

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 5

Representatives Hillyer, Leland

A BILL

To amend section 5747.01 and to enact sections 1
120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 2
120.67, and 120.68 of the Revised Code to 3
establish the Ohio Public Defender State Loan 4
Repayment Program. 5

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

Section 1. That section 5747.01 be amended and sections 6
120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 120.67, and 7
120.68 of the Revised Code be enacted to read as follows: 8

Sec. 120.61. As used in sections 120.61 to 120.68 of the 9
Revised Code: 10

"Employed as a public defender" means an attorney employed 11
by the state public defender, a county public defender 12
commission, or a joint county public defender commission to 13
represent indigent persons. 14

"Full-time practice" means working a minimum of forty 15
hours per week for a minimum of forty-five weeks each service 16
year. 17

"Part-time practice" means working a minimum of twenty and 18

a maximum of thirty-nine hours per week for a minimum of forty-five weeks per service year.

"Teaching activities" means providing education to students regarding the attorney's normal course of practice and expertise as a public defender.

Sec. 120.62. There is hereby created the Ohio public defender state loan repayment program, which shall be administered by the state public defender. The program shall provide loan repayment on behalf of attorneys who agree to employment as public defenders in areas designated as public defender shortage areas by the state public defender pursuant to section 120.63 of the Revised Code.

Under the program, the state public defender, by means of a contract entered into under section 120.66 of the Revised Code, may agree to repay up to the amount set pursuant to section 120.66 of the Revised Code of the principal and interest of a government or other educational loan taken by an individual for the following expenses, so long as the expenses were incurred while the individual was enrolled in, for up to a maximum of three years, a law school in the United States that was, during the time enrolled, accredited by the American bar association, or a law school located outside the United States for which the individual received a foreign equivalency evaluation:

(A) Tuition;

(B) Other educational expenses, such as fees, books, and expenses, for specific purposes and in amounts determined to be reasonable by the state public defender;

(C) Room and board, in an amount determined reasonable by

the state public defender.

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Sec. 120.63. The state public defender shall designate
public defender shortage areas in this state based on case load
relative to the number of public defenders. The designations
shall be made by rule and may apply geographically by county.

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Sec. 120.64. (A) An individual who meets both of the
following requirements may apply for participation in the Ohio
public defender state loan repayment program:

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(1) The individual is a citizen of the United States, a
national of the United States, or a permanent resident of the
United States.

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(2) The individual either:

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(a) Is a student enrolled in the final year of law school;
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(b) Has been admitted to the practice of law in this state
by the Ohio supreme court and remains in good standing.

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(B) An application for participation in the Ohio public
defender state loan repayment program shall be submitted to the
state public defender on a form that the state public defender
shall prescribe. The individual shall submit the following
information with an application:

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(1) The individual's name, permanent address or address at
which the individual is currently residing if different from the
permanent address, and telephone number;

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(2) The law school the individual is attending or
attended, the dates of attendance, and verification of
attendance;

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<u>(3) The individual's employer, as applicable;</u>	75
<u>(4) A summary and verification of the educational expenses</u>	76
<u>for which the individual seeks reimbursement under the program;</u>	77
<u>(5) Verification that the individual has been admitted to</u>	78
<u>the practice of law in this state by the Ohio supreme court and</u>	79
<u>remains in good standing, unless the individual is a student;</u>	80
<u>(6) Verification the individual is a citizen of the United</u>	81
<u>States, a national of the United States, or a permanent resident</u>	82
<u>of the United States.</u>	83
<u>Sec. 120.65. If funds are available in the Ohio public</u>	84
<u>defender state loan repayment fund created under section 120.67</u>	85
<u>of the Revised Code and the general assembly has appropriated</u>	86
<u>funds for the Ohio public defender state loan repayment program,</u>	87
<u>the state public defender shall approve an individual for</u>	88
<u>participation in the program if the state public defender finds</u>	89
<u>that the individual is eligible for participation in the</u>	90
<u>program.</u>	91
<u>Upon approval, the state public defender shall notify and</u>	92
<u>enter into discussions with the individual. The object of the</u>	93
<u>discussions is to facilitate the recruitment of the individual</u>	94
<u>to become or remain employed as a public defender within a</u>	95
<u>public defender shortage area.</u>	96
<u>If the state public defender and individual agree on the</u>	97
<u>individual's employment as a public defender within a public</u>	98
<u>defender shortage area, the individual shall prepare, sign, and</u>	99
<u>deliver to the state public defender a letter of intent agreeing</u>	100
<u>to that placement.</u>	101
<u>Sec. 120.66. (A) After signing a letter of intent under</u>	102
<u>section 120.65 of the Revised Code, an individual and the state</u>	103

public defender may enter into a contract for the individual's 104
participation in the Ohio public defender state loan repayment 105
program. The individual's employer also may be a party to the 106
contract. 107

(B) The contract shall include all of the following 108
obligations: 109

(1) The individual agrees to remain employed as a public 110
defender within the public defender shortage area identified in 111
the letter of intent for the number of hours and duration 112
specified in the contract; 113

(2) The state public defender agrees, as provided in 114
section 120.62 of the Revised Code, to repay, so long as the 115
individual satisfies the service obligation agreed to under 116
division (B)(1) of this section, the following amount of the 117
principal and interest of a government or other educational loan 118
taken by the individual for expenses described in section 120.62 119
of the Revised Code: 120

(a) For a three-year service obligation, up to fifty 121
thousand dollars to an individual practicing full time or up to 122
twenty-five thousand dollars to an individual practicing part 123
time; 124

(b) For an additional fourth or fifth year of service, up 125
to an additional thirty-five thousand dollars to an individual 126
practicing full time and up to an additional seventeen thousand 127
five hundred dollars to an individual practicing part time. 128

(3) The individual agrees to pay the state public defender 129
an amount established by rules adopted under section 120.68 of 130
the Revised Code if the individual fails to complete the service 131
obligation agreed to under division (B)(1) of this section. 132

(C) The contract shall include the following terms as 133
agreed upon by the parties: 134

(1) The individual's required length of service in the 135
public defender shortage area, which must be at least three 136
years with an optional fourth year and optional fifth year; 137

(2) The number of weekly hours the individual will be 138
engaged in full-time practice or part-time practice in the 139
public defender shortage area; 140

(3) The maximum amount that the state public defender will 141
repay on behalf of the individual; 142

(4) The extent to which the individual's teaching 143
activities will be counted toward the individual's full-time 144
practice or part-time practice hours under the contract. 145

(D) If the amount specified in division (C) (3) of this 146
section includes federal funds, the amount of state funds repaid 147
on the individual's behalf shall be the same as the amount of 148
those federal funds. 149

Sec. 120.67. The state public defender may accept gifts of 150
money from any source for the implementation and administration 151
of sections 120.61 to 120.68 of the Revised Code. The state 152
public defender shall pay all gifts accepted under this section 153
into the state treasury to the credit of the public defender 154
shortage area fund, which is hereby created. 155

The state public defender shall pay all damages collected 156
under division (B) (3) of section 120.66 of the Revised Code into 157
the state treasury to the credit of the public defender loan 158
repayment fund, which is hereby created. 159

The state public defender shall use the public defender 160

shortage area fund and the public defender loan repayment fund 161
for the implementation and administration of sections 120.61 to 162
120.68 of the Revised Code. 163

Sec. 120.68. The state public defender, in accordance with 164
Chapter 119. of the Revised Code, shall adopt rules as necessary 165
to implement and administer sections 120.61 to 120.67 of the 166
Revised Code. 167

Sec. 5747.01. Except as otherwise expressly provided or 168
clearly appearing from the context, any term used in this 169
chapter that is not otherwise defined in this section has the 170
same meaning as when used in a comparable context in the laws of 171
the United States relating to federal income taxes or if not 172
used in a comparable context in those laws, has the same meaning 173
as in section 5733.40 of the Revised Code. Any reference in this 174
chapter to the Internal Revenue Code includes other laws of the 175
United States relating to federal income taxes. 176

