded from the 769
computation of the taxpayer's federal taxable income as required 770
to be reported for the taxpayer's taxable year under the 771
Internal Revenue Code; 772

(b) The amount resulted in a reduction in the taxpayer's 773
federal taxable income as required to be reported for any of the 774
taxpayer's taxable years under the Internal Revenue Code. 775

(12) Deduct any amount, net of related expenses deducted 776
in computing federal taxable income, that a trust is required to 777
report as farm income on its federal income tax return, but only 778
if the assets of the trust include at least ten acres of land 779
satisfying the definition of "land devoted exclusively to 780

agricultural use" under section 5713.30 of the Revised Code, 781
regardless of whether the land is valued for tax purposes as 782
such land under sections 5713.30 to 5713.38 of the Revised Code. 783
If the trust is a pass-through entity investor, section 5747.231 784
of the Revised Code applies in ascertaining if the trust is 785
eligible to claim the deduction provided by division (S) (12) of 786
this section in connection with the pass-through entity's farm 787
income. 788

Except for farm income attributable to the S portion of an 789
electing small business trust, the deduction provided by 790
division (S) (12) of this section is allowed only to the extent 791
that the trust has not distributed such farm income. Division 792
(S) (12) of this section applies only to taxable years of a trust 793
beginning in 2002 or thereafter. 794

(13) Add the net amount of income described in section 795
641(c) of the Internal Revenue Code to the extent that amount is 796
not included in federal taxable income. 797

(14) Add or deduct the amount the taxpayer would be 798
required to add or deduct under division (A) (20) or (21) of this 799
section if the taxpayer's Ohio taxable income were computed in 800
the same manner as an individual's Ohio adjusted gross income is 801
computed under this section. In the case of a trust, division 802
(S) (14) of this section applies only to any of the trust's 803
taxable years beginning in 2002 or thereafter. 804

(T) "School district income" and "school district income 805
tax" have the same meanings as in section 5748.01 of the Revised 806
Code. 807

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 808
(7) of this section, "public obligations," "purchase 809

obligations," and "interest or interest equivalent" have the 810
same meanings as in section 5709.76 of the Revised Code. 811

(V) "Limited liability company" means any limited 812
liability company formed under Chapter 1705. of the Revised Code 813
or under the laws of any other state. 814

(W) "Pass-through entity investor" means any person who, 815
during any portion of a taxable year of a pass-through entity, 816
is a partner, member, shareholder, or equity investor in that 817
pass-through entity. 818

(X) "Banking day" has the same meaning as in section 819
1304.01 of the Revised Code. 820

(Y) "Month" means a calendar month. 821

(Z) "Quarter" means the first three months, the second 822
three months, the third three months, or the last three months 823
of the taxpayer's taxable year. 824

(AA) (1) "Eligible institution" means a state university or 825
state institution of higher education as defined in section 826
3345.011 of the Revised Code, or a private, nonprofit college, 827
university, or other post-secondary institution located in this 828
state that possesses a certificate of authorization issued by 829
the chancellor of higher education pursuant to Chapter 1713. of 830
the Revised Code or a certificate of registration issued by the 831
state board of career colleges and schools under Chapter 3332. 832
of the Revised Code. 833

(2) "Qualified tuition and fees" means tuition and fees 834
imposed by an eligible institution as a condition of enrollment 835
or attendance, not exceeding two thousand five hundred dollars 836
in each of the individual's first two years of post-secondary 837
education. If the individual is a part-time student, "qualified 838

tuition and fees" includes tuition and fees paid for the 839
academic equivalent of the first two years of post-secondary 840
education during a maximum of five taxable years, not exceeding 841
a total of five thousand dollars. "Qualified tuition and fees" 842
does not include: 843

(a) Expenses for any course or activity involving sports, 844
games, or hobbies unless the course or activity is part of the 845
individual's degree or diploma program; 846

(b) The cost of books, room and board, student activity 847
fees, athletic fees, insurance expenses, or other expenses 848
unrelated to the individual's academic course of instruction; 849

(c) Tuition, fees, or other expenses paid or reimbursed 850
through an employer, scholarship, grant in aid, or other 851
educational benefit program. 852

