

As Reported by the Senate Ways and Means Committee

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S. B. No. 26

Senator Kunze

**Cosponsors: Senators Maharath, Thomas, Roegner, Sykes, Williams, Fedor,
Manning**

A BILL

To amend section 5747.01 of the Revised Code to
authorize a state income tax deduction for
teachers' out-of-pocket expenses for
professional development and classroom supplies.

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

Section 1. That section 5747.01 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 18
in the Internal Revenue Code, adjusted as provided in this 19
section: 20

(1) Add interest or dividends on obligations or securities 21
of any state or of any political subdivision or authority of any 22
state, other than this state and its subdivisions and 23
authorities. 24

(2) Add interest or dividends on obligations of any 25
authority, commission, instrumentality, territory, or possession 26
of the United States to the extent that the interest or 27
dividends are exempt from federal income taxes but not from 28
state income taxes. 29

(3) Deduct interest or dividends on obligations of the 30
United States and its territories and possessions or of any 31
authority, commission, or instrumentality of the United States 32
to the extent that the interest or dividends are included in 33
federal adjusted gross income but exempt from state income taxes 34
under the laws of the United States. 35

(4) Deduct disability and survivor's benefits to the 36
extent included in federal adjusted gross income. 37

(5) Deduct benefits under Title II of the Social Security 38
Act and tier 1 railroad retirement benefits to the extent 39
included in federal adjusted gross income under section 86 of 40
the Internal Revenue Code. 41

(6) In the case of a taxpayer who is a beneficiary of a 42
trust that makes an accumulation distribution as defined in 43
section 665 of the Internal Revenue Code, add, for the 44
beneficiary's taxable years beginning before 2002, the portion, 45
if any, of such distribution that does not exceed the 46

undistributed net income of the trust for the three taxable 47
years preceding the taxable year in which the distribution is 48
made to the extent that the portion was not included in the 49
trust's taxable income for any of the trust's taxable years 50
beginning in 2002 or thereafter. "Undistributed net income of a 51
trust" means the taxable income of the trust increased by (a) (i) 52
the additions to adjusted gross income required under division 53
(A) of this section and (ii) the personal exemptions allowed to 54
the trust pursuant to section 642(b) of the Internal Revenue 55
Code, and decreased by (b) (i) the deductions to adjusted gross 56
income required under division (A) of this section, (ii) the 57
amount of federal income taxes attributable to such income, and 58
(iii) the amount of taxable income that has been included in the 59
adjusted gross income of a beneficiary by reason of a prior 60
accumulation distribution. Any undistributed net income included 61
in the adjusted gross income of a beneficiary shall reduce the 62
undistributed net income of the trust commencing with the 63
earliest years of the accumulation period. 64

(7) Deduct the amount of wages and salaries, if any, not 65
otherwise allowable as a deduction but that would have been 66
allowable as a deduction in computing federal adjusted gross 67
income for the taxable year, had the targeted jobs credit 68
allowed and determined under sections 38, 51, and 52 of the 69
Internal Revenue Code not been in effect. 70

(8) Deduct any interest or interest equivalent on public 71
obligations and purchase obligations to the extent that the 72
interest or interest equivalent is included in federal adjusted 73
gross income. 74

(9) Add any loss or deduct any gain resulting from the 75
sale, exchange, or other disposition of public obligations to 76

the extent that the loss has been deducted or the gain has been 77
included in computing federal adjusted gross income. 78

(10) Deduct or add amounts, as provided under section 79
5747.70 of the Revised Code, related to contributions to 80
variable college savings program accounts made or tuition units 81
purchased pursuant to Chapter 3334. of the Revised Code. 82

(11) (a) Deduct, to the extent not otherwise allowable as a 83
deduction or exclusion in computing federal or Ohio adjusted 84
gross income for the taxable year, the amount the taxpayer paid 85
during the taxable year for medical care insurance and qualified 86
long-term care insurance for the taxpayer, the taxpayer's 87
spouse, and dependents. No deduction for medical care insurance 88
under division (A) (11) of this section shall be allowed either 89
to any taxpayer who is eligible to participate in any subsidized 90
health plan maintained by any employer of the taxpayer or of the 91
taxpayer's spouse, or to any taxpayer who is entitled to, or on 92
application would be entitled to, benefits under part A of Title 93
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 94
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 95
of this section, "subsidized health plan" means a health plan 96
for which the employer pays any portion of the plan's cost. The 97
deduction allowed under division (A) (11) (a) of this section 98
shall be the net of any related premium refunds, related premium 99
reimbursements, or related insurance premium dividends received 100
during the taxable year. 101