As used in this chapter: 177

(A) "Adjusted gross income" or "Ohio adjusted gross 178
income" means federal adjusted gross income, as defined and used 179
in the Internal Revenue Code, adjusted as provided in this 180
section: 181

(1) Add interest or dividends on obligations or securities 182
of any state or of any political subdivision or authority of any 183
state, other than this state and its subdivisions and 184
authorities. 185

(2) Add interest or dividends on obligations of any 186
authority, commission, instrumentality, territory, or possession 187
of the United States to the extent that the interest or 188
dividends are exempt from federal income taxes but not from 189

state income taxes. 190

(3) Deduct interest or dividends on obligations of the 191
United States and its territories and possessions or of any 192
authority, commission, or instrumentality of the United States 193
to the extent that the interest or dividends are included in 194
federal adjusted gross income but exempt from state income taxes 195
under the laws of the United States. 196

(4) Deduct disability and survivor's benefits to the 197
extent included in federal adjusted gross income. 198

(5) Deduct benefits under Title II of the Social Security 199
Act and tier 1 railroad retirement benefits to the extent 200
included in federal adjusted gross income under section 86 of 201
the Internal Revenue Code. 202

(6) In the case of a taxpayer who is a beneficiary of a 203
trust that makes an accumulation distribution as defined in 204
section 665 of the Internal Revenue Code, add, for the 205
beneficiary's taxable years beginning before 2002, the portion, 206
if any, of such distribution that does not exceed the 207
undistributed net income of the trust for the three taxable 208
years preceding the taxable year in which the distribution is 209
made to the extent that the portion was not included in the 210
trust's taxable income for any of the trust's taxable years 211
beginning in 2002 or thereafter. "Undistributed net income of a 212
trust" means the taxable income of the trust increased by (a) (i) 213
the additions to adjusted gross income required under division 214
(A) of this section and (ii) the personal exemptions allowed to 215
the trust pursuant to section 642(b) of the Internal Revenue 216
Code, and decreased by (b) (i) the deductions to adjusted gross 217
income required under division (A) of this section, (ii) the 218
amount of federal income taxes attributable to such income, and 219

(iii) the amount of taxable income that has been included in the 220
adjusted gross income of a beneficiary by reason of a prior 221
accumulation distribution. Any undistributed net income included 222
in the adjusted gross income of a beneficiary shall reduce the 223
undistributed net income of the trust commencing with the 224
earliest years of the accumulation period. 225

(7) Deduct the amount of wages and salaries, if any, not 226
otherwise allowable as a deduction but that would have been 227
allowable as a deduction in computing federal adjusted gross 228
income for the taxable year, had the targeted jobs credit 229
allowed and determined under sections 38, 51, and 52 of the 230
Internal Revenue Code not been in effect. 231

(8) Deduct any interest or interest equivalent on public 232
obligations and purchase obligations to the extent that the 233
interest or interest equivalent is included in federal adjusted 234
gross income. 235

(9) Add any loss or deduct any gain resulting from the 236
sale, exchange, or other disposition of public obligations to 237
the extent that the loss has been deducted or the gain has been 238
included in computing federal adjusted gross income. 239

(10) Deduct or add amounts, as provided under section 240
5747.70 of the Revised Code, related to contributions to 241
variable college savings program accounts made or tuition units 242
purchased pursuant to Chapter 3334. of the Revised Code. 243

(11)(a) Deduct, to the extent not otherwise allowable as a 244
deduction or exclusion in computing federal or Ohio adjusted 245
gross income for the taxable year, the amount the taxpayer paid 246
during the taxable year for medical care insurance and qualified 247
long-term care insurance for the taxpayer, the taxpayer's 248

spouse, and dependents. No deduction for medical care insurance 249
under division (A)(11) of this section shall be allowed either 250
to any taxpayer who is eligible to participate in any subsidized 251
health plan maintained by any employer of the taxpayer or of the 252
taxpayer's spouse, or to any taxpayer who is entitled to, or on 253
application would be entitled to, benefits under part A of Title 254
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 255
U.S.C. 301, as amended. For the purposes of division (A)(11)(a) 256
of this section, "subsidized health plan" means a health plan 257
for which the employer pays any portion of the plan's cost. The 258
deduction allowed under division (A)(11)(a) of this section 259
shall be the net of any related premium refunds, related premium 260
reimbursements, or related insurance premium dividends received 261
during the taxable year. 262

(b) Deduct, to the extent not otherwise deducted or 263
excluded in computing federal or Ohio adjusted gross income 264
during the taxable year, the amount the taxpayer paid during the 265
taxable year, not compensated for by any insurance or otherwise, 266
for medical care of the taxpayer, the taxpayer's spouse, and 267
dependents, to the extent the expenses exceed seven and one-half 268
per cent of the taxpayer's federal adjusted gross income. 269

(c) Deduct, to the extent not otherwise deducted or 270
excluded in computing federal or Ohio adjusted gross income, any 271
amount included in federal adjusted gross income under section 272
105 or not excluded under section 106 of the Internal Revenue 273
Code solely because it relates to an accident and health plan 274
for a person who otherwise would be a "qualifying relative" and 275
thus a "dependent" under section 152 of the Internal Revenue 276
Code but for the fact that the person fails to meet the income 277
and support limitations under section 152(d)(1)(B) and (C) of 278
the Internal Revenue Code. 279

(d) For purposes of division (A)(11) of this section, 280
"medical care" has the meaning given in section 213 of the 281
Internal Revenue Code, subject to the special rules, 282
limitations, and exclusions set forth therein, and "qualified 283
long-term care" has the same meaning given in section 7702B(c) 284
of the Internal Revenue Code. Solely for purposes of divisions 285
(A)(11)(a) and (c) of this section, "dependent" includes a 286
person who otherwise would be a "qualifying relative" and thus a 287
"dependent" under section 152 of the Internal Revenue Code but 288
for the fact that the person fails to meet the income and 289
support limitations under section 152(d)(1)(B) and (C) of the 290
Internal Revenue Code. 291

(12)(a) Deduct any amount included in federal adjusted 292
gross income solely because the amount represents a 293
reimbursement or refund of expenses that in any year the 294
taxpayer had deducted as an itemized deduction pursuant to 295
section 63 of the Internal Revenue Code and applicable United 296
States department of the treasury regulations. The deduction 297
otherwise allowed under division (A)(12)(a) of this section 298
shall be reduced to the extent the reimbursement is attributable 299
to an amount the taxpayer deducted under this section in any 300
taxable year. 301

(b) Add any amount not otherwise included in Ohio adjusted 302
gross income for any taxable year to the extent that the amount 303
is attributable to the recovery during the taxable year of any 304
amount deducted or excluded in computing federal or Ohio 305
adjusted gross income in any taxable year. 306

(13) Deduct any portion of the deduction described in 307
section 1341(a)(2) of the Internal Revenue Code, for repaying 308
previously reported income received under a claim of right, that 309

meets both of the following requirements: 310

(a) It is allowable for repayment of an item that was 311
included in the taxpayer's adjusted gross income for a prior 312
taxable year and did not qualify for a credit under division (A) 313
or (B) of section 5747.05 of the Revised Code for that year; 314

(b) It does not otherwise reduce the taxpayer's adjusted 315
gross income for the current or any other taxable year. 316

(14) Deduct an amount equal to the deposits made to, and 317
net investment earnings of, a medical savings account during the 318
taxable year, in accordance with section 3924.66 of the Revised 319
Code. The deduction allowed by division (A) (14) of this section 320
does not apply to medical savings account deposits and earnings 321
otherwise deducted or excluded for the current or any other 322
taxable year from the taxpayer's federal adjusted gross income. 323

