

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**S. B. No. 125**

**Senators Hottinger, Brenner**

**Cosponsors: Senators Terhar, Wilson, Fedor**

---

**A BILL**

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

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

**Section 1.** That sections 5747.01 and 5747.70 of the  
Revised Code be amended to read as follows:

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

As used in this chapter:

(A) "Adjusted gross income" or "Ohio adjusted gross

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 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 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 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 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 491  
months ending on the last day of any month other than December. 492

(G) "Individual" means any natural person. 493

(H) "Internal Revenue Code" means the "Internal Revenue 494  
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 495

(I) "Resident" means any of the following, provided that 496  
division (I) (3) of this section applies only to taxable years of 497  
a trust beginning in 2002 or thereafter: 498

(1) An individual who is domiciled in this state, subject 499  
to section 5747.24 of the Revised Code; 500

(2) The estate of a decedent who at the time of death was 501  
domiciled in this state. The domicile tests of section 5747.24 502  
of the Revised Code are not controlling for purposes of division 503  
(I) (2) of this section. 504

(3) A trust that, in whole or part, resides in this state. 505  
If only part of a trust resides in this state, the trust is a 506  
resident only with respect to that part. 507

For the purposes of division (I) (3) of this section: 508

(a) A trust resides in this state for the trust's current 509  
taxable year to the extent, as described in division (I) (3) (d) 510  
of this section, that the trust consists directly or indirectly, 511  
in whole or in part, of assets, net of any related liabilities, 512  
that were transferred, or caused to be transferred, directly or 513  
indirectly, to the trust by any of the following: 514

(i) A person, a court, or a governmental entity or 515  
instrumentality on account of the death of a decedent, but only 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  
680  
681  
682  
683  
684  
685  
686

(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 1016  
corporation, except either of the following: 1017

(i) A corporation that has made an election under 1018  
subchapter S, chapter one, subtitle A, of the Internal Revenue 1019  
Code for its taxable year ending within, or on the last day of, 1020  
the investor's taxable year; 1021

(ii) A subsidiary that is wholly owned by any corporation 1022  
that has made an election under subchapter S, chapter one, 1023  
subtitle A of the Internal Revenue Code for its taxable year 1024  
ending within, or on the last day of, the investor's taxable 1025  
year. 1026

(2) For the purposes of this chapter, unless expressly 1027  
stated otherwise, no qualifying person indirectly owns any asset 1028  
directly or indirectly owned by any qualifying corporation. 1029

(FF) For purposes of this chapter and Chapter 5751. of the 1030  
Revised Code: 1031

(1) "Trust" does not include a qualified pre-income tax 1032  
trust. 1033

(2) A "qualified pre-income tax trust" is any pre-income 1034  
tax trust that makes a qualifying pre-income tax trust election 1035  
as described in division (FF) (3) of this section. 1036

(3) A "qualifying pre-income tax trust election" is an 1037  
election by a pre-income tax trust to subject to the tax imposed 1038  
by section 5751.02 of the Revised Code the pre-income tax trust 1039  
and all pass-through entities of which the trust owns or 1040  
controls, directly, indirectly, or constructively through 1041  
related interests, five per cent or more of the ownership or 1042  
equity interests. The trustee shall notify the tax commissioner 1043  
in writing of the election on or before April 15, 2006. The 1044

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