

**As Passed by the Senate**

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**Sub. S. B. No. 125**

**Senators Hottinger, Brenner**

**Cosponsors: Senators Terhar, Wilson, Fedor, Roegner, Hackett, Blessing, Coley,  
Huffman, S., Lehner, Manning, McColley, O'Brien, Peterson, Rulli, Yuko**

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**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 income" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:

(1) Add interest or dividends 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.

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

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

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

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

(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion,

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) (a) of this section shall be allowed 92  
either to any taxpayer who is eligible to participate in any 93  
subsidized health plan maintained by any employer of the 94  
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 95  
entitled to, or on application would be entitled to, benefits 96  
under part A of Title XVIII of the "Social Security Act," 49 97  
Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 98  
division (A) (11) (a) of this section, "subsidized health plan" 99  
means a health plan for which the employer pays any portion of 100  
the plan's cost. The deduction allowed under division (A) (11) (a) 101  
of this section shall be the net of any related premium refunds, 102  
related premium reimbursements, or related insurance premium 103  
dividends received 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 138  
States department of the treasury regulations. The deduction 139  
otherwise allowed under division (A) (12) (a) of this section 140  
shall be reduced to the extent the reimbursement is attributable 141  
to an amount the taxpayer deducted under this section in any 142  
taxable year. 143

(b) Add any amount not otherwise included in Ohio adjusted 144  
gross income for any taxable year to the extent that the amount 145  
is attributable to the recovery during the taxable year of any 146  
amount deducted or excluded in computing federal or Ohio 147  
adjusted gross income in any taxable year. 148

(13) Deduct any portion of the deduction described in 149  
section 1341(a) (2) of the Internal Revenue Code, for repaying 150  
previously reported income received under a claim of right, that 151  
meets both of the following requirements: 152

(a) It is allowable for repayment of an item that was 153  
included in the taxpayer's adjusted gross income for a prior 154  
taxable year and did not qualify for a credit under division (A) 155  
or (B) of section 5747.05 of the Revised Code for that year; 156

(b) It does not otherwise reduce the taxpayer's adjusted 157  
gross income for the current or any other taxable year. 158

(14) Deduct an amount equal to the deposits made to, and 159  
net investment earnings of, a medical savings account during the 160  
taxable year, in accordance with section 3924.66 of the Revised 161  
Code. The deduction allowed by division (A) (14) of this section 162  
does not apply to medical savings account deposits and earnings 163  
otherwise deducted or excluded for the current or any other 164  
taxable year from the taxpayer's federal adjusted gross income. 165

(15) (a) Add an amount equal to the funds withdrawn from a 166  
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 of the Revised Code to the extent that such amount 176  
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 256  
commissioner, may waive the add-backs related to a pass-through 257  
entity if the taxpayer owns, directly or indirectly, less than 258  
five per cent of the pass-through entity. 259

(b) Nothing in division (A) (20) of this section shall be 260  
construed to adjust or modify the adjusted basis of any asset. 261

(c) To the extent the add-back required under division (A) 262  
(20) (a) of this section is attributable to property generating 263  
nonbusiness income or loss allocated under section 5747.20 of 264  
the Revised Code, the add-back shall be situated to the same 265  
location as the nonbusiness income or loss generated by the 266  
property for the purpose of determining the credit under 267  
division (A) of section 5747.05 of the Revised Code. Otherwise, 268  
the add-back shall be apportioned, subject to one or more of the 269  
four alternative methods of apportionment enumerated in section 270  
5747.21 of the Revised Code. 271

(d) For the purposes of division (A) (20) (a) (v) of this 272  
section, net operating loss carryback and carryforward shall not 273  
include the allowance of any net operating loss deduction 274  
carryback or carryforward to the taxable year to the extent such 275  
loss resulted from depreciation allowed by section 168(k) of the 276  
Internal Revenue Code and by the qualifying section 179 277  
depreciation expense amount. 278

(e) For the purposes of divisions (A) (20) and (21) of this 279  
section: 280

(i) "Income taxes withheld" means the total amount 281  
withheld and remitted under sections 5747.06 and 5747.07 of the 282  
Revised Code by an employer during the employer's taxable year. 283

(ii) "Increase in income taxes withheld" means the amount 284  
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 sitused 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) Deduct from the portion of an individual's federal 423  
adjusted gross income that is eligible business income, to the 424  
extent not otherwise deducted or excluded in computing federal 425  
adjusted gross income for the taxable year, one hundred twenty- 426  
five thousand dollars for each spouse if spouses file separate 427  
returns under section 5747.08 of the Revised Code or two hundred 428  
fifty thousand dollars for all other individuals. 429

(32) Deduct, as provided under section 5747.78 of the 430  
Revised Code, contributions to ABLE savings accounts made in 431  
accordance with sections 113.50 to 113.56 of the Revised Code. 432

(33) (a) Deduct, to the extent not otherwise deducted or 433  
excluded in computing federal or Ohio adjusted gross income 434  
during the taxable year, all of the following: 435

(i) Compensation paid to a qualifying employee described 436  
in division (A) (14) (a) of section 5703.94 of the Revised Code to 437  
the extent such compensation is for disaster work conducted in 438  
this state during a disaster response period pursuant to a 439  
qualifying solicitation received by the employee's employer; 440