(15) (a) Add an amount equal to the funds withdrawn from a 324
medical savings account during the taxable year, and the net 325
investment earnings on those funds, when the funds withdrawn 326
were used for any purpose other than to reimburse an account 327
holder for, or to pay, eligible medical expenses, in accordance 328
with section 3924.66 of the Revised Code; 329

(b) Add the amounts distributed from a medical savings 330
account under division (A) (2) of section 3924.68 of the Revised 331
Code during the taxable year. 332

(16) Add any amount claimed as a credit under section 333
5747.059 or 5747.65 of the Revised Code to the extent that such 334
amount satisfies either of the following: 335

(a) The amount was deducted or excluded from the 336
computation of the taxpayer's federal adjusted gross income as 337
required to be reported for the taxpayer's taxable year under 338

the Internal Revenue Code; 339

(b) The amount resulted in a reduction of the taxpayer's 340
federal adjusted gross income as required to be reported for any 341
of the taxpayer's taxable years under the Internal Revenue Code. 342

(17) Deduct the amount contributed by the taxpayer to an 343
individual development account program established by a county 344
department of job and family services pursuant to sections 345
329.11 to 329.14 of the Revised Code for the purpose of matching 346
funds deposited by program participants. On request of the tax 347
commissioner, the taxpayer shall provide any information that, 348
in the tax commissioner's opinion, is necessary to establish the 349
amount deducted under division (A)(17) of this section. 350

(18) Beginning in taxable year 2001 but not for any 351
taxable year beginning after December 31, 2005, if the taxpayer 352
is married and files a joint return and the combined federal 353
adjusted gross income of the taxpayer and the taxpayer's spouse 354
for the taxable year does not exceed one hundred thousand 355
dollars, or if the taxpayer is single and has a federal adjusted 356
gross income for the taxable year not exceeding fifty thousand 357
dollars, deduct amounts paid during the taxable year for 358
qualified tuition and fees paid to an eligible institution for 359
the taxpayer, the taxpayer's spouse, or any dependent of the 360
taxpayer, who is a resident of this state and is enrolled in or 361
attending a program that culminates in a degree or diploma at an 362
eligible institution. The deduction may be claimed only to the 363
extent that qualified tuition and fees are not otherwise 364
deducted or excluded for any taxable year from federal or Ohio 365
adjusted gross income. The deduction may not be claimed for 366
educational expenses for which the taxpayer claims a credit 367
under section 5747.27 of the Revised Code. 368

(19) Add any reimbursement received during the taxable 369
year of any amount the taxpayer deducted under division (A) (18) 370
of this section in any previous taxable year to the extent the 371
amount is not otherwise included in Ohio adjusted gross income. 372

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 373
(v) of this section, add five-sixths of the amount of 374
depreciation expense allowed by subsection (k) of section 168 of 375
the Internal Revenue Code, including the taxpayer's 376
proportionate or distributive share of the amount of 377
depreciation expense allowed by that subsection to a pass- 378
through entity in which the taxpayer has a direct or indirect 379
ownership interest. 380

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 381
of this section, add five-sixths of the amount of qualifying 382
section 179 depreciation expense, including the taxpayer's 383
proportionate or distributive share of the amount of qualifying 384
section 179 depreciation expense allowed to any pass-through 385
entity in which the taxpayer has a direct or indirect ownership 386
interest. 387

(iii) Subject to division (A) (20) (a) (v) of this section, 388
for taxable years beginning in 2012 or thereafter, if the 389
increase in income taxes withheld by the taxpayer is equal to or 390
greater than ten per cent of income taxes withheld by the 391
taxpayer during the taxpayer's immediately preceding taxable 392
year, "two-thirds" shall be substituted for "five-sixths" for 393
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 394

(iv) Subject to division (A) (20) (a) (v) of this section, 395
for taxable years beginning in 2012 or thereafter, a taxpayer is 396
not required to add an amount under division (A) (20) of this 397
section if the increase in income taxes withheld by the taxpayer 398

and by any pass-through entity in which the taxpayer has a 399
direct or indirect ownership interest is equal to or greater 400
than the sum of (I) the amount of qualifying section 179 401
depreciation expense and (II) the amount of depreciation expense 402
allowed to the taxpayer by subsection (k) of section 168 of the 403
Internal Revenue Code, and including the taxpayer's 404
proportionate or distributive shares of such amounts allowed to 405
any such pass-through entities. 406

(v) If a taxpayer directly or indirectly incurs a net 407
operating loss for the taxable year for federal income tax 408
purposes, to the extent such loss resulted from depreciation 409
expense allowed by subsection (k) of section 168 of the Internal 410
Revenue Code and by qualifying section 179 depreciation expense, 411
"the entire" shall be substituted for "five-sixths of the" for 412
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 413

The tax commissioner, under procedures established by the 414
commissioner, may waive the add-backs related to a pass-through 415
entity if the taxpayer owns, directly or indirectly, less than 416
five per cent of the pass-through entity. 417

(b) Nothing in division (A) (20) of this section shall be 418
construed to adjust or modify the adjusted basis of any asset. 419

(c) To the extent the add-back required under division (A) 420
(20) (a) of this section is attributable to property generating 421
nonbusiness income or loss allocated under section 5747.20 of 422
the Revised Code, the add-back shall be situated to the same 423
location as the nonbusiness income or loss generated by the 424
property for the purpose of determining the credit under 425
division (A) of section 5747.05 of the Revised Code. Otherwise, 426
the add-back shall be apportioned, subject to one or more of the 427
four alternative methods of apportionment enumerated in section 428

5747.21 of the Revised Code. 429

(d) For the purposes of division (A) (20) (a) (v) of this 430
section, net operating loss carryback and carryforward shall not 431
include the allowance of any net operating loss deduction 432
carryback or carryforward to the taxable year to the extent such 433
loss resulted from depreciation allowed by section 168(k) of the 434
Internal Revenue Code and by the qualifying section 179 435
depreciation expense amount. 436

(e) For the purposes of divisions (A) (20) and (21) of this 437
section: 438

(i) "Income taxes withheld" means the total amount 439
withheld and remitted under sections 5747.06 and 5747.07 of the 440
Revised Code by an employer during the employer's taxable year. 441

(ii) "Increase in income taxes withheld" means the amount 442
by which the amount of income taxes withheld by an employer 443
during the employer's current taxable year exceeds the amount of 444
income taxes withheld by that employer during the employer's 445
immediately preceding taxable year. 446

(iii) "Qualifying section 179 depreciation expense" means 447
the difference between (I) the amount of depreciation expense 448
directly or indirectly allowed to a taxpayer under section 179 449
of the Internal Revised Code, and (II) the amount of 450
depreciation expense directly or indirectly allowed to the 451
taxpayer under section 179 of the Internal Revenue Code as that 452
section existed on December 31, 2002. 453

(21) (a) If the taxpayer was required to add an amount 454
under division (A) (20) (a) of this section for a taxable year, 455
deduct one of the following: 456

(i) One-fifth of the amount so added for each of the five 457

succeeding taxable years if the amount so added was five-sixths 458
of qualifying section 179 depreciation expense or depreciation 459
expense allowed by subsection (k) of section 168 of the Internal 460
Revenue Code; 461

(ii) One-half of the amount so added for each of the two 462
succeeding taxable years if the amount so added was two-thirds 463
of such depreciation expense; 464

(iii) One-sixth of the amount so added for each of the six 465
succeeding taxable years if the entire amount of such 466
depreciation expense was so added. 467

(b) If the amount deducted under division (A) (21) (a) of 468
this section is attributable to an add-back allocated under 469
division (A) (20) (c) of this section, the amount deducted shall 470
be situated to the same location. Otherwise, the add-back shall 471
be apportioned using the apportionment factors for the taxable 472
year in which the deduction is taken, subject to one or more of 473
the four alternative methods of apportionment enumerated in 474
section 5747.21 of the Revised Code. 475