(b) Deduct, to the extent not otherwise deducted or 102
excluded in computing federal or Ohio adjusted gross income 103
during the taxable year, the amount the taxpayer paid during the 104
taxable year, not compensated for by any insurance or otherwise, 105
for medical care of the taxpayer, the taxpayer's spouse, and 106

dependents, to the extent the expenses exceed seven and one-half 107
per cent of the taxpayer's federal adjusted gross income. 108

(c) Deduct, to the extent not otherwise deducted or 109
excluded in computing federal or Ohio adjusted gross income, any 110
amount included in federal adjusted gross income under section 111
105 or not excluded under section 106 of the Internal Revenue 112
Code solely because it relates to an accident and health plan 113
for a person who otherwise would be a "qualifying relative" and 114
thus a "dependent" under section 152 of the Internal Revenue 115
Code but for the fact that the person fails to meet the income 116
and support limitations under section 152(d)(1)(B) and (C) of 117
the Internal Revenue Code. 118

(d) For purposes of division (A)(11) of this section, 119
"medical care" has the meaning given in section 213 of the 120
Internal Revenue Code, subject to the special rules, 121
limitations, and exclusions set forth therein, and "qualified 122
long-term care" has the same meaning given in section 7702B(c) 123
of the Internal Revenue Code. Solely for purposes of divisions 124
(A)(11)(a) and (c) of this section, "dependent" includes a 125
person who otherwise would be a "qualifying relative" and thus a 126
"dependent" under section 152 of the Internal Revenue Code but 127
for the fact that the person fails to meet the income and 128
support limitations under section 152(d)(1)(B) and (C) of the 129
Internal Revenue Code. 130

(12)(a) Deduct any amount included in federal adjusted 131
gross income solely because the amount represents a 132
reimbursement or refund of expenses that in any year the 133
taxpayer had deducted as an itemized deduction pursuant to 134
section 63 of the Internal Revenue Code and applicable United 135
States department of the treasury regulations. The deduction 136

otherwise allowed under division (A) (12) (a) of this section 137
shall be reduced to the extent the reimbursement is attributable 138
to an amount the taxpayer deducted under this section in any 139
taxable year. 140

(b) Add any amount not otherwise included in Ohio adjusted 141
gross income for any taxable year to the extent that the amount 142
is attributable to the recovery during the taxable year of any 143
amount deducted or excluded in computing federal or Ohio 144
adjusted gross income in any taxable year. 145

(13) Deduct any portion of the deduction described in 146
section 1341(a) (2) of the Internal Revenue Code, for repaying 147
previously reported income received under a claim of right, that 148
meets both of the following requirements: 149

(a) It is allowable for repayment of an item that was 150
included in the taxpayer's adjusted gross income for a prior 151
taxable year and did not qualify for a credit under division (A) 152
or (B) of section 5747.05 of the Revised Code for that year; 153

(b) It does not otherwise reduce the taxpayer's adjusted 154
gross income for the current or any other taxable year. 155

(14) Deduct an amount equal to the deposits made to, and 156
net investment earnings of, a medical savings account during the 157
taxable year, in accordance with section 3924.66 of the Revised 158
Code. The deduction allowed by division (A) (14) of this section 159
does not apply to medical savings account deposits and earnings 160
otherwise deducted or excluded for the current or any other 161
taxable year from the taxpayer's federal adjusted gross income. 162

(15) (a) Add an amount equal to the funds withdrawn from a 163
medical savings account during the taxable year, and the net 164
investment earnings on those funds, when the funds withdrawn 165

were used for any purpose other than to reimburse an account 166
holder for, or to pay, eligible medical expenses, in accordance 167
with section 3924.66 of the Revised Code; 168

(b) Add the amounts distributed from a medical savings 169
account under division (A)(2) of section 3924.68 of the Revised 170
Code during the taxable year. 171

(16) Add any amount claimed as a credit under section 172
5747.059 or 5747.65 of the Revised Code to the extent that such 173
amount satisfies either of the following: 174

