

As Re-Referred by the House Rules and Reference Committee

133rd General Assembly

Regular Session

2019-2020

Am. H. B. No. 5

Representatives Hillyer, Leland

Cosponsors: Representatives Plummer, Galonski, Rogers, Smith, T., West

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- 19
five weeks per service year. 20

"Teaching activities" means providing education to 21
students regarding the attorney's normal course of practice and 22
expertise as a public defender. 23

Sec. 120.62. There is hereby created the Ohio public 24
defender state loan repayment program, which shall be 25
administered by the state public defender. The program shall 26
provide loan repayment on behalf of attorneys who agree to 27
employment as public defenders in areas designated as public 28
defender shortage areas by the state public defender pursuant to 29
section 120.63 of the Revised Code. 30

Under the program, the state public defender, by means of 31
a contract entered into under section 120.66 of the Revised 32
Code, may agree to repay up to the amount set pursuant to 33
section 120.66 of the Revised Code of the principal and interest 34
of a government or other educational loan taken by an individual 35
for the following expenses, so long as the expenses were 36
incurred while the individual was enrolled in a law school in 37
the United States that was, during the time enrolled, accredited 38
by the American bar association, or a law school located outside 39
the United States for which the individual received a foreign 40
equivalency evaluation: 41

(A) Tuition; 42

(B) Other educational expenses, such as fees, books, and 43
expenses, for specific purposes and in amounts determined to be 44
reasonable by the state public defender; 45

(C) Room and board, in an amount determined reasonable by 46

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;
or

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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>	74
<u>(4) A summary and verification of the educational expenses</u>	75
<u>for which the individual seeks reimbursement under the program;</u>	76
<u>(5) Verification that the individual has been admitted to</u>	77
<u>the practice of law in this state by the Ohio supreme court and</u>	78
<u>remains in good standing, unless the individual is a student;</u>	79
<u>(6) Verification the individual is a citizen of the United</u>	80
<u>States, a national of the United States, or a permanent resident</u>	81
<u>of the United States.</u>	82
<u>Sec. 120.65. If funds are available in the Ohio public</u>	83
<u>defender state loan repayment fund created under section 120.67</u>	84
<u>of the Revised Code and the general assembly has appropriated</u>	85
<u>funds for the Ohio public defender state loan repayment program,</u>	86
<u>the state public defender shall approve an individual for</u>	87
<u>participation in the program if the state public defender finds</u>	88
<u>that the individual is eligible for participation in the</u>	89
<u>program.</u>	90
<u>Upon approval, the state public defender shall notify and</u>	91
<u>enter into discussions with the individual. The object of the</u>	92
<u>discussions is to facilitate the recruitment of the individual</u>	93
<u>to become or remain employed as a public defender within a</u>	94
<u>public defender shortage area.</u>	95
<u>If the state public defender and individual agree on the</u>	96
<u>individual's employment as a public defender within a public</u>	97
<u>defender shortage area, the individual shall prepare, sign, and</u>	98
<u>deliver to the state public defender a letter of intent agreeing</u>	99
<u>to that placement.</u>	100
<u>Sec. 120.66. (A) After signing a letter of intent under</u>	101
<u>section 120.65 of the Revised Code, an individual and the state</u>	102

public defender may enter into a contract for the individual's 103
participation in the Ohio public defender state loan repayment 104
program. The individual's employer also may be a party to the 105
contract. 106

(B) The contract shall include all of the following 107
obligations: 108

(1) The individual agrees to remain employed as a public 109
defender within the public defender shortage area identified in 110
the letter of intent for the number of hours and duration 111
specified in the contract; 112

(2) The state public defender agrees, as provided in 113
section 120.62 of the Revised Code, to repay, so long as the 114
individual satisfies the service obligation agreed to under 115
division (B)(1) of this section, the following amount of the 116
principal and interest of a government or other educational loan 117
taken by the individual for expenses described in section 120.62 118
of the Revised Code: 119

(a) For a three-year service obligation, up to fifty 120
thousand dollars to an individual practicing full time or up to 121
twenty-five thousand dollars to an individual practicing part 122
time; 123

(b) For an additional fourth or fifth year of service, up 124
to an additional thirty-five thousand dollars to an individual 125
practicing full time and up to an additional seventeen thousand 126
five hundred dollars to an individual practicing part time. 127

(3) The individual agrees to pay the state public defender 128
an amount established by rules adopted under section 120.68 of 129
the Revised Code if the individual fails to complete the service 130
obligation agreed to under division (B)(1) of this section. 131

(C) The contract shall include the following terms as 132
agreed upon by the parties: 133

(1) The individual's required length of service in the 134
public defender shortage area, which must be at least three 135
years with an optional fourth year and optional fifth year; 136

(2) The number of weekly hours the individual will be 137
engaged in full-time practice or part-time practice in the 138
public defender shortage area; 139

(3) The maximum amount that the state public defender will 140
repay on behalf of the individual; 141

(4) The extent to which the individual's teaching 142
activities will be counted toward the individual's full-time 143
practice or part-time practice hours under the contract. 144