(c) No deduction is available under division (A) (21) (a) of 476
this section with regard to any depreciation allowed by section 477
168(k) of the Internal Revenue Code and by the qualifying 478
section 179 depreciation expense amount to the extent that such 479
depreciation results in or increases a federal net operating 480
loss carryback or carryforward. If no such deduction is 481
available for a taxable year, the taxpayer may carry forward the 482
amount not deducted in such taxable year to the next taxable 483
year and add that amount to any deduction otherwise available 484
under division (A) (21) (a) of this section for that next taxable 485
year. The carryforward of amounts not so deducted shall continue 486
until the entire addition required by division (A) (20) (a) of 487

this section has been deducted. 488

(d) No refund shall be allowed as a result of adjustments 489
made by division (A) (21) of this section. 490

(22) Deduct, to the extent not otherwise deducted or 491
excluded in computing federal or Ohio adjusted gross income for 492
the taxable year, the amount the taxpayer received during the 493
taxable year as reimbursement for life insurance premiums under 494
section 5919.31 of the Revised Code. 495

(23) Deduct, to the extent not otherwise deducted or 496
excluded in computing federal or Ohio adjusted gross income for 497
the taxable year, the amount the taxpayer received during the 498
taxable year as a death benefit paid by the adjutant general 499
under section 5919.33 of the Revised Code. 500

(24) Deduct, to the extent included in federal adjusted 501
gross income and not otherwise allowable as a deduction or 502
exclusion in computing federal or Ohio adjusted gross income for 503
the taxable year, military pay and allowances received by the 504
taxpayer during the taxable year for active duty service in the 505
United States army, air force, navy, marine corps, or coast 506
guard or reserve components thereof or the national guard. The 507
deduction may not be claimed for military pay and allowances 508
received by the taxpayer while the taxpayer is stationed in this 509
state. 510

(25) Deduct, to the extent not otherwise allowable as a 511
deduction or exclusion in computing federal or Ohio adjusted 512
gross income for the taxable year and not otherwise compensated 513
for by any other source, the amount of qualified organ donation 514
expenses incurred by the taxpayer during the taxable year, not 515
to exceed ten thousand dollars. A taxpayer may deduct qualified 516

organ donation expenses only once for all taxable years 517
beginning with taxable years beginning in 2007. 518

For the purposes of division (A) (25) of this section: 519

(a) "Human organ" means all or any portion of a human 520
liver, pancreas, kidney, intestine, or lung, and any portion of 521
human bone marrow. 522

(b) "Qualified organ donation expenses" means travel 523
expenses, lodging expenses, and wages and salary forgone by a 524
taxpayer in connection with the taxpayer's donation, while 525
living, of one or more of the taxpayer's human organs to another 526
human being. 527

(26) Deduct, to the extent not otherwise deducted or 528
excluded in computing federal or Ohio adjusted gross income for 529
the taxable year, amounts received by the taxpayer as retired 530
personnel pay for service in the uniformed services or reserve 531
components thereof, or the national guard, or received by the 532
surviving spouse or former spouse of such a taxpayer under the 533
survivor benefit plan on account of such a taxpayer's death. If 534
the taxpayer receives income on account of retirement paid under 535
the federal civil service retirement system or federal employees 536
retirement system, or under any successor retirement program 537
enacted by the congress of the United States that is established 538
and maintained for retired employees of the United States 539
government, and such retirement income is based, in whole or in 540
part, on credit for the taxpayer's uniformed service, the 541
deduction allowed under this division shall include only that 542
portion of such retirement income that is attributable to the 543
taxpayer's uniformed service, to the extent that portion of such 544
retirement income is otherwise included in federal adjusted 545
gross income and is not otherwise deducted under this section. 546

Any amount deducted under division (A) (26) of this section is 547
not included in a taxpayer's adjusted gross income for the 548
purposes of section 5747.055 of the Revised Code. No amount may 549
be deducted under division (A) (26) of this section on the basis 550
of which a credit was claimed under section 5747.055 of the 551
Revised Code. 552

(27) Deduct, to the extent not otherwise deducted or 553
excluded in computing federal or Ohio adjusted gross income for 554
the taxable year, the amount the taxpayer received during the 555
taxable year from the military injury relief fund created in 556
section 5902.05 of the Revised Code. 557

(28) Deduct, to the extent not otherwise deducted or 558
excluded in computing federal or Ohio adjusted gross income for 559
the taxable year, the amount the taxpayer received as a veterans 560
bonus during the taxable year from the Ohio department of 561
veterans services as authorized by Section 2r of Article VIII, 562
Ohio Constitution. 563

(29) Deduct, to the extent not otherwise deducted or 564
excluded in computing federal or Ohio adjusted gross income for 565
the taxable year, any income derived from a transfer agreement 566
or from the enterprise transferred under that agreement under 567
section 4313.02 of the Revised Code. 568

(30) Deduct, to the extent not otherwise deducted or 569
excluded in computing federal or Ohio adjusted gross income for 570
the taxable year, Ohio college opportunity or federal Pell grant 571
amounts received by the taxpayer or the taxpayer's spouse or 572
dependent pursuant to section 3333.122 of the Revised Code or 20 573
U.S.C. 1070a, et seq., and used to pay room or board furnished 574
by the educational institution for which the grant was awarded 575
at the institution's facilities, including meal plans 576

administered by the institution. For the purposes of this 577
division, receipt of a grant includes the distribution of a 578
grant directly to an educational institution and the crediting 579
of the grant to the enrollee's account with the institution. 580

(31)(a) For taxable years beginning in 2015, deduct from 581
the portion of an individual's adjusted gross income that is 582
business income, to the extent not otherwise deducted or 583
excluded in computing federal or Ohio adjusted gross income for 584
the taxable year, the lesser of the following amounts: 585

(i) Seventy-five per cent of the individual's business 586
income; 587

(ii) Ninety-three thousand seven hundred fifty dollars for 588
each spouse if spouses file separate returns under section 589
5747.08 of the Revised Code or one hundred eighty-seven thousand 590
five hundred dollars for all other individuals. 591

(b) For taxable years beginning in 2016 or thereafter, 592
deduct from the portion of an individual's adjusted gross income 593
that is business income, to the extent not otherwise deducted or 594
excluded in computing federal adjusted gross income for the 595
taxable year, one hundred twenty-five thousand dollars for each 596
spouse if spouses file separate returns under section 5747.08 of 597
the Revised Code or two hundred fifty thousand dollars for all 598
other individuals. 599

(32) Deduct, as provided under section 5747.78 of the 600
Revised Code, contributions to ABLE savings accounts made in 601
accordance with sections 113.50 to 113.56 of the Revised Code. 602

(33)(a) Deduct, to the extent not otherwise deducted or 603
excluded in computing federal or Ohio adjusted gross income 604
during the taxable year, all of the following: 605

(i) Compensation paid to a qualifying employee described 606
in division (A) (14) (a) of section 5703.94 of the Revised Code to 607
the extent such compensation is for disaster work conducted in 608
this state during a disaster response period pursuant to a 609
qualifying solicitation received by the employee's employer; 610

(ii) Compensation paid to a qualifying employee described 611
in division (A) (14) (b) of section 5703.94 of the Revised Code to 612
the extent such compensation is for disaster work conducted in 613
this state by the employee during the disaster response period 614
on critical infrastructure owned or used by the employee's 615
employer; 616

(iii) Income received by an out-of-state disaster business 617
for disaster work conducted in this state during a disaster 618
response period, or, if the out-of-state disaster business is a 619
pass-through entity, a taxpayer's distributive share of the 620
pass-through entity's income from the business conducting 621
disaster work in this state during a disaster response period, 622
if, in either case, the disaster work is conducted pursuant to a 623
qualifying solicitation received by the business. 624