(a) The amount was deducted or excluded from the 175
computation of the taxpayer's federal adjusted gross income as 176
required to be reported for the taxpayer's taxable year under 177
the Internal Revenue Code; 178

(b) The amount resulted in a reduction of the taxpayer's 179
federal adjusted gross income as required to be reported for any 180
of the taxpayer's taxable years under the Internal Revenue Code. 181

(17) Deduct the amount contributed by the taxpayer to an 182
individual development account program established by a county 183
department of job and family services pursuant to sections 184
329.11 to 329.14 of the Revised Code for the purpose of matching 185
funds deposited by program participants. On request of the tax 186
commissioner, the taxpayer shall provide any information that, 187
in the tax commissioner's opinion, is necessary to establish the 188
amount deducted under division (A)(17) of this section. 189

(18) Beginning in taxable year 2001 but not for any 190
taxable year beginning after December 31, 2005, if the taxpayer 191
is married and files a joint return and the combined federal 192
adjusted gross income of the taxpayer and the taxpayer's spouse 193
for the taxable year does not exceed one hundred thousand 194

dollars, or if the taxpayer is single and has a federal adjusted 195
gross income for the taxable year not exceeding fifty thousand 196
dollars, deduct amounts paid during the taxable year for 197
qualified tuition and fees paid to an eligible institution for 198
the taxpayer, the taxpayer's spouse, or any dependent of the 199
taxpayer, who is a resident of this state and is enrolled in or 200
attending a program that culminates in a degree or diploma at an 201
eligible institution. The deduction may be claimed only to the 202
extent that qualified tuition and fees are not otherwise 203
deducted or excluded for any taxable year from federal or Ohio 204
adjusted gross income. The deduction may not be claimed for 205
educational expenses for which the taxpayer claims a credit 206
under section 5747.27 of the Revised Code. 207

(19) Add any reimbursement received during the taxable 208
year of any amount the taxpayer deducted under division (A) (18) 209
of this section in any previous taxable year to the extent the 210
amount is not otherwise included in Ohio adjusted gross income. 211

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 212
(v) of this section, add five-sixths of the amount of 213
depreciation expense allowed by subsection (k) of section 168 of 214
the Internal Revenue Code, including the taxpayer's 215
proportionate or distributive share of the amount of 216
depreciation expense allowed by that subsection to a pass- 217
through entity in which the taxpayer has a direct or indirect 218
ownership interest. 219

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 220
of this section, add five-sixths of the amount of qualifying 221
section 179 depreciation expense, including the taxpayer's 222
proportionate or distributive share of the amount of qualifying 223
section 179 depreciation expense allowed to any pass-through 224

entity in which the taxpayer has a direct or indirect ownership 225
interest. 226

(iii) Subject to division (A) (20) (a) (v) of this section, 227
for taxable years beginning in 2012 or thereafter, if the 228
increase in income taxes withheld by the taxpayer is equal to or 229
greater than ten per cent of income taxes withheld by the 230
taxpayer during the taxpayer's immediately preceding taxable 231
year, "two-thirds" shall be substituted for "five-sixths" for 232
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 233

(iv) Subject to division (A) (20) (a) (v) of this section, 234
for taxable years beginning in 2012 or thereafter, a taxpayer is 235
not required to add an amount under division (A) (20) of this 236
section if the increase in income taxes withheld by the taxpayer 237
and by any pass-through entity in which the taxpayer has a 238
direct or indirect ownership interest is equal to or greater 239
than the sum of (I) the amount of qualifying section 179 240
depreciation expense and (II) the amount of depreciation expense 241
allowed to the taxpayer by subsection (k) of section 168 of the 242
Internal Revenue Code, and including the taxpayer's 243
proportionate or distributive shares of such amounts allowed to 244
any such pass-through entities. 245

(v) If a taxpayer directly or indirectly incurs a net 246
operating loss for the taxable year for federal income tax 247
purposes, to the extent such loss resulted from depreciation 248
expense allowed by subsection (k) of section 168 of the Internal 249
Revenue Code and by qualifying section 179 depreciation expense, 250
"the entire" shall be substituted for "five-sixths of the" for 251
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 252

The tax commissioner, under procedures established by the 253
commissioner, may waive the add-backs related to a pass-through 254

entity if the taxpayer owns, directly or indirectly, less than 255
five per cent of the pass-through entity. 256