(ii) Compensation paid to a qualifying employee described 441  
in division (A) (14) (b) of section 5703.94 of the Revised Code to 442  
the extent such compensation is for disaster work conducted in 443  
this state by the employee during the disaster response period 444  
on critical infrastructure owned or used by the employee's 445  
employer; 446

(iii) Income received by an out-of-state disaster business 447  
for disaster work conducted in this state during a disaster 448  
response period, or, if the out-of-state disaster business is a 449  
pass-through entity, a taxpayer's distributive share of the 450  
pass-through entity's income from the business conducting 451  
disaster work in this state during a disaster response period, 452  
if, in either case, the disaster work is conducted pursuant to a 453  
qualifying solicitation received by the business. 454

(b) All terms used in division (A) (33) of this section 455  
have the same meanings as in section 5703.94 of the Revised 456  
Code. 457

(B) (1) "Business income" means income, including gain or 458  
loss, arising from transactions, activities, and sources in the 459  
regular course of a trade or business and includes income, gain, 460  
or loss from real property, tangible property, and intangible 461



property if the acquisition, rental, management, and disposition 462  
of the property constitute integral parts of the regular course 463  
of a trade or business operation. "Business income" includes 464  
income, including gain or loss, from a partial or complete 465  
liquidation of a business, including, but not limited to, gain 466  
or loss from the sale or other disposition of goodwill. 467

(2) "Eligible business income" means business income 468  
excluding income from a trade or business that performs either 469  
or both of the following: 470

(a) Legal services provided by an active attorney admitted 471  
to the practice of law in this state or by an attorney 472  
registered for corporate counsel status under section 6 of rule 473  
VI of the Ohio supreme court rules for the government of the bar 474  
of Ohio; 475

(b) Executive agency lobbying activity, retirement system 476  
lobbying activity, or actively advocating by a person required 477  
to register with the joint legislative ethics committee under 478  
section 101.78, 101.92, or 121.62 of the Revised Code. Terms 479  
used in division (B)(2) of this section have the same meaning as 480  
in section 101.70, 101.92, or 121.60 of the Revised Code. 481

(C) "Nonbusiness income" means all income other than 482  
business income and may include, but is not limited to, 483  
compensation, rents and royalties from real or tangible personal 484  
property, capital gains, interest, dividends and distributions, 485  
patent or copyright royalties, or lottery winnings, prizes, and 486  
awards. 487

(D) "Compensation" means any form of remuneration paid to 488  
an employee for personal services. 489

(E) "Fiduciary" means a guardian, trustee, executor, 490

administrator, receiver, conservator, or any other person acting 491  
in any fiduciary capacity for any individual, trust, or estate. 492

(F) "Fiscal year" means an accounting period of twelve 493  
months ending on the last day of any month other than December. 494

(G) "Individual" means any natural person. 495

(H) "Internal Revenue Code" means the "Internal Revenue 496  
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 497

(I) "Resident" means any of the following, provided that 498  
division (I)(3) of this section applies only to taxable years of 499  
a trust beginning in 2002 or thereafter: 500

(1) An individual who is domiciled in this state, subject 501  
to section 5747.24 of the Revised Code; 502

(2) The estate of a decedent who at the time of death was 503  
domiciled in this state. The domicile tests of section 5747.24 504  
of the Revised Code are not controlling for purposes of division 505  
(I)(2) of this section. 506

(3) A trust that, in whole or part, resides in this state. 507  
If only part of a trust resides in this state, the trust is a 508  
resident only with respect to that part. 509

For the purposes of division (I)(3) of this section: 510

(a) A trust resides in this state for the trust's current 511  
taxable year to the extent, as described in division (I)(3)(d) 512  
of this section, that the trust consists directly or indirectly, 513  
in whole or in part, of assets, net of any related liabilities, 514  
that were transferred, or caused to be transferred, directly or 515  
indirectly, to the trust by any of the following: 516

(i) A person, a court, or a governmental entity or 517

instrumentality on account of the death of a decedent, but only 518  
if the trust is described in division (I) (3) (e) (i) or (ii) of 519  
this section; 520

(ii) A person who was domiciled in this state for the 521  
purposes of this chapter when the person directly or indirectly 522  
transferred assets to an irrevocable trust, but only if at least 523  
one of the trust's qualifying beneficiaries is domiciled in this 524  
state for the purposes of this chapter during all or some 525  
portion of the trust's current taxable year; 526

(iii) A person who was domiciled in this state for the 527  
purposes of this chapter when the trust document or instrument 528  
or part of the trust document or instrument became irrevocable, 529  
but only if at least one of the trust's qualifying beneficiaries 530  
is a resident domiciled in this state for the purposes of this 531  
chapter during all or some portion of the trust's current 532  
taxable year. If a trust document or instrument became 533  
irrevocable upon the death of a person who at the time of death 534  
was domiciled in this state for purposes of this chapter, that 535  
person is a person described in division (I) (3) (a) (iii) of this 536  
section. 537

(b) A trust is irrevocable to the extent that the 538  
transferor is not considered to be the owner of the net assets 539  
of the trust under sections 671 to 678 of the Internal Revenue 540  
Code. 541