(b) All terms used in division (A) (33) of this section 625
have the same meanings as in section 5703.94 of the Revised 626
Code. 627

(34) Deduct, to the extent included in federal adjusted 628
gross income, income attributable to loan repayments on behalf 629
of the taxpayer under the Ohio public defender state loan 630
repayment program under section 120.66 of the Revised Code. 631

(B) "Business income" means income, including gain or 632
loss, arising from transactions, activities, and sources in the 633
regular course of a trade or business and includes income, gain, 634

or loss from real property, tangible property, and intangible 635
property if the acquisition, rental, management, and disposition 636
of the property constitute integral parts of the regular course 637
of a trade or business operation. "Business income" includes 638
income, including gain or loss, from a partial or complete 639
liquidation of a business, including, but not limited to, gain 640
or loss from the sale or other disposition of goodwill. 641

(C) "Nonbusiness income" means all income other than 642
business income and may include, but is not limited to, 643
compensation, rents and royalties from real or tangible personal 644
property, capital gains, interest, dividends and distributions, 645
patent or copyright royalties, or lottery winnings, prizes, and 646
awards. 647

(D) "Compensation" means any form of remuneration paid to 648
an employee for personal services. 649

(E) "Fiduciary" means a guardian, trustee, executor, 650
administrator, receiver, conservator, or any other person acting 651
in any fiduciary capacity for any individual, trust, or estate. 652

(F) "Fiscal year" means an accounting period of twelve 653
months ending on the last day of any month other than December. 654

(G) "Individual" means any natural person. 655

(H) "Internal Revenue Code" means the "Internal Revenue 656
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 657

(I) "Resident" means any of the following, provided that 658
division (I)(3) of this section applies only to taxable years of 659
a trust beginning in 2002 or thereafter: 660

(1) An individual who is domiciled in this state, subject 661
to section 5747.24 of the Revised Code; 662

(2) The estate of a decedent who at the time of death was 663
domiciled in this state. The domicile tests of section 5747.24 664
of the Revised Code are not controlling for purposes of division 665
(I) (2) of this section. 666

(3) A trust that, in whole or part, resides in this state. 667
If only part of a trust resides in this state, the trust is a 668
resident only with respect to that part. 669

For the purposes of division (I) (3) of this section: 670

(a) A trust resides in this state for the trust's current 671
taxable year to the extent, as described in division (I) (3) (d) 672
of this section, that the trust consists directly or indirectly, 673
in whole or in part, of assets, net of any related liabilities, 674
that were transferred, or caused to be transferred, directly or 675
indirectly, to the trust by any of the following: 676

(i) A person, a court, or a governmental entity or 677
instrumentality on account of the death of a decedent, but only 678
if the trust is described in division (I) (3) (e) (i) or (ii) of 679
this section; 680

(ii) A person who was domiciled in this state for the 681
purposes of this chapter when the person directly or indirectly 682
transferred assets to an irrevocable trust, but only if at least 683
one of the trust's qualifying beneficiaries is domiciled in this 684
state for the purposes of this chapter during all or some 685
portion of the trust's current taxable year; 686

(iii) A person who was domiciled in this state for the 687
purposes of this chapter when the trust document or instrument 688
or part of the trust document or instrument became irrevocable, 689
but only if at least one of the trust's qualifying beneficiaries 690
is a resident domiciled in this state for the purposes of this 691

chapter during all or some portion of the trust's current 692
taxable year. If a trust document or instrument became 693
irrevocable upon the death of a person who at the time of death 694
was domiciled in this state for purposes of this chapter, that 695
person is a person described in division (I) (3) (a) (iii) of this 696
section. 697

(b) A trust is irrevocable to the extent that the 698
transferor is not considered to be the owner of the net assets 699
of the trust under sections 671 to 678 of the Internal Revenue 700
Code. 701

(c) With respect to a trust other than a charitable lead 702
trust, "qualifying beneficiary" has the same meaning as 703
"potential current beneficiary" as defined in section 1361(e) (2) 704
of the Internal Revenue Code, and with respect to a charitable 705
lead trust "qualifying beneficiary" is any current, future, or 706
contingent beneficiary, but with respect to any trust 707
"qualifying beneficiary" excludes a person or a governmental 708
entity or instrumentality to any of which a contribution would 709
qualify for the charitable deduction under section 170 of the 710
Internal Revenue Code. 711

(d) For the purposes of division (I) (3) (a) of this 712
section, the extent to which a trust consists directly or 713
indirectly, in whole or in part, of assets, net of any related 714
liabilities, that were transferred directly or indirectly, in 715
whole or part, to the trust by any of the sources enumerated in 716
that division shall be ascertained by multiplying the fair 717
market value of the trust's assets, net of related liabilities, 718
by the qualifying ratio, which shall be computed as follows: 719

(i) The first time the trust receives assets, the 720
numerator of the qualifying ratio is the fair market value of 721

those assets at that time, net of any related liabilities, from 722
sources enumerated in division (I) (3) (a) of this section. The 723
denominator of the qualifying ratio is the fair market value of 724
all the trust's assets at that time, net of any related 725
liabilities. 726

(ii) Each subsequent time the trust receives assets, a 727
revised qualifying ratio shall be computed. The numerator of the 728
revised qualifying ratio is the sum of (1) the fair market value 729
of the trust's assets immediately prior to the subsequent 730
transfer, net of any related liabilities, multiplied by the 731
qualifying ratio last computed without regard to the subsequent 732
transfer, and (2) the fair market value of the subsequently 733
transferred assets at the time transferred, net of any related 734
liabilities, from sources enumerated in division (I) (3) (a) of 735
this section. The denominator of the revised qualifying ratio is 736
the fair market value of all the trust's assets immediately 737
after the subsequent transfer, net of any related liabilities. 738

(iii) Whether a transfer to the trust is by or from any of 739
the sources enumerated in division (I) (3) (a) of this section 740
shall be ascertained without regard to the domicile of the 741
trust's beneficiaries. 742

(e) For the purposes of division (I) (3) (a) (i) of this 743
section: 744

(i) A trust is described in division (I) (3) (e) (i) of this 745
section if the trust is a testamentary trust and the testator of 746
that testamentary trust was domiciled in this state at the time 747
of the testator's death for purposes of the taxes levied under 748
Chapter 5731. of the Revised Code. 749

(ii) A trust is described in division (I) (3) (e) (ii) of 750

this section if the transfer is a qualifying transfer described 751
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 752
trust is an irrevocable inter vivos trust, and at least one of 753
the trust's qualifying beneficiaries is domiciled in this state 754
for purposes of this chapter during all or some portion of the 755
trust's current taxable year. 756

(f) For the purposes of division (I) (3) (e) (ii) of this 757
section, a "qualifying transfer" is a transfer of assets, net of 758
any related liabilities, directly or indirectly to a trust, if 759
the transfer is described in any of the following: 760

(i) The transfer is made to a trust, created by the 761
decedent before the decedent's death and while the decedent was 762
domiciled in this state for the purposes of this chapter, and, 763
prior to the death of the decedent, the trust became irrevocable 764
while the decedent was domiciled in this state for the purposes 765
of this chapter. 766

(ii) The transfer is made to a trust to which the 767
decedent, prior to the decedent's death, had directly or 768
indirectly transferred assets, net of any related liabilities, 769
while the decedent was domiciled in this state for the purposes 770
of this chapter, and prior to the death of the decedent the 771
trust became irrevocable while the decedent was domiciled in 772
this state for the purposes of this chapter. 773

(iii) The transfer is made on account of a contractual 774
relationship existing directly or indirectly between the 775
transferor and either the decedent or the estate of the decedent 776
at any time prior to the date of the decedent's death, and the 777
decedent was domiciled in this state at the time of death for 778
purposes of the taxes levied under Chapter 5731. of the Revised 779
Code. 780