(b) Nothing in division (A) (20) of this section shall be 257
construed to adjust or modify the adjusted basis of any asset. 258

(c) To the extent the add-back required under division (A) 259
(20) (a) of this section is attributable to property generating 260
nonbusiness income or loss allocated under section 5747.20 of 261
the Revised Code, the add-back shall be situated to the same 262
location as the nonbusiness income or loss generated by the 263
property for the purpose of determining the credit under 264
division (A) of section 5747.05 of the Revised Code. Otherwise, 265
the add-back shall be apportioned, subject to one or more of the 266
four alternative methods of apportionment enumerated in section 267
5747.21 of the Revised Code. 268

(d) For the purposes of division (A) (20) (a) (v) of this 269
section, net operating loss carryback and carryforward shall not 270
include the allowance of any net operating loss deduction 271
carryback or carryforward to the taxable year to the extent such 272
loss resulted from depreciation allowed by section 168(k) of the 273
Internal Revenue Code and by the qualifying section 179 274
depreciation expense amount. 275

(e) For the purposes of divisions (A) (20) and (21) of this 276
section: 277

(i) "Income taxes withheld" means the total amount 278
withheld and remitted under sections 5747.06 and 5747.07 of the 279
Revised Code by an employer during the employer's taxable year. 280

(ii) "Increase in income taxes withheld" means the amount 281
by which the amount of income taxes withheld by an employer 282
during the employer's current taxable year exceeds the amount of 283

income taxes withheld by that employer during the employer's 284
immediately preceding taxable year. 285

(iii) "Qualifying section 179 depreciation expense" means 286
the difference between (I) the amount of depreciation expense 287
directly or indirectly allowed to a taxpayer under section 179 288
of the Internal Revised Code, and (II) the amount of 289
depreciation expense directly or indirectly allowed to the 290
taxpayer under section 179 of the Internal Revenue Code as that 291
section existed on December 31, 2002. 292

(21) (a) If the taxpayer was required to add an amount 293
under division (A) (20) (a) of this section for a taxable year, 294
deduct one of the following: 295

(i) One-fifth of the amount so added for each of the five 296
succeeding taxable years if the amount so added was five-sixths 297
of qualifying section 179 depreciation expense or depreciation 298
expense allowed by subsection (k) of section 168 of the Internal 299
Revenue Code; 300

(ii) One-half of the amount so added for each of the two 301
succeeding taxable years if the amount so added was two-thirds 302
of such depreciation expense; 303

(iii) One-sixth of the amount so added for each of the six 304
succeeding taxable years if the entire amount of such 305
depreciation expense was so added. 306

(b) If the amount deducted under division (A) (21) (a) of 307
this section is attributable to an add-back allocated under 308
division (A) (20) (c) of this section, the amount deducted shall 309
be sitused to the same location. Otherwise, the add-back shall 310
be apportioned using the apportionment factors for the taxable 311
year in which the deduction is taken, subject to one or more of 312

the four alternative methods of apportionment enumerated in 313
section 5747.21 of the Revised Code. 314

(c) No deduction is available under division (A) (21) (a) of 315
this section with regard to any depreciation allowed by section 316
168(k) of the Internal Revenue Code and by the qualifying 317
section 179 depreciation expense amount to the extent that such 318
depreciation results in or increases a federal net operating 319
loss carryback or carryforward. If no such deduction is 320
available for a taxable year, the taxpayer may carry forward the 321
amount not deducted in such taxable year to the next taxable 322
year and add that amount to any deduction otherwise available 323
under division (A) (21) (a) of this section for that next taxable 324
year. The carryforward of amounts not so deducted shall continue 325
until the entire addition required by division (A) (20) (a) of 326
this section has been deducted. 327

(d) No refund shall be allowed as a result of adjustments 328
made by division (A) (21) of this section. 329

(22) Deduct, to the extent not otherwise deducted or 330
excluded in computing federal or Ohio adjusted gross income for 331
the taxable year, the amount the taxpayer received during the 332
taxable year as reimbursement for life insurance premiums under 333
section 5919.31 of the Revised Code. 334

(23) Deduct, to the extent not otherwise deducted or 335
excluded in computing federal or Ohio adjusted gross income for 336
the taxable year, the amount the taxpayer received during the 337
taxable year as a death benefit paid by the adjutant general 338
under section 5919.33 of the Revised Code. 339