(D) If the amount specified in division (C) (3) of this 145
section includes federal funds, the amount of state funds repaid 146
on the individual's behalf shall be the same as the amount of 147
those federal funds. 148

Sec. 120.67. The state public defender may accept gifts of 149
money from any source for the implementation and administration 150
of sections 120.61 to 120.68 of the Revised Code. The state 151
public defender shall pay all gifts accepted under this section 152
into the state treasury to the credit of the public defender 153
shortage area fund, which is hereby created. 154

The state public defender shall pay all damages collected 155
under division (B) (3) of section 120.66 of the Revised Code into 156
the state treasury to the credit of the public defender loan 157
repayment fund, which is hereby created. 158

The state public defender shall use the public defender 159

shortage area fund and the public defender loan repayment fund 160
for the implementation and administration of sections 120.61 to 161
120.68 of the Revised Code. 162

Sec. 120.68. The state public defender, in accordance with 163
section 111.15 of the Revised Code, shall adopt rules as 164
necessary to implement and administer sections 120.61 to 120.67 165
of the Revised Code. 166

Sec. 5747.01. Except as otherwise expressly provided or 167
clearly appearing from the context, any term used in this 168
chapter that is not otherwise defined in this section has the 169
same meaning as when used in a comparable context in the laws of 170
the United States relating to federal income taxes or if not 171
used in a comparable context in those laws, has the same meaning 172
as in section 5733.40 of the Revised Code. Any reference in this 173
chapter to the Internal Revenue Code includes other laws of the 174
United States relating to federal income taxes. 175

As used in this chapter: 176

(A) "Adjusted gross income" or "Ohio adjusted gross 177
income" means federal adjusted gross income, as defined and used 178
in the Internal Revenue Code, adjusted as provided in this 179
section: 180

(1) Add interest or dividends on obligations or securities 181
of any state or of any political subdivision or authority of any 182
state, other than this state and its subdivisions and 183
authorities. 184

(2) Add interest or dividends on obligations of any 185
authority, commission, instrumentality, territory, or possession 186
of the United States to the extent that the interest or 187
dividends are exempt from federal income taxes but not from 188

state income taxes. 189

(3) Deduct interest or dividends on obligations of the 190
United States and its territories and possessions or of any 191
authority, commission, or instrumentality of the United States 192
to the extent that the interest or dividends are included in 193
federal adjusted gross income but exempt from state income taxes 194
under the laws of the United States. 195

(4) Deduct disability and survivor's benefits to the 196
extent included in federal adjusted gross income. 197

(5) Deduct benefits under Title II of the Social Security 198
Act and tier 1 railroad retirement benefits to the extent 199
included in federal adjusted gross income under section 86 of 200
the Internal Revenue Code. 201

(6) In the case of a taxpayer who is a beneficiary of a 202
trust that makes an accumulation distribution as defined in 203
section 665 of the Internal Revenue Code, add, for the 204
beneficiary's taxable years beginning before 2002, the portion, 205
if any, of such distribution that does not exceed the 206
undistributed net income of the trust for the three taxable 207
years preceding the taxable year in which the distribution is 208
made to the extent that the portion was not included in the 209
trust's taxable income for any of the trust's taxable years 210
beginning in 2002 or thereafter. "Undistributed net income of a 211
trust" means the taxable income of the trust increased by (a) (i) 212
the additions to adjusted gross income required under division 213
(A) of this section and (ii) the personal exemptions allowed to 214
the trust pursuant to section 642(b) of the Internal Revenue 215
Code, and decreased by (b) (i) the deductions to adjusted gross 216
income required under division (A) of this section, (ii) the 217
amount of federal income taxes attributable to such income, and 218

(iii) the amount of taxable income that has been included in the 219
adjusted gross income of a beneficiary by reason of a prior 220
accumulation distribution. Any undistributed net income included 221
in the adjusted gross income of a beneficiary shall reduce the 222
undistributed net income of the trust commencing with the 223
earliest years of the accumulation period. 224

(7) Deduct the amount of wages and salaries, if any, not 225
otherwise allowable as a deduction but that would have been 226
allowable as a deduction in computing federal adjusted gross 227
income for the taxable year, had the targeted jobs credit 228
allowed and determined under sections 38, 51, and 52 of the 229
Internal Revenue Code not been in effect. 230

(8) Deduct any interest or interest equivalent on public 231
obligations and purchase obligations to the extent that the 232
interest or interest equivalent is included in federal adjusted 233
gross income. 234

(9) Add any loss or deduct any gain resulting from the 235
sale, exchange, or other disposition of public obligations to 236
the extent that the loss has been deducted or the gain has been 237
included in computing federal adjusted gross income. 238

(10) Deduct or add amounts, as provided under section 239
5747.70 of the Revised Code, related to contributions to 240
variable college savings program accounts made or tuition units 241
purchased pursuant to Chapter 3334. of the Revised Code. 242