(c) With respect to a trust other than a charitable lead 542  
trust, "qualifying beneficiary" has the same meaning as 543  
"potential current beneficiary" as defined in section 1361(e) (2) 544  
of the Internal Revenue Code, and with respect to a charitable 545  
lead trust "qualifying beneficiary" is any current, future, or 546  
contingent beneficiary, but with respect to any trust 547

"qualifying beneficiary" excludes a person or a governmental 548  
entity or instrumentality to any of which a contribution would 549  
qualify for the charitable deduction under section 170 of the 550  
Internal Revenue Code. 551

(d) For the purposes of division (I)(3)(a) of this 552  
section, the extent to which a trust consists directly or 553  
indirectly, in whole or in part, of assets, net of any related 554  
liabilities, that were transferred directly or indirectly, in 555  
whole or part, to the trust by any of the sources enumerated in 556  
that division shall be ascertained by multiplying the fair 557  
market value of the trust's assets, net of related liabilities, 558  
by the qualifying ratio, which shall be computed as follows: 559

(i) The first time the trust receives assets, the 560  
numerator of the qualifying ratio is the fair market value of 561  
those assets at that time, net of any related liabilities, from 562  
sources enumerated in division (I)(3)(a) of this section. The 563  
denominator of the qualifying ratio is the fair market value of 564  
all the trust's assets at that time, net of any related 565  
liabilities. 566

(ii) Each subsequent time the trust receives assets, a 567  
revised qualifying ratio shall be computed. The numerator of the 568  
revised qualifying ratio is the sum of (1) the fair market value 569  
of the trust's assets immediately prior to the subsequent 570  
transfer, net of any related liabilities, multiplied by the 571  
qualifying ratio last computed without regard to the subsequent 572  
transfer, and (2) the fair market value of the subsequently 573  
transferred assets at the time transferred, net of any related 574  
liabilities, from sources enumerated in division (I)(3)(a) of 575  
this section. The denominator of the revised qualifying ratio is 576  
the fair market value of all the trust's assets immediately 577

after the subsequent transfer, net of any related liabilities. 578

(iii) Whether a transfer to the trust is by or from any of 579  
the sources enumerated in division (I) (3) (a) of this section 580  
shall be ascertained without regard to the domicile of the 581  
trust's beneficiaries. 582

(e) For the purposes of division (I) (3) (a) (i) of this 583  
section: 584

(i) A trust is described in division (I) (3) (e) (i) of this 585  
section if the trust is a testamentary trust and the testator of 586  
that testamentary trust was domiciled in this state at the time 587  
of the testator's death for purposes of the taxes levied under 588  
Chapter 5731. of the Revised Code. 589

(ii) A trust is described in division (I) (3) (e) (ii) of 590  
this section if the transfer is a qualifying transfer described 591  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 592  
trust is an irrevocable inter vivos trust, and at least one of 593  
the trust's qualifying beneficiaries is domiciled in this state 594  
for purposes of this chapter during all or some portion of the 595  
trust's current taxable year. 596

(f) For the purposes of division (I) (3) (e) (ii) of this 597  
section, a "qualifying transfer" is a transfer of assets, net of 598  
any related liabilities, directly or indirectly to a trust, if 599  
the transfer is described in any of the following: 600

(i) The transfer is made to a trust, created by the 601  
decedent before the decedent's death and while the decedent was 602  
domiciled in this state for the purposes of this chapter, and, 603  
prior to the death of the decedent, the trust became irrevocable 604  
while the decedent was domiciled in this state for the purposes 605  
of this chapter. 606

(ii) The transfer is made to a trust to which the 607  
decedent, prior to the decedent's death, had directly or 608  
indirectly transferred assets, net of any related liabilities, 609  
while the decedent was domiciled in this state for the purposes 610  
of this chapter, and prior to the death of the decedent the 611  
trust became irrevocable while the decedent was domiciled in 612  
this state for the purposes of this chapter. 613

(iii) The transfer is made on account of a contractual 614  
relationship existing directly or indirectly between the 615  
transferor and either the decedent or the estate of the decedent 616  
at any time prior to the date of the decedent's death, and the 617  
decedent was domiciled in this state at the time of death for 618  
purposes of the taxes levied under Chapter 5731. of the Revised 619  
Code. 620

(iv) The transfer is made to a trust on account of a 621  
contractual relationship existing directly or indirectly between 622  
the transferor and another person who at the time of the 623  
decedent's death was domiciled in this state for purposes of 624  
this chapter. 625

(v) The transfer is made to a trust on account of the will 626  
of a testator who was domiciled in this state at the time of the 627  
testator's death for purposes of the taxes levied under Chapter 628  
5731. of the Revised Code. 629

(vi) The transfer is made to a trust created by or caused 630  
to be created by a court, and the trust was directly or 631  
indirectly created in connection with or as a result of the 632  
death of an individual who, for purposes of the taxes levied 633  
under Chapter 5731. of the Revised Code, was domiciled in this 634  
state at the time of the individual's death. 635

(g) The tax commissioner may adopt rules to ascertain the 636  
part of a trust residing in this state. 637

(J) "Nonresident" means an individual or estate that is 638  
not a resident. An individual who is a resident for only part of 639  
a taxable year is a nonresident for the remainder of that 640  
taxable year. 641

(K) "Pass-through entity" has the same meaning as in 642  
section 5733.04 of the Revised Code. 643