(24) Deduct, to the extent included in federal adjusted 340
gross income and not otherwise allowable as a deduction or 341

exclusion in computing federal or Ohio adjusted gross income for 342
the taxable year, military pay and allowances received by the 343
taxpayer during the taxable year for active duty service in the 344
United States army, air force, navy, marine corps, or coast 345
guard or reserve components thereof or the national guard. The 346
deduction may not be claimed for military pay and allowances 347
received by the taxpayer while the taxpayer is stationed in this 348
state. 349

(25) Deduct, to the extent not otherwise allowable as a 350
deduction or exclusion in computing federal or Ohio adjusted 351
gross income for the taxable year and not otherwise compensated 352
for by any other source, the amount of qualified organ donation 353
expenses incurred by the taxpayer during the taxable year, not 354
to exceed ten thousand dollars. A taxpayer may deduct qualified 355
organ donation expenses only once for all taxable years 356
beginning with taxable years beginning in 2007. 357

For the purposes of division (A) (25) of this section: 358

(a) "Human organ" means all or any portion of a human 359
liver, pancreas, kidney, intestine, or lung, and any portion of 360
human bone marrow. 361

(b) "Qualified organ donation expenses" means travel 362
expenses, lodging expenses, and wages and salary forgone by a 363
taxpayer in connection with the taxpayer's donation, while 364
living, of one or more of the taxpayer's human organs to another 365
human being. 366

(26) Deduct, to the extent not otherwise deducted or 367
excluded in computing federal or Ohio adjusted gross income for 368
the taxable year, amounts received by the taxpayer as retired 369
personnel pay for service in the uniformed services or reserve 370

components thereof, or the national guard, or received by the 371
surviving spouse or former spouse of such a taxpayer under the 372
survivor benefit plan on account of such a taxpayer's death. If 373
the taxpayer receives income on account of retirement paid under 374
the federal civil service retirement system or federal employees 375
retirement system, or under any successor retirement program 376
enacted by the congress of the United States that is established 377
and maintained for retired employees of the United States 378
government, and such retirement income is based, in whole or in 379
part, on credit for the taxpayer's uniformed service, the 380
deduction allowed under this division shall include only that 381
portion of such retirement income that is attributable to the 382
taxpayer's uniformed service, to the extent that portion of such 383
retirement income is otherwise included in federal adjusted 384
gross income and is not otherwise deducted under this section. 385
Any amount deducted under division (A) (26) of this section is 386
not included in a taxpayer's adjusted gross income for the 387
purposes of section 5747.055 of the Revised Code. No amount may 388
be deducted under division (A) (26) of this section on the basis 389
of which a credit was claimed under section 5747.055 of the 390
Revised Code. 391

(27) Deduct, to the extent not otherwise deducted or 392
excluded in computing federal or Ohio adjusted gross income for 393
the taxable year, the amount the taxpayer received during the 394
taxable year from the military injury relief fund created in 395
section 5902.05 of the Revised Code. 396

(28) Deduct, to the extent not otherwise deducted or 397
excluded in computing federal or Ohio adjusted gross income for 398
the taxable year, the amount the taxpayer received as a veterans 399
bonus during the taxable year from the Ohio department of 400
veterans services as authorized by Section 2r of Article VIII, 401

Ohio Constitution. 402

(29) Deduct, to the extent not otherwise deducted or 403
excluded in computing federal or Ohio adjusted gross income for 404
the taxable year, any income derived from a transfer agreement 405
or from the enterprise transferred under that agreement under 406
section 4313.02 of the Revised Code. 407

(30) Deduct, to the extent not otherwise deducted or 408
excluded in computing federal or Ohio adjusted gross income for 409
the taxable year, Ohio college opportunity or federal Pell grant 410
amounts received by the taxpayer or the taxpayer's spouse or 411
dependent pursuant to section 3333.122 of the Revised Code or 20 412
U.S.C. 1070a, et seq., and used to pay room or board furnished 413
by the educational institution for which the grant was awarded 414
at the institution's facilities, including meal plans 415
administered by the institution. For the purposes of this 416
division, receipt of a grant includes the distribution of a 417
grant directly to an educational institution and the crediting 418
of the grant to the enrollee's account with the institution. 419