(iv) The transfer is made to a trust on account of a 781
contractual relationship existing directly or indirectly between 782
the transferor and another person who at the time of the 783
decedent's death was domiciled in this state for purposes of 784
this chapter. 785

(v) The transfer is made to a trust on account of the will 786
of a testator who was domiciled in this state at the time of the 787
testator's death for purposes of the taxes levied under Chapter 788
5731. of the Revised Code. 789

(vi) The transfer is made to a trust created by or caused 790
to be created by a court, and the trust was directly or 791
indirectly created in connection with or as a result of the 792
death of an individual who, for purposes of the taxes levied 793
under Chapter 5731. of the Revised Code, was domiciled in this 794
state at the time of the individual's death. 795

(g) The tax commissioner may adopt rules to ascertain the 796
part of a trust residing in this state. 797

(J) "Nonresident" means an individual or estate that is 798
not a resident. An individual who is a resident for only part of 799
a taxable year is a nonresident for the remainder of that 800
taxable year. 801

(K) "Pass-through entity" has the same meaning as in 802
section 5733.04 of the Revised Code. 803

(L) "Return" means the notifications and reports required 804
to be filed pursuant to this chapter for the purpose of 805
reporting the tax due and includes declarations of estimated tax 806
when so required. 807

(M) "Taxable year" means the calendar year or the 808
taxpayer's fiscal year ending during the calendar year, or 809

fractional part thereof, upon which the adjusted gross income is 810
calculated pursuant to this chapter. 811

(N) "Taxpayer" means any person subject to the tax imposed 812
by section 5747.02 of the Revised Code or any pass-through 813
entity that makes the election under division (D) of section 814
5747.08 of the Revised Code. 815

(O) "Dependents" means dependents as defined in the 816
Internal Revenue Code and as claimed in the taxpayer's federal 817
income tax return for the taxable year or which the taxpayer 818
would have been permitted to claim had the taxpayer filed a 819
federal income tax return. 820

(P) "Principal county of employment" means, in the case of 821
a nonresident, the county within the state in which a taxpayer 822
performs services for an employer or, if those services are 823
performed in more than one county, the county in which the major 824
portion of the services are performed. 825

(Q) As used in sections 5747.50 to 5747.55 of the Revised 826
Code: 827

(1) "Subdivision" means any county, municipal corporation, 828
park district, or township. 829

(2) "Essential local government purposes" includes all 830
functions that any subdivision is required by general law to 831
exercise, including like functions that are exercised under a 832
charter adopted pursuant to the Ohio Constitution. 833

(R) "Overpayment" means any amount already paid that 834
exceeds the figure determined to be the correct amount of the 835
tax. 836

(S) "Taxable income" or "Ohio taxable income" applies only 837

to estates and trusts, and means federal taxable income, as 838
defined and used in the Internal Revenue Code, adjusted as 839
follows: 840

(1) Add interest or dividends, net of ordinary, necessary, 841
and reasonable expenses not deducted in computing federal 842
taxable income, on obligations or securities of any state or of 843
any political subdivision or authority of any state, other than 844
this state and its subdivisions and authorities, but only to the 845
extent that such net amount is not otherwise includible in Ohio 846
taxable income and is described in either division (S) (1) (a) or 847
(b) of this section: 848

(a) The net amount is not attributable to the S portion of 849
an electing small business trust and has not been distributed to 850
beneficiaries for the taxable year; 851

(b) The net amount is attributable to the S portion of an 852
electing small business trust for the taxable year. 853

(2) Add interest or dividends, net of ordinary, necessary, 854
and reasonable expenses not deducted in computing federal 855
taxable income, on obligations of any authority, commission, 856
instrumentality, territory, or possession of the United States 857
to the extent that the interest or dividends are exempt from 858
federal income taxes but not from state income taxes, but only 859
to the extent that such net amount is not otherwise includible 860
in Ohio taxable income and is described in either division (S) 861
(1) (a) or (b) of this section; 862

(3) Add the amount of personal exemption allowed to the 863
estate pursuant to section 642(b) of the Internal Revenue Code; 864

(4) Deduct interest or dividends, net of related expenses 865
deducted in computing federal taxable income, on obligations of 866

the United States and its territories and possessions or of any 867
authority, commission, or instrumentality of the United States 868
to the extent that the interest or dividends are exempt from 869
state taxes under the laws of the United States, but only to the 870
extent that such amount is included in federal taxable income 871
and is described in either division (S)(1)(a) or (b) of this 872
section; 873

(5) Deduct the amount of wages and salaries, if any, not 874
otherwise allowable as a deduction but that would have been 875
allowable as a deduction in computing federal taxable income for 876
the taxable year, had the targeted jobs credit allowed under 877
sections 38, 51, and 52 of the Internal Revenue Code not been in 878
effect, but only to the extent such amount relates either to 879
income included in federal taxable income for the taxable year 880
or to income of the S portion of an electing small business 881
trust for the taxable year; 882

(6) Deduct any interest or interest equivalent, net of 883
related expenses deducted in computing federal taxable income, 884
on public obligations and purchase obligations, but only to the 885
extent that such net amount relates either to income included in 886
federal taxable income for the taxable year or to income of the 887
S portion of an electing small business trust for the taxable 888
year; 889

(7) Add any loss or deduct any gain resulting from sale, 890
exchange, or other disposition of public obligations to the 891
extent that such loss has been deducted or such gain has been 892
included in computing either federal taxable income or income of 893
the S portion of an electing small business trust for the 894
taxable year; 895

(8) Except in the case of the final return of an estate, 896

add any amount deducted by the taxpayer on both its Ohio estate 897
tax return pursuant to section 5731.14 of the Revised Code, and 898
on its federal income tax return in determining federal taxable 899
income; 900

(9) (a) Deduct any amount included in federal taxable 901
income solely because the amount represents a reimbursement or 902
refund of expenses that in a previous year the decedent had 903
deducted as an itemized deduction pursuant to section 63 of the 904
Internal Revenue Code and applicable treasury regulations. The 905
deduction otherwise allowed under division (S) (9) (a) of this 906
section shall be reduced to the extent the reimbursement is 907
attributable to an amount the taxpayer or decedent deducted 908
under this section in any taxable year. 909

(b) Add any amount not otherwise included in Ohio taxable 910
income for any taxable year to the extent that the amount is 911
attributable to the recovery during the taxable year of any 912
amount deducted or excluded in computing federal or Ohio taxable 913
income in any taxable year, but only to the extent such amount 914
has not been distributed to beneficiaries for the taxable year. 915

(10) Deduct any portion of the deduction described in 916
section 1341(a) (2) of the Internal Revenue Code, for repaying 917
previously reported income received under a claim of right, that 918
meets both of the following requirements: 919

(a) It is allowable for repayment of an item that was 920
included in the taxpayer's taxable income or the decedent's 921
adjusted gross income for a prior taxable year and did not 922
qualify for a credit under division (A) or (B) of section 923
5747.05 of the Revised Code for that year. 924

(b) It does not otherwise reduce the taxpayer's taxable 925

income or the decedent's adjusted gross income for the current 926
or any other taxable year. 927

(11) Add any amount claimed as a credit under section 928
5747.059 or 5747.65 of the Revised Code to the extent that the 929
amount satisfies either of the following: 930

(a) The amount was deducted or excluded from the 931
computation of the taxpayer's federal taxable income as required 932
to be reported for the taxpayer's taxable year under the 933
Internal Revenue Code; 934

(b) The amount resulted in a reduction in the taxpayer's 935
federal taxable income as required to be reported for any of the 936
taxpayer's taxable years under the Internal Revenue Code. 937