(L) "Return" means the notifications and reports required 644  
to be filed pursuant to this chapter for the purpose of 645  
reporting the tax due and includes declarations of estimated tax 646  
when so required. 647

(M) "Taxable year" means the calendar year or the 648  
taxpayer's fiscal year ending during the calendar year, or 649  
fractional part thereof, upon which the adjusted gross income is 650  
calculated pursuant to this chapter. 651

(N) "Taxpayer" means any person subject to the tax imposed 652  
by section 5747.02 of the Revised Code or any pass-through 653  
entity that makes the election under division (D) of section 654  
5747.08 of the Revised Code. 655

(O) "Dependents" means one of the following: 656

(1) For taxable years beginning on or after January 1, 657  
2018, and before January 1, 2026, dependents as defined in the 658  
Internal Revenue Code; 659

(2) For all other taxable years, dependents as defined in 660  
the Internal Revenue Code and as claimed in the taxpayer's 661  
federal income tax return for the taxable year or which the 662  
taxpayer would have been permitted to claim had the taxpayer 663

filed a federal income tax return. 664

(P) "Principal county of employment" means, in the case of 665  
a nonresident, the county within the state in which a taxpayer 666  
performs services for an employer or, if those services are 667  
performed in more than one county, the county in which the major 668  
portion of the services are performed. 669

(Q) As used in sections 5747.50 to 5747.55 of the Revised 670  
Code: 671

(1) "Subdivision" means any county, municipal corporation, 672  
park district, or township. 673

(2) "Essential local government purposes" includes all 674  
functions that any subdivision is required by general law to 675  
exercise, including like functions that are exercised under a 676  
charter adopted pursuant to the Ohio Constitution. 677

(R) "Overpayment" means any amount already paid that 678  
exceeds the figure determined to be the correct amount of the 679  
tax. 680

(S) "Taxable income" or "Ohio taxable income" applies only 681  
to estates and trusts, and means federal taxable income, as 682  
defined and used in the Internal Revenue Code, adjusted as 683  
follows: 684

(1) Add interest or dividends, net of ordinary, necessary, 685  
and reasonable expenses not deducted in computing federal 686  
taxable income, on obligations or securities of any state or of 687  
any political subdivision or authority of any state, other than 688  
this state and its subdivisions and authorities, but only to the 689  
extent that such net amount is not otherwise includible in Ohio 690  
taxable income and is described in either division (S) (1) (a) or 691  
(b) of this section: 692



(a) The net amount is not attributable to the S portion of 693  
an electing small business trust and has not been distributed to 694  
beneficiaries for the taxable year; 695

(b) The net amount is attributable to the S portion of an 696  
electing small business trust for the taxable year. 697

(2) Add interest or dividends, net of ordinary, necessary, 698  
and reasonable expenses not deducted in computing federal 699  
taxable income, on obligations of any authority, commission, 700  
instrumentality, territory, or possession of the United States 701  
to the extent that the interest or dividends are exempt from 702  
federal income taxes but not from state income taxes, but only 703  
to the extent that such net amount is not otherwise includible 704  
in Ohio taxable income and is described in either division (S) 705  
(1) (a) or (b) of this section; 706

(3) Add the amount of personal exemption allowed to the 707  
estate pursuant to section 642(b) of the Internal Revenue Code; 708

(4) Deduct interest or dividends, net of related expenses 709  
deducted in computing federal taxable income, on obligations of 710  
the United States and its territories and possessions or of any 711  
authority, commission, or instrumentality of the United States 712  
to the extent that the interest or dividends are exempt from 713  
state taxes under the laws of the United States, but only to the 714  
extent that such amount is included in federal taxable income 715  
and is described in either division (S) (1) (a) or (b) of this 716  
section; 717

(5) Deduct the amount of wages and salaries, if any, not 718  
otherwise allowable as a deduction but that would have been 719  
allowable as a deduction in computing federal taxable income for 720  
the taxable year, had the targeted jobs credit allowed under 721

sections 38, 51, and 52 of the Internal Revenue Code not been in 722  
effect, but only to the extent such amount relates either to 723  
income included in federal taxable income for the taxable year 724  
or to income of the S portion of an electing small business 725  
trust for the taxable year; 726

(6) Deduct any interest or interest equivalent, net of 727  
related expenses deducted in computing federal taxable income, 728  
on public obligations and purchase obligations, but only to the 729  
extent that such net amount relates either to income included in 730  
federal taxable income for the taxable year or to income of the 731  
S portion of an electing small business trust for the taxable 732  
year; 733

(7) Add any loss or deduct any gain resulting from sale, 734  
exchange, or other disposition of public obligations to the 735  
extent that such loss has been deducted or such gain has been 736  
included in computing either federal taxable income or income of 737  
the S portion of an electing small business trust for the 738  
taxable year; 739

(8) Except in the case of the final return of an estate, 740  
add any amount deducted by the taxpayer on both its Ohio estate 741  
tax return pursuant to section 5731.14 of the Revised Code, and 742  
on its federal income tax return in determining federal taxable 743  
income; 744

(9) (a) Deduct any amount included in federal taxable 745  
income solely because the amount represents a reimbursement or 746  
refund of expenses that in a previous year the decedent had 747  
deducted as an itemized deduction pursuant to section 63 of the 748  
Internal Revenue Code and applicable treasury regulations. The 749  
deduction otherwise allowed under division (S) (9) (a) of this 750  
section shall be reduced to the extent the reimbursement is 751

attributable to an amount the taxpayer or decedent deducted 752  
under this section in any taxable year. 753