(31) (a) For taxable years beginning in 2015, deduct from 420
the portion of an individual's adjusted gross income that is 421
business income, to the extent not otherwise deducted or 422
excluded in computing federal or Ohio adjusted gross income for 423
the taxable year, the lesser of the following amounts: 424

(i) Seventy-five per cent of the individual's business 425
income; 426

(ii) Ninety-three thousand seven hundred fifty dollars for 427
each spouse if spouses file separate returns under section 428
5747.08 of the Revised Code or one hundred eighty-seven thousand 429
five hundred dollars for all other individuals. 430

(b) For taxable years beginning in 2016 or thereafter, 431
deduct from the portion of an individual's adjusted gross income 432
that is business income, to the extent not otherwise deducted or 433
excluded in computing federal adjusted gross income for the 434
taxable year, one hundred twenty-five thousand dollars for each 435
spouse if spouses file separate returns under section 5747.08 of 436
the Revised Code or two hundred fifty thousand dollars for all 437
other individuals. 438

(32) Deduct, as provided under section 5747.78 of the 439
Revised Code, contributions to ABLE savings accounts made in 440
accordance with sections 113.50 to 113.56 of the Revised Code. 441

(33) (a) Deduct, to the extent not otherwise deducted or 442
excluded in computing federal or Ohio adjusted gross income 443
during the taxable year, all of the following: 444

(i) Compensation paid to a qualifying employee described 445
in division (A) (14) (a) of section 5703.94 of the Revised Code to 446
the extent such compensation is for disaster work conducted in 447
this state during a disaster response period pursuant to a 448
qualifying solicitation received by the employee's employer; 449

(ii) Compensation paid to a qualifying employee described 450
in division (A) (14) (b) of section 5703.94 of the Revised Code to 451
the extent such compensation is for disaster work conducted in 452
this state by the employee during the disaster response period 453
on critical infrastructure owned or used by the employee's 454
employer; 455

(iii) Income received by an out-of-state disaster business 456
for disaster work conducted in this state during a disaster 457
response period, or, if the out-of-state disaster business is a 458
pass-through entity, a taxpayer's distributive share of the 459

pass-through entity's income from the business conducting 460
disaster work in this state during a disaster response period, 461
if, in either case, the disaster work is conducted pursuant to a 462
qualifying solicitation received by the business. 463

(b) All terms used in division (A) (33) of this section 464
have the same meanings as in section 5703.94 of the Revised 465
Code. 466

(34) For a taxpayer who is a qualifying Ohio educator, 467
deduct, to the extent not otherwise deducted or excluded in 468
computing federal or Ohio adjusted gross income for the taxable 469
year, the lesser of two hundred fifty dollars or the amount of 470
expenses described in subsections (a) (2) (D) (i) and (ii) of 471
section 62 of the Internal Revenue Code paid or incurred by the 472
taxpayer during the taxpayer's taxable year in excess of the 473
amount the taxpayer is authorized to deduct for that taxable 474
year under subsection (a) (2) (D) of that section. 475

(B) "Business income" means income, including gain or 476
loss, arising from transactions, activities, and sources in the 477
regular course of a trade or business and includes income, gain, 478
or loss from real property, tangible property, and intangible 479
property if the acquisition, rental, management, and disposition 480
of the property constitute integral parts of the regular course 481
of a trade or business operation. "Business income" includes 482
income, including gain or loss, from a partial or complete 483
liquidation of a business, including, but not limited to, gain 484
or loss from the sale or other disposition of goodwill. 485

(C) "Nonbusiness income" means all income other than 486
business income and may include, but is not limited to, 487
compensation, rents and royalties from real or tangible personal 488
property, capital gains, interest, dividends and distributions, 489

patent or copyright royalties, or lottery winnings, prizes, and 490
awards. 491

(D) "Compensation" means any form of remuneration paid to 492
an employee for personal services. 493

(E) "Fiduciary" means a guardian, trustee, executor, 494
administrator, receiver, conservator, or any other person acting 495
in any fiduciary capacity for any individual, trust, or estate. 496

(F) "Fiscal year" means an accounting period of twelve 497
months ending on the last day of any month other than December. 498

(G) "Individual" means any natural person. 499

(H) "Internal Revenue Code" means the "Internal Revenue 500
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 501

(I) "Resident" means any of the following, provided that 502
division (I) (3) of this section applies only to taxable years of 503
a trust beginning in 2002 or thereafter: 504