(12) Deduct any amount, net of related expenses deducted 938
in computing federal taxable income, that a trust is required to 939
report as farm income on its federal income tax return, but only 940
if the assets of the trust include at least ten acres of land 941
satisfying the definition of "land devoted exclusively to 942
agricultural use" under section 5713.30 of the Revised Code, 943
regardless of whether the land is valued for tax purposes as 944
such land under sections 5713.30 to 5713.38 of the Revised Code. 945
If the trust is a pass-through entity investor, section 5747.231 946
of the Revised Code applies in ascertaining if the trust is 947
eligible to claim the deduction provided by division (S)(12) of 948
this section in connection with the pass-through entity's farm 949
income. 950

Except for farm income attributable to the S portion of an 951
electing small business trust, the deduction provided by 952
division (S)(12) of this section is allowed only to the extent 953
that the trust has not distributed such farm income. Division 954

(S) (12) of this section applies only to taxable years of a trust 955
beginning in 2002 or thereafter. 956

(13) Add the net amount of income described in section 957
641(c) of the Internal Revenue Code to the extent that amount is 958
not included in federal taxable income. 959

(14) Add or deduct the amount the taxpayer would be 960
required to add or deduct under division (A) (20) or (21) of this 961
section if the taxpayer's Ohio taxable income were computed in 962
the same manner as an individual's Ohio adjusted gross income is 963
computed under this section. In the case of a trust, division 964
(S) (14) of this section applies only to any of the trust's 965
taxable years beginning in 2002 or thereafter. 966

(T) "School district income" and "school district income 967
tax" have the same meanings as in section 5748.01 of the Revised 968
Code. 969

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 970
(7) of this section, "public obligations," "purchase 971
obligations," and "interest or interest equivalent" have the 972
same meanings as in section 5709.76 of the Revised Code. 973

(V) "Limited liability company" means any limited 974
liability company formed under Chapter 1705. of the Revised Code 975
or under the laws of any other state. 976

(W) "Pass-through entity investor" means any person who, 977
during any portion of a taxable year of a pass-through entity, 978
is a partner, member, shareholder, or equity investor in that 979
pass-through entity. 980

(X) "Banking day" has the same meaning as in section 981
1304.01 of the Revised Code. 982

(Y) "Month" means a calendar month.	983
(Z) "Quarter" means the first three months, the second	984
three months, the third three months, or the last three months	985
of the taxpayer's taxable year.	986
(AA) (1) "Eligible institution" means a state university or	987
state institution of higher education as defined in section	988
3345.011 of the Revised Code, or a private, nonprofit college,	989
university, or other post-secondary institution located in this	990
state that possesses a certificate of authorization issued by	991
the chancellor of higher education pursuant to Chapter 1713. of	992
the Revised Code or a certificate of registration issued by the	993
state board of career colleges and schools under Chapter 3332.	994
of the Revised Code.	995
(2) "Qualified tuition and fees" means tuition and fees	996
imposed by an eligible institution as a condition of enrollment	997
or attendance, not exceeding two thousand five hundred dollars	998
in each of the individual's first two years of post-secondary	999
education. If the individual is a part-time student, "qualified	1000
tuition and fees" includes tuition and fees paid for the	1001
academic equivalent of the first two years of post-secondary	1002
education during a maximum of five taxable years, not exceeding	1003
a total of five thousand dollars. "Qualified tuition and fees"	1004
does not include:	1005
(a) Expenses for any course or activity involving sports,	1006
games, or hobbies unless the course or activity is part of the	1007
individual's degree or diploma program;	1008
(b) The cost of books, room and board, student activity	1009
fees, athletic fees, insurance expenses, or other expenses	1010
unrelated to the individual's academic course of instruction;	1011

(c) Tuition, fees, or other expenses paid or reimbursed 1012
through an employer, scholarship, grant in aid, or other 1013
educational benefit program. 1014

(BB)(1) "Modified business income" means the business 1015
income included in a trust's Ohio taxable income after such 1016
taxable income is first reduced by the qualifying trust amount, 1017
if any. 1018

(2) "Qualifying trust amount" of a trust means capital 1019
gains and losses from the sale, exchange, or other disposition 1020
of equity or ownership interests in, or debt obligations of, a 1021
qualifying investee to the extent included in the trust's Ohio 1022
taxable income, but only if the following requirements are 1023
satisfied: 1024

(a) The book value of the qualifying investee's physical 1025
assets in this state and everywhere, as of the last day of the 1026
qualifying investee's fiscal or calendar year ending immediately 1027
prior to the date on which the trust recognizes the gain or 1028
loss, is available to the trust. 1029

(b) The requirements of section 5747.011 of the Revised 1030
Code are satisfied for the trust's taxable year in which the 1031
trust recognizes the gain or loss. 1032

Any gain or loss that is not a qualifying trust amount is 1033
modified business income, qualifying investment income, or 1034
modified nonbusiness income, as the case may be. 1035

(3) "Modified nonbusiness income" means a trust's Ohio 1036
taxable income other than modified business income, other than 1037
the qualifying trust amount, and other than qualifying 1038
investment income, as defined in section 5747.012 of the Revised 1039
Code, to the extent such qualifying investment income is not 1040

otherwise part of modified business income. 1041

(4) "Modified Ohio taxable income" applies only to trusts, 1042
and means the sum of the amounts described in divisions (BB) (4) 1043
(a) to (c) of this section: 1044

(a) The fraction, calculated under section 5747.013, and 1045
applying section 5747.231 of the Revised Code, multiplied by the 1046
sum of the following amounts: 1047

(i) The trust's modified business income; 1048

(ii) The trust's qualifying investment income, as defined 1049
in section 5747.012 of the Revised Code, but only to the extent 1050
the qualifying investment income does not otherwise constitute 1051
modified business income and does not otherwise constitute a 1052
qualifying trust amount. 1053

(b) The qualifying trust amount multiplied by a fraction, 1054
the numerator of which is the sum of the book value of the 1055
qualifying investee's physical assets in this state on the last 1056
day of the qualifying investee's fiscal or calendar year ending 1057
immediately prior to the day on which the trust recognizes the 1058
qualifying trust amount, and the denominator of which is the sum 1059
of the book value of the qualifying investee's total physical 1060
assets everywhere on the last day of the qualifying investee's 1061
fiscal or calendar year ending immediately prior to the day on 1062
which the trust recognizes the qualifying trust amount. If, for 1063
a taxable year, the trust recognizes a qualifying trust amount 1064
with respect to more than one qualifying investee, the amount 1065
described in division (BB) (4) (b) of this section shall equal the 1066
sum of the products so computed for each such qualifying 1067
investee. 1068

(c) (i) With respect to a trust or portion of a trust that 1069

is a resident as ascertained in accordance with division (I) (3) 1070
(d) of this section, its modified nonbusiness income. 1071

(ii) With respect to a trust or portion of a trust that is 1072
not a resident as ascertained in accordance with division (I) (3) 1073
(d) of this section, the amount of its modified nonbusiness 1074
income satisfying the descriptions in divisions (B) (2) to (5) of 1075
section 5747.20 of the Revised Code, except as otherwise 1076
provided in division (BB) (4) (c) (ii) of this section. With 1077
respect to a trust or portion of a trust that is not a resident 1078
as ascertained in accordance with division (I) (3) (d) of this 1079
section, the trust's portion of modified nonbusiness income 1080
recognized from the sale, exchange, or other disposition of a 1081
debt interest in or equity interest in a section 5747.212 1082
entity, as defined in section 5747.212 of the Revised Code, 1083
without regard to division (A) of that section, shall not be 1084
allocated to this state in accordance with section 5747.20 of 1085
the Revised Code but shall be apportioned to this state in 1086
accordance with division (B) of section 5747.212 of the Revised 1087
Code without regard to division (A) of that section. 1088