(b) Add any amount not otherwise included in Ohio taxable 754  
income for any taxable year to the extent that the amount is 755  
attributable to the recovery during the taxable year of any 756  
amount deducted or excluded in computing federal or Ohio taxable 757  
income in any taxable year, but only to the extent such amount 758  
has not been distributed to beneficiaries for the taxable year. 759

(10) Deduct any portion of the deduction described in 760  
section 1341(a) (2) of the Internal Revenue Code, for repaying 761  
previously reported income received under a claim of right, that 762  
meets both of the following requirements: 763

(a) It is allowable for repayment of an item that was 764  
included in the taxpayer's taxable income or the decedent's 765  
adjusted gross income for a prior taxable year and did not 766  
qualify for a credit under division (A) or (B) of section 767  
5747.05 of the Revised Code for that year. 768

(b) It does not otherwise reduce the taxpayer's taxable 769  
income or the decedent's adjusted gross income for the current 770  
or any other taxable year. 771

(11) Add any amount claimed as a credit under section 772  
5747.059 of the Revised Code to the extent that the amount 773  
satisfies either of the following: 774

(a) The amount was deducted or excluded from the 775  
computation of the taxpayer's federal taxable income as required 776  
to be reported for the taxpayer's taxable year under the 777  
Internal Revenue Code; 778

(b) The amount resulted in a reduction in the taxpayer's 779  
federal taxable income as required to be reported for any of the 780

taxpayer's taxable years under the Internal Revenue Code. 781

(12) Deduct any amount, net of related expenses deducted 782  
in computing federal taxable income, that a trust is required to 783  
report as farm income on its federal income tax return, but only 784  
if the assets of the trust include at least ten acres of land 785  
satisfying the definition of "land devoted exclusively to 786  
agricultural use" under section 5713.30 of the Revised Code, 787  
regardless of whether the land is valued for tax purposes as 788  
such land under sections 5713.30 to 5713.38 of the Revised Code. 789  
If the trust is a pass-through entity investor, section 5747.231 790  
of the Revised Code applies in ascertaining if the trust is 791  
eligible to claim the deduction provided by division (S) (12) of 792  
this section in connection with the pass-through entity's farm 793  
income. 794

Except for farm income attributable to the S portion of an 795  
electing small business trust, the deduction provided by 796  
division (S) (12) of this section is allowed only to the extent 797  
that the trust has not distributed such farm income. Division 798  
(S) (12) of this section applies only to taxable years of a trust 799  
beginning in 2002 or thereafter. 800

(13) Add the net amount of income described in section 801  
641(c) of the Internal Revenue Code to the extent that amount is 802  
not included in federal taxable income. 803

(14) Add or deduct the amount the taxpayer would be 804  
required to add or deduct under division (A) (20) or (21) of this 805  
section if the taxpayer's Ohio taxable income were computed in 806  
the same manner as an individual's Ohio adjusted gross income is 807  
computed under this section. In the case of a trust, division 808  
(S) (14) of this section applies only to any of the trust's 809  
taxable years beginning in 2002 or thereafter. 810

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

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

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

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

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

(Y) "Month" means a calendar month.

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

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

(2) "Qualified tuition and fees" means tuition and fees 840  
imposed by an eligible institution as a condition of enrollment 841  
or attendance, not exceeding two thousand five hundred dollars 842  
in each of the individual's first two years of post-secondary 843  
education. If the individual is a part-time student, "qualified 844  
tuition and fees" includes tuition and fees paid for the 845  
academic equivalent of the first two years of post-secondary 846  
education during a maximum of five taxable years, not exceeding 847  
a total of five thousand dollars. "Qualified tuition and fees" 848  
does not include: 849

(a) Expenses for any course or activity involving sports, 850  
games, or hobbies unless the course or activity is part of the 851  
individual's degree or diploma program; 852

(b) The cost of books, room and board, student activity 853  
fees, athletic fees, insurance expenses, or other expenses 854  
unrelated to the individual's academic course of instruction; 855

(c) Tuition, fees, or other expenses paid or reimbursed 856  
through an employer, scholarship, grant in aid, or other 857  
educational benefit program. 858

(BB)(1) "Modified business income" means the business 859  
income included in a trust's Ohio taxable income after such 860  
taxable income is first reduced by the qualifying trust amount, 861  
if any. 862

(2) "Qualifying trust amount" of a trust means capital 863  
gains and losses from the sale, exchange, or other disposition 864  
of equity or ownership interests in, or debt obligations of, a 865  
qualifying investee to the extent included in the trust's Ohio 866  
taxable income, but only if the following requirements are 867  
satisfied: 868

(a) The book value of the qualifying investee's physical 869  
assets in this state and everywhere, as of the last day of the 870  
qualifying investee's fiscal or calendar year ending immediately 871  
prior to the date on which the trust recognizes the gain or 872  
loss, is available to the trust. 873

(b) The requirements of section 5747.011 of the Revised 874  
Code are satisfied for the trust's taxable year in which the 875  
trust recognizes the gain or loss. 876

Any gain or loss that is not a qualifying trust amount is 877  
modified business income, qualifying investment income, or 878  
modified nonbusiness income, as the case may be. 879