(BB) (1) "Modified business income" means the business 853
income included in a trust's Ohio taxable income after such 854
taxable income is first reduced by the qualifying trust amount, 855
if any. 856

(2) "Qualifying trust amount" of a trust means capital 857
gains and losses from the sale, exchange, or other disposition 858
of equity or ownership interests in, or debt obligations of, a 859
qualifying investee to the extent included in the trust's Ohio 860
taxable income, but only if the following requirements are 861
satisfied: 862

(a) The book value of the qualifying investee's physical 863
assets in this state and everywhere, as of the last day of the 864
qualifying investee's fiscal or calendar year ending immediately 865
prior to the date on which the trust recognizes the gain or 866
loss, is available to the trust. 867

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

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

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

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

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

(i) The trust's modified business income;

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

(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the

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

(c) (i) With respect to a trust or portion of a trust that 907
is a resident as ascertained in accordance with division (I) (3) 908
(d) of this section, its modified nonbusiness income. 909

(ii) With respect to a trust or portion of a trust that is 910
not a resident as ascertained in accordance with division (I) (3) 911
(d) of this section, the amount of its modified nonbusiness 912
income satisfying the descriptions in divisions (B) (2) to (5) of 913
section 5747.20 of the Revised Code, except as otherwise 914
provided in division (BB) (4) (c) (ii) of this section. With 915
respect to a trust or portion of a trust that is not a resident 916
as ascertained in accordance with division (I) (3) (d) of this 917
section, the trust's portion of modified nonbusiness income 918
recognized from the sale, exchange, or other disposition of a 919
debt interest in or equity interest in a section 5747.212 920
entity, as defined in section 5747.212 of the Revised Code, 921
without regard to division (A) of that section, shall not be 922
allocated to this state in accordance with section 5747.20 of 923
the Revised Code but shall be apportioned to this state in 924
accordance with division (B) of section 5747.212 of the Revised 925
Code without regard to division (A) of that section. 926

If the allocation and apportionment of a trust's income 927
under divisions (BB) (4) (a) and (c) of this section do not fairly 928
represent the modified Ohio taxable income of the trust in this 929
state, the alternative methods described in division (C) of 930
section 5747.21 of the Revised Code may be applied in the manner 931
and to the same extent provided in that section. 932

(5) (a) Except as set forth in division (BB) (5) (b) of this 933
section, "qualifying investee" means a person in which a trust 934
has an equity or ownership interest, or a person or unit of 935
government the debt obligations of either of which are owned by 936
a trust. For the purposes of division (BB) (2) (a) of this section 937
and for the purpose of computing the fraction described in 938
division (BB) (4) (b) of this section, all of the following apply: 939

(i) If the qualifying investee is a member of a qualifying 940
controlled group on the last day of the qualifying investee's 941
fiscal or calendar year ending immediately prior to the date on 942
which the trust recognizes the gain or loss, then "qualifying 943
investee" includes all persons in the qualifying controlled 944
group on such last day. 945

(ii) If the qualifying investee, or if the qualifying 946
investee and any members of the qualifying controlled group of 947
which the qualifying investee is a member on the last day of the 948
qualifying investee's fiscal or calendar year ending immediately 949
prior to the date on which the trust recognizes the gain or 950
loss, separately or cumulatively own, directly or indirectly, on 951
the last day of the qualifying investee's fiscal or calendar 952
year ending immediately prior to the date on which the trust 953
recognizes the qualifying trust amount, more than fifty per cent 954
of the equity of a pass-through entity, then the qualifying 955
investee and the other members are deemed to own the 956

proportionate share of the pass-through entity's physical assets 957
which the pass-through entity directly or indirectly owns on the 958
last day of the pass-through entity's calendar or fiscal year 959
ending within or with the last day of the qualifying investee's 960
fiscal or calendar year ending immediately prior to the date on 961
which the trust recognizes the qualifying trust amount. 962

(iii) For the purposes of division (BB) (5) (a) (iii) of this 963
section, "upper level pass-through entity" means a pass-through 964
entity directly or indirectly owning any equity of another pass- 965
through entity, and "lower level pass-through entity" means that 966
other pass-through entity. 967