If the allocation and apportionment of a trust's income 1089
under divisions (BB) (4) (a) and (c) of this section do not fairly 1090
represent the modified Ohio taxable income of the trust in this 1091
state, the alternative methods described in division (C) of 1092
section 5747.21 of the Revised Code may be applied in the manner 1093
and to the same extent provided in that section. 1094

(5) (a) Except as set forth in division (BB) (5) (b) of this 1095
section, "qualifying investee" means a person in which a trust 1096
has an equity or ownership interest, or a person or unit of 1097
government the debt obligations of either of which are owned by 1098
a trust. For the purposes of division (BB) (2) (a) of this section 1099

and for the purpose of computing the fraction described in 1100
division (BB) (4) (b) of this section, all of the following apply: 1101

(i) If the qualifying investee is a member of a qualifying 1102
controlled group on the last day of the qualifying investee's 1103
fiscal or calendar year ending immediately prior to the date on 1104
which the trust recognizes the gain or loss, then "qualifying 1105
investee" includes all persons in the qualifying controlled 1106
group on such last day. 1107

(ii) If the qualifying investee, or if the qualifying 1108
investee and any members of the qualifying controlled group of 1109
which the qualifying investee is a member on the last day of the 1110
qualifying investee's fiscal or calendar year ending immediately 1111
prior to the date on which the trust recognizes the gain or 1112
loss, separately or cumulatively own, directly or indirectly, on 1113
the last day of the qualifying investee's fiscal or calendar 1114
year ending immediately prior to the date on which the trust 1115
recognizes the qualifying trust amount, more than fifty per cent 1116
of the equity of a pass-through entity, then the qualifying 1117
investee and the other members are deemed to own the 1118
proportionate share of the pass-through entity's physical assets 1119
which the pass-through entity directly or indirectly owns on the 1120
last day of the pass-through entity's calendar or fiscal year 1121
ending within or with the last day of the qualifying investee's 1122
fiscal or calendar year ending immediately prior to the date on 1123
which the trust recognizes the qualifying trust amount. 1124

(iii) For the purposes of division (BB) (5) (a) (iii) of this 1125
section, "upper level pass-through entity" means a pass-through 1126
entity directly or indirectly owning any equity of another pass- 1127
through entity, and "lower level pass-through entity" means that 1128
other pass-through entity. 1129

An upper level pass-through entity, whether or not it is 1130
also a qualifying investee, is deemed to own, on the last day of 1131
the upper level pass-through entity's calendar or fiscal year, 1132
the proportionate share of the lower level pass-through entity's 1133
physical assets that the lower level pass-through entity 1134
directly or indirectly owns on the last day of the lower level 1135
pass-through entity's calendar or fiscal year ending within or 1136
with the last day of the upper level pass-through entity's 1137
fiscal or calendar year. If the upper level pass-through entity 1138
directly and indirectly owns less than fifty per cent of the 1139
equity of the lower level pass-through entity on each day of the 1140
upper level pass-through entity's calendar or fiscal year in 1141
which or with which ends the calendar or fiscal year of the 1142
lower level pass-through entity and if, based upon clear and 1143
convincing evidence, complete information about the location and 1144
cost of the physical assets of the lower pass-through entity is 1145
not available to the upper level pass-through entity, then 1146
solely for purposes of ascertaining if a gain or loss 1147
constitutes a qualifying trust amount, the upper level pass- 1148
through entity shall be deemed as owning no equity of the lower 1149
level pass-through entity for each day during the upper level 1150
pass-through entity's calendar or fiscal year in which or with 1151
which ends the lower level pass-through entity's calendar or 1152
fiscal year. Nothing in division (BB)(5)(a)(iii) of this section 1153
shall be construed to provide for any deduction or exclusion in 1154
computing any trust's Ohio taxable income. 1155

(b) With respect to a trust that is not a resident for the 1156
taxable year and with respect to a part of a trust that is not a 1157
resident for the taxable year, "qualifying investee" for that 1158
taxable year does not include a C corporation if both of the 1159
following apply: 1160

(i) During the taxable year the trust or part of the trust 1161
recognizes a gain or loss from the sale, exchange, or other 1162
disposition of equity or ownership interests in, or debt 1163
obligations of, the C corporation. 1164

(ii) Such gain or loss constitutes nonbusiness income. 1165

(6) "Available" means information is such that a person is 1166
able to learn of the information by the due date plus 1167
extensions, if any, for filing the return for the taxable year 1168
in which the trust recognizes the gain or loss. 1169

(CC) "Qualifying controlled group" has the same meaning as 1170
in section 5733.04 of the Revised Code. 1171

(DD) "Related member" has the same meaning as in section 1172
5733.042 of the Revised Code. 1173

(EE) (1) For the purposes of division (EE) of this section: 1174

(a) "Qualifying person" means any person other than a 1175
qualifying corporation. 1176

(b) "Qualifying corporation" means any person classified 1177
for federal income tax purposes as an association taxable as a 1178
corporation, except either of the following: 1179

(i) A corporation that has made an election under 1180
subchapter S, chapter one, subtitle A, of the Internal Revenue 1181
Code for its taxable year ending within, or on the last day of, 1182
the investor's taxable year; 1183

(ii) A subsidiary that is wholly owned by any corporation 1184
that has made an election under subchapter S, chapter one, 1185
subtitle A of the Internal Revenue Code for its taxable year 1186
ending within, or on the last day of, the investor's taxable 1187
year. 1188

(2) For the purposes of this chapter, unless expressly 1189
stated otherwise, no qualifying person indirectly owns any asset 1190
directly or indirectly owned by any qualifying corporation. 1191

(FF) For purposes of this chapter and Chapter 5751. of the 1192
Revised Code: 1193

(1) "Trust" does not include a qualified pre-income tax 1194
trust. 1195

(2) A "qualified pre-income tax trust" is any pre-income 1196
tax trust that makes a qualifying pre-income tax trust election 1197
as described in division (FF)(3) of this section. 1198

(3) A "qualifying pre-income tax trust election" is an 1199
election by a pre-income tax trust to subject to the tax imposed 1200
by section 5751.02 of the Revised Code the pre-income tax trust 1201
and all pass-through entities of which the trust owns or 1202
controls, directly, indirectly, or constructively through 1203
related interests, five per cent or more of the ownership or 1204
equity interests. The trustee shall notify the tax commissioner 1205
in writing of the election on or before April 15, 2006. The 1206
election, if timely made, shall be effective on and after 1207
January 1, 2006, and shall apply for all tax periods and tax 1208
years until revoked by the trustee of the trust. 1209

(4) A "pre-income tax trust" is a trust that satisfies all 1210
of the following requirements: 1211

(a) The document or instrument creating the trust was 1212
executed by the grantor before January 1, 1972; 1213

(b) The trust became irrevocable upon the creation of the 1214
trust; and 1215

(c) The grantor was domiciled in this state at the time 1216

the trust was created. 1217

(GG) "Uniformed services" has the same meaning as in 10 1218
U.S.C. 101. 1219

(HH) "Taxable business income" means the amount by which 1220
an individual's business income that is included in federal 1221
adjusted gross income exceeds the amount of business income the 1222
individual is authorized to deduct under division (A) (31) of 1223
this section for the taxable year. 1224

(II) "Employer" does not include a franchisor with respect 1225
to the franchisor's relationship with a franchisee or an 1226
employee of a franchisee, unless the franchisor agrees to assume 1227
that role in writing or a court of competent jurisdiction 1228
determines that the franchisor exercises a type or degree of 1229
control over the franchisee or the franchisee's employees that 1230
is not customarily exercised by a franchisor for the purpose of 1231
protecting the franchisor's trademark, brand, or both. For 1232
purposes of this division, "franchisor" and "franchisee" have 1233
the same meanings as in 16 C.F.R. 436.1. 1234

Section 2. That existing section 5747.01 of the Revised 1235
Code is hereby repealed. 1236