

As Reported by the Senate Ways and Means Committee

133rd General Assembly

Regular Session

2019-2020

Sub. S. B. No. 125

Senators Hottinger, Brenner

Cosponsors: Senators Terhar, Wilson, Fedor, Roegner, Hackett

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)(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 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) 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