An upper level pass-through entity, whether or not it is 968
also a qualifying investee, is deemed to own, on the last day of 969
the upper level pass-through entity's calendar or fiscal year, 970
the proportionate share of the lower level pass-through entity's 971
physical assets that the lower level pass-through entity 972
directly or indirectly owns on the last day of the lower level 973
pass-through entity's calendar or fiscal year ending within or 974
with the last day of the upper level pass-through entity's 975
fiscal or calendar year. If the upper level pass-through entity 976
directly and indirectly owns less than fifty per cent of the 977
equity of the lower level pass-through entity on each day of the 978
upper level pass-through entity's calendar or fiscal year in 979
which or with which ends the calendar or fiscal year of the 980
lower level pass-through entity and if, based upon clear and 981
convincing evidence, complete information about the location and 982
cost of the physical assets of the lower pass-through entity is 983
not available to the upper level pass-through entity, then 984
solely for purposes of ascertaining if a gain or loss 985
constitutes a qualifying trust amount, the upper level pass- 986
through entity shall be deemed as owning no equity of the lower 987

level pass-through entity for each day during the upper level 988
pass-through entity's calendar or fiscal year in which or with 989
which ends the lower level pass-through entity's calendar or 990
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 991
shall be construed to provide for any deduction or exclusion in 992
computing any trust's Ohio taxable income. 993

(b) With respect to a trust that is not a resident for the 994
taxable year and with respect to a part of a trust that is not a 995
resident for the taxable year, "qualifying investee" for that 996
taxable year does not include a C corporation if both of the 997
following apply: 998

(i) During the taxable year the trust or part of the trust 999
recognizes a gain or loss from the sale, exchange, or other 1000
disposition of equity or ownership interests in, or debt 1001
obligations of, the C corporation. 1002

(ii) Such gain or loss constitutes nonbusiness income. 1003

(6) "Available" means information is such that a person is 1004
able to learn of the information by the due date plus 1005
extensions, if any, for filing the return for the taxable year 1006
in which the trust recognizes the gain or loss. 1007

(CC) "Qualifying controlled group" has the same meaning as 1008
in section 5733.04 of the Revised Code. 1009

(DD) "Related member" has the same meaning as in section 1010
5733.042 of the Revised Code. 1011

(EE) (1) For the purposes of division (EE) of this section: 1012

(a) "Qualifying person" means any person other than a 1013
qualifying corporation. 1014

(b) "Qualifying corporation" means any person classified 1015

for federal income tax purposes as an association taxable as a corporation, except either of the following:

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

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

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

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

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

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

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

election, if timely made, shall be effective on and after 1045
January 1, 2006, and shall apply for all tax periods and tax 1046
years until revoked by the trustee of the trust. 1047

(4) A "pre-income tax trust" is a trust that satisfies all 1048
of the following requirements: 1049

(a) The document or instrument creating the trust was 1050
executed by the grantor before January 1, 1972; 1051

(b) The trust became irrevocable upon the creation of the 1052
trust; and 1053

(c) The grantor was domiciled in this state at the time 1054
the trust was created. 1055

(GG) "Uniformed services" has the same meaning as in 10
U.S.C. 101. 1056
1057

(HH) "Taxable business income" means the amount by which 1058
an individual's business income that is included in federal 1059
adjusted gross income exceeds the amount of business income the 1060
individual is authorized to deduct under division (A) (31) of 1061
this section for the taxable year. 1062

(II) "Employer" does not include a franchisor with respect 1063
to the franchisor's relationship with a franchisee or an 1064
employee of a franchisee, unless the franchisor agrees to assume 1065
that role in writing or a court of competent jurisdiction 1066
determines that the franchisor exercises a type or degree of 1067
control over the franchisee or the franchisee's employees that 1068
is not customarily exercised by a franchisor for the purpose of 1069
protecting the franchisor's trademark, brand, or both. For 1070
purposes of this division, "franchisor" and "franchisee" have 1071
the same meanings as in 16 C.F.R. 436.1. 1072