(1) An individual who is domiciled in this state, subject 505
to section 5747.24 of the Revised Code; 506

(2) The estate of a decedent who at the time of death was 507
domiciled in this state. The domicile tests of section 5747.24 508
of the Revised Code are not controlling for purposes of division 509
(I) (2) of this section. 510

(3) A trust that, in whole or part, resides in this state. 511
If only part of a trust resides in this state, the trust is a 512
resident only with respect to that part. 513

For the purposes of division (I) (3) of this section: 514

(a) A trust resides in this state for the trust's current 515
taxable year to the extent, as described in division (I) (3) (d) 516

of this section, that the trust consists directly or indirectly, 517
in whole or in part, of assets, net of any related liabilities, 518
that were transferred, or caused to be transferred, directly or 519
indirectly, to the trust by any of the following: 520

(i) A person, a court, or a governmental entity or 521
instrumentality on account of the death of a decedent, but only 522
if the trust is described in division (I)(3)(e)(i) or (ii) of 523
this section; 524

(ii) A person who was domiciled in this state for the 525
purposes of this chapter when the person directly or indirectly 526
transferred assets to an irrevocable trust, but only if at least 527
one of the trust's qualifying beneficiaries is domiciled in this 528
state for the purposes of this chapter during all or some 529
portion of the trust's current taxable year; 530

(iii) A person who was domiciled in this state for the 531
purposes of this chapter when the trust document or instrument 532
or part of the trust document or instrument became irrevocable, 533
but only if at least one of the trust's qualifying beneficiaries 534
is a resident domiciled in this state for the purposes of this 535
chapter during all or some portion of the trust's current 536
taxable year. If a trust document or instrument became 537
irrevocable upon the death of a person who at the time of death 538
was domiciled in this state for purposes of this chapter, that 539
person is a person described in division (I)(3)(a)(iii) of this 540
section. 541

(b) A trust is irrevocable to the extent that the 542
transferor is not considered to be the owner of the net assets 543
of the trust under sections 671 to 678 of the Internal Revenue 544
Code. 545

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

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

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

(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the

qualifying ratio last computed without regard to the subsequent 576
transfer, and (2) the fair market value of the subsequently 577
transferred assets at the time transferred, net of any related 578
liabilities, from sources enumerated in division (I) (3) (a) of 579
this section. The denominator of the revised qualifying ratio is 580
the fair market value of all the trust's assets immediately 581
after the subsequent transfer, net of any related liabilities. 582

(iii) Whether a transfer to the trust is by or from any of 583
the sources enumerated in division (I) (3) (a) of this section 584
shall be ascertained without regard to the domicile of the 585
trust's beneficiaries. 586

(e) For the purposes of division (I) (3) (a) (i) of this 587
section: 588

(i) A trust is described in division (I) (3) (e) (i) of this 589
section if the trust is a testamentary trust and the testator of 590
that testamentary trust was domiciled in this state at the time 591
of the testator's death for purposes of the taxes levied under 592
Chapter 5731. of the Revised Code. 593

(ii) A trust is described in division (I) (3) (e) (ii) of 594
this section if the transfer is a qualifying transfer described 595
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 596
trust is an irrevocable inter vivos trust, and at least one of 597
the trust's qualifying beneficiaries is domiciled in this state 598
for purposes of this chapter during all or some portion of the 599
trust's current taxable year. 600

(f) For the purposes of division (I) (3) (e) (ii) of this 601
section, a "qualifying transfer" is a transfer of assets, net of 602
any related liabilities, directly or indirectly to a trust, if 603
the transfer is described in any of the following: 604

(i) The transfer is made to a trust, created by the 605
decedent before the decedent's death and while the decedent was 606
domiciled in this state for the purposes of this chapter, and, 607
prior to the death of the decedent, the trust became irrevocable 608
while the decedent was domiciled in this state for the purposes 609
of this chapter. 610

(ii) The transfer is made to a trust to which the 611
decedent, prior to the decedent's death, had directly or 612
indirectly transferred assets, net of any related liabilities, 613
while the decedent was domiciled in this state for the purposes 614
of this chapter, and prior to the death of the decedent the 615
trust became irrevocable while the decedent was domiciled in 616
this state for the purposes of this chapter. 617