(3) "Modified nonbusiness income" means a trust's Ohio 880  
taxable income other than modified business income, other than 881  
the qualifying trust amount, and other than qualifying 882  
investment income, as defined in section 5747.012 of the Revised 883  
Code, to the extent such qualifying investment income is not 884  
otherwise part of modified business income. 885

(4) "Modified Ohio taxable income" applies only to trusts, 886  
and means the sum of the amounts described in divisions (BB) (4) 887  
(a) to (c) of this section: 888

(a) The fraction, calculated under section 5747.013, and 889  
applying section 5747.231 of the Revised Code, multiplied by the 890  
sum of the following amounts: 891

(i) The trust's modified business income; 892

(ii) The trust's qualifying investment income, as defined 893  
in section 5747.012 of the Revised Code, but only to the extent 894  
the qualifying investment income does not otherwise constitute 895  
modified business income and does not otherwise constitute a 896  
qualifying trust amount. 897

(b) The qualifying trust amount multiplied by a fraction, 898  
the numerator of which is the sum of the book value of the 899  
qualifying investee's physical assets in this state on the last 900  
day of the qualifying investee's fiscal or calendar year ending 901  
immediately prior to the day on which the trust recognizes the 902  
qualifying trust amount, and the denominator of which is the sum 903  
of the book value of the qualifying investee's total physical 904  
assets everywhere on the last day of the qualifying investee's 905  
fiscal or calendar year ending immediately prior to the day on 906  
which the trust recognizes the qualifying trust amount. If, for 907  
a taxable year, the trust recognizes a qualifying trust amount 908  
with respect to more than one qualifying investee, the amount 909  
described in division (BB) (4) (b) of this section shall equal the 910  
sum of the products so computed for each such qualifying 911  
investee. 912

(c) (i) With respect to a trust or portion of a trust that 913  
is a resident as ascertained in accordance with division (I) (3) 914  
(d) of this section, its modified nonbusiness income. 915

(ii) With respect to a trust or portion of a trust that is 916  
not a resident as ascertained in accordance with division (I) (3) 917  
(d) of this section, the amount of its modified nonbusiness 918  
income satisfying the descriptions in divisions (B) (2) to (5) of 919  
section 5747.20 of the Revised Code, except as otherwise 920  
provided in division (BB) (4) (c) (ii) of this section. With 921  
respect to a trust or portion of a trust that is not a resident 922  
as ascertained in accordance with division (I) (3) (d) of this 923  
section, the trust's portion of modified nonbusiness income 924  
recognized from the sale, exchange, or other disposition of a 925  
debt interest in or equity interest in a section 5747.212 926  
entity, as defined in section 5747.212 of the Revised Code, 927  
without regard to division (A) of that section, shall not be 928



allocated to this state in accordance with section 5747.20 of 929  
the Revised Code but shall be apportioned to this state in 930  
accordance with division (B) of section 5747.212 of the Revised 931  
Code without regard to division (A) of that section. 932

If the allocation and apportionment of a trust's income 933  
under divisions (BB) (4) (a) and (c) of this section do not fairly 934  
represent the modified Ohio taxable income of the trust in this 935  
state, the alternative methods described in division (C) of 936  
section 5747.21 of the Revised Code may be applied in the manner 937  
and to the same extent provided in that section. 938

(5) (a) Except as set forth in division (BB) (5) (b) of this 939  
section, "qualifying investee" means a person in which a trust 940  
has an equity or ownership interest, or a person or unit of 941  
government the debt obligations of either of which are owned by 942  
a trust. For the purposes of division (BB) (2) (a) of this section 943  
and for the purpose of computing the fraction described in 944  
division (BB) (4) (b) of this section, all of the following apply: 945

(i) If the qualifying investee is a member of a qualifying 946  
controlled group on the last day of the qualifying investee's 947  
fiscal or calendar year ending immediately prior to the date on 948  
which the trust recognizes the gain or loss, then "qualifying 949  
investee" includes all persons in the qualifying controlled 950  
group on such last day. 951

(ii) If the qualifying investee, or if the qualifying 952  
investee and any members of the qualifying controlled group of 953  
which the qualifying investee is a member on the last day of the 954  
qualifying investee's fiscal or calendar year ending immediately 955  
prior to the date on which the trust recognizes the gain or 956  
loss, separately or cumulatively own, directly or indirectly, on 957  
the last day of the qualifying investee's fiscal or calendar 958

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

(iii) For the purposes of division (BB) (5) (a) (iii) of this 969  
section, "upper level pass-through entity" means a pass-through 970  
entity directly or indirectly owning any equity of another pass- 971  
through entity, and "lower level pass-through entity" means that 972  
other pass-through entity. 973