Sec. 5747.70. (A) In computing Ohio adjusted gross income, 1073
a deduction from federal adjusted gross income is allowed to a 1074
~~contributor for the amount contributed during the taxable year~~ 1075
taxpayer who contributes to a variable college savings program 1076
~~account and to a purchaser of or purchases~~ tuition units under 1077
~~the Ohio college savings program created by Chapter 3334. of the~~ 1078
Revised Code a qualified tuition program established in 1079
accordance with section 529 of the Internal Revenue Code. The 1080
amount of the deduction shall equal the amount contributed or 1081
purchased during the taxable year to the extent that the amounts 1082
of such contributions and purchases were not deducted in 1083
determining the contributor's or purchaser's federal adjusted 1084
gross income for the taxable year. The combined amount of 1085
contributions and purchases deducted in any taxable year by a 1086
taxpayer or the taxpayer and the taxpayer's spouse, regardless 1087
of whether the taxpayer and the taxpayer's spouse file separate 1088
returns or a joint return, is limited to four thousand dollars 1089
for each beneficiary for whom contributions or purchases are 1090
made. If the combined annual contributions and purchases for a 1091
beneficiary exceed four thousand dollars, the excess may be 1092
carried forward and deducted in future taxable years until the 1093
contributions and purchases have been fully deducted. 1094

(B) In computing Ohio adjusted gross income, a deduction 1095
from federal adjusted gross income is allowed for: 1096

(1) Income related to tuition units and contributions that 1097
as of the end of the taxable year have not been refunded 1098
pursuant to the termination of a qualified tuition program 1099
payment contract or ~~variable college savings program~~ account 1100
~~under section 3334.10 of the Revised Code,~~ to the extent that 1101
such income is included in federal adjusted gross income. 1102

(2) The excess of the total purchase price of tuition 1103
units refunded during the taxable year pursuant to the 1104
termination of a qualified tuition program payment contract 1105
~~under section 3334.10 of the Revised Code over the amount of the~~ 1106
~~refund,~~ to the extent the amount of the excess was not deducted 1107
in determining federal adjusted gross income. Division (B) (2) of 1108
this section applies only to units for which no deduction was 1109
allowable under division (A) of this section. 1110

(C) In computing Ohio adjusted gross income, there shall 1111
be added to federal adjusted gross income the amount of loss 1112
related to tuition units and contributions that as of the end of 1113
the taxable year have not been refunded pursuant to the 1114
termination of a qualified tuition program payment contract or 1115
~~variable college savings program account under section 3334.10~~ 1116
~~of the Revised Code,~~ to the extent that such loss was deducted 1117
in determining federal adjusted gross income. 1118

(D) For taxable years in which distributions or refunds 1119
are made under a qualified tuition ~~payment or variable college~~ 1120
~~savings program contract program~~ for any reason other than 1121
payment of higher education expenses, or the beneficiary's 1122
death, disability, or receipt of a scholarship as described in 1123
section 3334.10 of the Revised Code: 1124

(1) If the distribution or refund is paid to the purchaser 1125
or contributor or beneficiary, any portion of the distribution 1126
or refund not included in the recipient's federal adjusted gross 1127
income shall be added to the recipient's federal adjusted gross 1128
income in determining the recipient's Ohio adjusted gross 1129
income, except that the amount added shall not exceed amounts 1130
previously deducted under division (A) of this section less any 1131
amounts added under division (D) (1) of this section in a prior 1132

taxable year. 1133

(2) If amounts paid by a purchaser or contributor on or 1134
after January 1, 2000, are distributed or refunded to someone 1135
other than the purchaser or contributor or beneficiary, the 1136
amount of the payment not included in the recipient's federal 1137
adjusted gross income, less any amounts added under division (D) 1138
of this section in a prior taxable year, shall be added to the 1139
recipient's federal adjusted gross income in determining the 1140
recipient's Ohio adjusted gross income. 1141

Section 2. That existing sections 5747.01 and 5747.70 of 1142
the Revised Code are hereby repealed. 1143

Section 3. The amendment by this act of section 5747.70 of 1144
the Revised Code applies to taxable years beginning on or after 1145
January 1, 2019. 1146

Nothing in this act shall limit the ability of a taxpayer 1147
whose combined contributions to an Ohio variable college savings 1148
program account and purchases of tuition units under the Ohio 1149
college savings program for a beneficiary exceeded four thousand 1150
dollars in a taxable year beginning before January 1, 2019, from 1151
carrying forward and deducting the excess in taxable years 1152
beginning on or after January 1, 2019. 1153