(iii) The transfer is made on account of a contractual 618
relationship existing directly or indirectly between the 619
transferor and either the decedent or the estate of the decedent 620
at any time prior to the date of the decedent's death, and the 621
decedent was domiciled in this state at the time of death for 622
purposes of the taxes levied under Chapter 5731. of the Revised 623
Code. 624

(iv) The transfer is made to a trust on account of a 625
contractual relationship existing directly or indirectly between 626
the transferor and another person who at the time of the 627
decedent's death was domiciled in this state for purposes of 628
this chapter. 629

(v) The transfer is made to a trust on account of the will 630
of a testator who was domiciled in this state at the time of the 631
testator's death for purposes of the taxes levied under Chapter 632
5731. of the Revised Code. 633

(vi) The transfer is made to a trust created by or caused 634
to be created by a court, and the trust was directly or 635
indirectly created in connection with or as a result of the 636
death of an individual who, for purposes of the taxes levied 637
under Chapter 5731. of the Revised Code, was domiciled in this 638
state at the time of the individual's death. 639

(g) The tax commissioner may adopt rules to ascertain the 640
part of a trust residing in this state. 641

(J) "Nonresident" means an individual or estate that is 642
not a resident. An individual who is a resident for only part of 643
a taxable year is a nonresident for the remainder of that 644
taxable year. 645

(K) "Pass-through entity" has the same meaning as in 646
section 5733.04 of the Revised Code. 647

(L) "Return" means the notifications and reports required 648
to be filed pursuant to this chapter for the purpose of 649
reporting the tax due and includes declarations of estimated tax 650
when so required. 651

(M) "Taxable year" means the calendar year or the 652
taxpayer's fiscal year ending during the calendar year, or 653
fractional part thereof, upon which the adjusted gross income is 654
calculated pursuant to this chapter. 655

(N) "Taxpayer" means any person subject to the tax imposed 656
by section 5747.02 of the Revised Code or any pass-through 657
entity that makes the election under division (D) of section 658
5747.08 of the Revised Code. 659

(O) "Dependents" means dependents as defined in the 660
Internal Revenue Code and as claimed in the taxpayer's federal 661
income tax return for the taxable year or which the taxpayer 662

would have been permitted to claim had the taxpayer filed a 663
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 or 5747.65 of the Revised Code to the extent that the 773
amount 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 811
tax" have the same meanings as in section 5748.01 of the Revised 812
Code. 813

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S) 814
(7) of this section, "public obligations," "purchase 815
obligations," and "interest or interest equivalent" have the 816
same meanings as in section 5709.76 of the Revised Code. 817

(V) "Limited liability company" means any limited 818
liability company formed under Chapter 1705. of the Revised Code 819
or under the laws of any other state. 820

(W) "Pass-through entity investor" means any person who, 821
during any portion of a taxable year of a pass-through entity, 822
is a partner, member, shareholder, or equity investor in that 823
pass-through entity. 824

(X) "Banking day" has the same meaning as in section 825
1304.01 of the Revised Code. 826

(Y) "Month" means a calendar month. 827

(Z) "Quarter" means the first three months, the second 828
three months, the third three months, or the last three months 829
of the taxpayer's taxable year. 830

(AA)(1) "Eligible institution" means a state university or 831
state institution of higher education as defined in section 832
3345.011 of the Revised Code, or a private, nonprofit college, 833
university, or other post-secondary institution located in this 834
state that possesses a certificate of authorization issued by 835
the chancellor of higher education pursuant to Chapter 1713. of 836
the Revised Code or a certificate of registration issued by the 837

state board of career colleges and schools under Chapter 3332. 838
of the Revised Code. 839

(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 business income that is included in federal 1065
adjusted gross income exceeds the amount of business income the 1066
individual is authorized to deduct under division (A) (31) of 1067
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) "Qualifying Ohio educator" means an individual who, 1079
for a taxable year, qualifies as an eligible educator, as that 1080
term is defined in section 62 of the Internal Revenue Code, and 1081
who holds a certificate, license, or permit described in Chapter 1082
3319. or section 3301.071 of the Revised Code. 1083

Section 2. That existing section 5747.01 of the Revised 1084
Code is hereby repealed. 1085

Section 3. The amendment by this act of section 5747.01 of 1086
the Revised Code applies to taxable years beginning on or after 1087
January 1, 2020. 1088