An upper level pass-through entity, whether or not it is 974  
also a qualifying investee, is deemed to own, on the last day of 975  
the upper level pass-through entity's calendar or fiscal year, 976  
the proportionate share of the lower level pass-through entity's 977  
physical assets that the lower level pass-through entity 978  
directly or indirectly owns on the last day of the lower level 979  
pass-through entity's calendar or fiscal year ending within or 980  
with the last day of the upper level pass-through entity's 981  
fiscal or calendar year. If the upper level pass-through entity 982  
directly and indirectly owns less than fifty per cent of the 983  
equity of the lower level pass-through entity on each day of the 984  
upper level pass-through entity's calendar or fiscal year in 985  
which or with which ends the calendar or fiscal year of the 986  
lower level pass-through entity and if, based upon clear and 987  
convincing evidence, complete information about the location and 988  
cost of the physical assets of the lower pass-through entity is 989

not available to the upper level pass-through entity, then 990  
solely for purposes of ascertaining if a gain or loss 991  
constitutes a qualifying trust amount, the upper level pass- 992  
through entity shall be deemed as owning no equity of the lower 993  
level pass-through entity for each day during the upper level 994  
pass-through entity's calendar or fiscal year in which or with 995  
which ends the lower level pass-through entity's calendar or 996  
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 997  
shall be construed to provide for any deduction or exclusion in 998  
computing any trust's Ohio taxable income. 999

(b) With respect to a trust that is not a resident for the 1000  
taxable year and with respect to a part of a trust that is not a 1001  
resident for the taxable year, "qualifying investee" for that 1002  
taxable year does not include a C corporation if both of the 1003  
following apply: 1004

(i) During the taxable year the trust or part of the trust 1005  
recognizes a gain or loss from the sale, exchange, or other 1006  
disposition of equity or ownership interests in, or debt 1007  
obligations of, the C corporation. 1008

(ii) Such gain or loss constitutes nonbusiness income. 1009

(6) "Available" means information is such that a person is 1010  
able to learn of the information by the due date plus 1011  
extensions, if any, for filing the return for the taxable year 1012  
in which the trust recognizes the gain or loss. 1013

(CC) "Qualifying controlled group" has the same meaning as 1014  
in section 5733.04 of the Revised Code. 1015

(DD) "Related member" has the same meaning as in section 1016  
5733.042 of the Revised Code. 1017

(EE) (1) For the purposes of division (EE) of this section: 1018

(a) "Qualifying person" means any person other than a 1019  
qualifying corporation. 1020

(b) "Qualifying corporation" means any person classified 1021  
for federal income tax purposes as an association taxable as a 1022  
corporation, except either of the following: 1023

(i) A corporation that has made an election under 1024  
subchapter S, chapter one, subtitle A, of the Internal Revenue 1025  
Code for its taxable year ending within, or on the last day of, 1026  
the investor's taxable year; 1027

(ii) A subsidiary that is wholly owned by any corporation 1028  
that has made an election under subchapter S, chapter one, 1029  
subtitle A of the Internal Revenue Code for its taxable year 1030  
ending within, or on the last day of, the investor's taxable 1031  
year. 1032

(2) For the purposes of this chapter, unless expressly 1033  
stated otherwise, no qualifying person indirectly owns any asset 1034  
directly or indirectly owned by any qualifying corporation. 1035

(FF) For purposes of this chapter and Chapter 5751. of the 1036  
Revised Code: 1037

(1) "Trust" does not include a qualified pre-income tax 1038  
trust. 1039

(2) A "qualified pre-income tax trust" is any pre-income 1040  
tax trust that makes a qualifying pre-income tax trust election 1041  
as described in division (FF) (3) of this section. 1042

(3) A "qualifying pre-income tax trust election" is an 1043  
election by a pre-income tax trust to subject to the tax imposed 1044  
by section 5751.02 of the Revised Code the pre-income tax trust 1045  
and all pass-through entities of which the trust owns or 1046

controls, directly, indirectly, or constructively through 1047  
related interests, five per cent or more of the ownership or 1048  
equity interests. The trustee shall notify the tax commissioner 1049  
in writing of the election on or before April 15, 2006. The 1050  
election, if timely made, shall be effective on and after 1051  
January 1, 2006, and shall apply for all tax periods and tax 1052  
years until revoked by the trustee of the trust. 1053

(4) A "pre-income tax trust" is a trust that satisfies all 1054  
of the following requirements: 1055

(a) The document or instrument creating the trust was 1056  
executed by the grantor before January 1, 1972; 1057

(b) The trust became irrevocable upon the creation of the 1058  
trust; and 1059

(c) The grantor was domiciled in this state at the time 1060  
the trust was created. 1061

(GG) "Uniformed services" has the same meaning as in 10 1062  
U.S.C. 101. 1063

(HH) "Taxable business income" means the amount by which 1064  
an individual's eligible business income that is included in 1065  
federal adjusted gross income exceeds the amount of eligible 1066  
business income the individual is authorized to deduct under 1067  
division (A) (31) of this section for the taxable year. 1068

(II) "Employer" does not include a franchisor with respect 1069  
to the franchisor's relationship with a franchisee or an 1070  
employee of a franchisee, unless the franchisor agrees to assume 1071  
that role in writing or a court of competent jurisdiction 1072  
determines that the franchisor exercises a type or degree of 1073  
control over the franchisee or the franchisee's employees that 1074  
is not customarily exercised by a franchisor for the purpose of 1075

protecting the franchisor's trademark, brand, or both. For 1076  
purposes of this division, "franchisor" and "franchisee" have 1077  
the same meanings as in 16 C.F.R. 436.1. 1078

(JJ) "Modified adjusted gross income" means Ohio adjusted 1079  
gross income plus any amount deducted under division (A) (31) of 1080  
this section for the taxable year. 1081

**Sec. 5747.70.** (A) In computing Ohio adjusted gross income, 1082  
a deduction from federal adjusted gross income is allowed to a 1083  
~~contributor for the amount contributed during the taxable year~~ 1084  
~~taxpayer who contributes to a variable college savings program~~ 1085  
~~account and to a purchaser of or purchases~~ tuition units under 1086  
~~the Ohio college savings program created by Chapter 3334. of the~~ 1087  
~~Revised Code~~ a qualified tuition program established in 1088  
accordance with section 529 of the Internal Revenue Code. The 1089  
amount of the deduction shall equal the amount contributed or 1090  
purchased during the taxable year to the extent that the amounts 1091  
of such contributions and purchases were not deducted in 1092  
determining the contributor's or purchaser's federal adjusted 1093  
gross income for the taxable year. The combined amount of 1094  
contributions and purchases deducted in any taxable year by a 1095  
taxpayer or the taxpayer and the taxpayer's spouse, regardless 1096  
of whether the taxpayer and the taxpayer's spouse file separate 1097  
returns or a joint return, is limited to four thousand dollars 1098  
for each beneficiary for whom contributions or purchases are 1099  
made. If the combined annual contributions and purchases for a 1100  
beneficiary exceed four thousand dollars, the excess may be 1101  
carried forward and deducted in future taxable years until the 1102  
contributions and purchases have been fully deducted. 1103

(B) In computing Ohio adjusted gross income, a deduction 1104  
from federal adjusted gross income is allowed for: 1105

(1) Income related to tuition units and contributions that 1106  
as of the end of the taxable year have not been refunded 1107  
pursuant to the termination of a qualified tuition program 1108  
payment contract or ~~variable college savings program~~ account 1109  
~~under section 3334.10 of the Revised Code,~~ to the extent that 1110  
such income is included in federal adjusted gross income. 1111

(2) The excess of the total purchase price of tuition 1112  
units refunded during the taxable year pursuant to the 1113  
termination of a qualified tuition program payment contract 1114  
~~under section 3334.10 of the Revised Code~~ over the amount of the 1115  
refund, to the extent the amount of the excess was not deducted 1116  
in determining federal adjusted gross income. Division (B) (2) of 1117  
this section applies only to units for which no deduction was 1118  
allowable under division (A) of this section. 1119

(C) In computing Ohio adjusted gross income, there shall 1120  
be added to federal adjusted gross income the amount of loss 1121  
related to tuition units and contributions that as of the end of 1122  
the taxable year have not been refunded pursuant to the 1123  
termination of a qualified tuition program payment contract or 1124  
~~variable college savings program~~ account ~~under section 3334.10~~ 1125  
~~of the Revised Code,~~ to the extent that such loss was deducted 1126  
in determining federal adjusted gross income. 1127

(D) For taxable years in which distributions or refunds 1128  
are made under a qualified tuition ~~payment or variable college~~ 1129  
~~savings program contract~~ program for any reason other than 1130  
payment of higher education expenses, or the beneficiary's 1131  
death, disability, or receipt of a scholarship as described in 1132  
section 3334.10 of the Revised Code: 1133

(1) If the distribution or refund is paid to the purchaser 1134  
or contributor or beneficiary, any portion of the distribution 1135

or refund not included in the recipient's federal adjusted gross 1136  
income shall be added to the recipient's federal adjusted gross 1137  
income in determining the recipient's Ohio adjusted gross 1138  
income, except that the amount added shall not exceed amounts 1139  
previously deducted under division (A) of this section less any 1140  
amounts added under division (D) (1) of this section in a prior 1141  
taxable year. 1142

(2) If amounts paid by a purchaser or contributor on or 1143  
after January 1, 2000, are distributed or refunded to someone 1144  
other than the purchaser or contributor or beneficiary, the 1145  
amount of the payment not included in the recipient's federal 1146  
adjusted gross income, less any amounts added under division (D) 1147  
of this section in a prior taxable year, shall be added to the 1148  
recipient's federal adjusted gross income in determining the 1149  
recipient's Ohio adjusted gross income. 1150

**Section 2.** That existing sections 5747.01 and 5747.70 of 1151  
the Revised Code are hereby repealed. 1152

**Section 3.** The amendment by this act of section 5747.70 of 1153  
the Revised Code applies to taxable years beginning on or after 1154  
January 1, 2019. 1155

Nothing in this act shall limit the ability of a taxpayer 1156  
whose combined contributions to an Ohio variable college savings 1157  
program account and purchases of tuition units under the Ohio 1158  
college savings program for a beneficiary exceeded four thousand 1159  
dollars in a taxable year beginning before January 1, 2019, from 1160  
carrying forward and deducting the excess in taxable years 1161  
beginning on or after January 1, 2019. 1162

**Section 4.** Section 5747.01 of the Revised Code is 1163  
presented in this act as a composite of the section as amended 1164



by H.B. 166 of the 133rd General Assembly and H.B. 24 and S.B. 1165  
22 both of the 132nd General Assembly. The General Assembly, 1166  
applying the principle stated in division (B) of section 1.52 of 1167  
the Revised Code that amendments are to be harmonized if 1168  
reasonably capable of simultaneous operation, finds that the 1169  
composite is the resulting version of the section in effect 1170  
prior to the effective date of the section as presented in this 1171  
act. 1172