(11) (a) Deduct, to the extent not otherwise allowable as a 243
deduction or exclusion in computing federal or Ohio adjusted 244
gross income for the taxable year, the amount the taxpayer paid 245
during the taxable year for medical care insurance and qualified 246
long-term care insurance for the taxpayer, the taxpayer's 247

spouse, and dependents. No deduction for medical care insurance 248
under division (A)(11) of this section shall be allowed either 249
to any taxpayer who is eligible to participate in any subsidized 250
health plan maintained by any employer of the taxpayer or of the 251
taxpayer's spouse, or to any taxpayer who is entitled to, or on 252
application would be entitled to, benefits under part A of Title 253
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 254
U.S.C. 301, as amended. For the purposes of division (A)(11)(a) 255
of this section, "subsidized health plan" means a health plan 256
for which the employer pays any portion of the plan's cost. The 257
deduction allowed under division (A)(11)(a) of this section 258
shall be the net of any related premium refunds, related premium 259
reimbursements, or related insurance premium dividends received 260
during the taxable year. 261

(b) Deduct, to the extent not otherwise deducted or 262
excluded in computing federal or Ohio adjusted gross income 263
during the taxable year, the amount the taxpayer paid during the 264
taxable year, not compensated for by any insurance or otherwise, 265
for medical care of the taxpayer, the taxpayer's spouse, and 266
dependents, to the extent the expenses exceed seven and one-half 267
per cent of the taxpayer's federal adjusted gross income. 268

(c) Deduct, to the extent not otherwise deducted or 269
excluded in computing federal or Ohio adjusted gross income, any 270
amount included in federal adjusted gross income under section 271
105 or not excluded under section 106 of the Internal Revenue 272
Code solely because it relates to an accident and health plan 273
for a person who otherwise would be a "qualifying relative" and 274
thus a "dependent" under section 152 of the Internal Revenue 275
Code but for the fact that the person fails to meet the income 276
and support limitations under section 152(d)(1)(B) and (C) of 277
the Internal Revenue Code. 278

(d) For purposes of division (A)(11) of this section, 279
"medical care" has the meaning given in section 213 of the 280
Internal Revenue Code, subject to the special rules, 281
limitations, and exclusions set forth therein, and "qualified 282
long-term care" has the same meaning given in section 7702B(c) 283
of the Internal Revenue Code. Solely for purposes of divisions 284
(A)(11)(a) and (c) of this section, "dependent" includes a 285
person who otherwise would be a "qualifying relative" and thus a 286
"dependent" under section 152 of the Internal Revenue Code but 287
for the fact that the person fails to meet the income and 288
support limitations under section 152(d)(1)(B) and (C) of the 289
Internal Revenue Code. 290

(12)(a) Deduct any amount included in federal adjusted 291
gross income solely because the amount represents a 292
reimbursement or refund of expenses that in any year the 293
taxpayer had deducted as an itemized deduction pursuant to 294
section 63 of the Internal Revenue Code and applicable United 295
States department of the treasury regulations. The deduction 296
otherwise allowed under division (A)(12)(a) of this section 297
shall be reduced to the extent the reimbursement is attributable 298
to an amount the taxpayer deducted under this section in any 299
taxable year. 300

(b) Add any amount not otherwise included in Ohio adjusted 301
gross income for any taxable year to the extent that the amount 302
is attributable to the recovery during the taxable year of any 303
amount deducted or excluded in computing federal or Ohio 304
adjusted gross income in any taxable year. 305

(13) Deduct any portion of the deduction described in 306
section 1341(a)(2) of the Internal Revenue Code, for repaying 307
previously reported income received under a claim of right, that 308

meets both of the following requirements: 309

(a) It is allowable for repayment of an item that was 310
included in the taxpayer's adjusted gross income for a prior 311
taxable year and did not qualify for a credit under division (A) 312
or (B) of section 5747.05 of the Revised Code for that year; 313

(b) It does not otherwise reduce the taxpayer's adjusted 314
gross income for the current or any other taxable year. 315

(14) Deduct an amount equal to the deposits made to, and 316
net investment earnings of, a medical savings account during the 317
taxable year, in accordance with section 3924.66 of the Revised 318
Code. The deduction allowed by division (A) (14) of this section 319
does not apply to medical savings account deposits and earnings 320
otherwise deducted or excluded for the current or any other 321
taxable year from the taxpayer's federal adjusted gross income. 322

(15) (a) Add an amount equal to the funds withdrawn from a 323
medical savings account during the taxable year, and the net 324
investment earnings on those funds, when the funds withdrawn 325
were used for any purpose other than to reimburse an account 326
holder for, or to pay, eligible medical expenses, in accordance 327
with section 3924.66 of the Revised Code; 328

(b) Add the amounts distributed from a medical savings 329
account under division (A) (2) of section 3924.68 of the Revised 330
Code during the taxable year. 331

(16) Add any amount claimed as a credit under section 332
5747.059 or 5747.65 of the Revised Code to the extent that such 333
amount satisfies either of the following: 334

(a) The amount was deducted or excluded from the 335
computation of the taxpayer's federal adjusted gross income as 336
required to be reported for the taxpayer's taxable year under 337

the Internal Revenue Code; 338

(b) The amount resulted in a reduction of the taxpayer's 339
federal adjusted gross income as required to be reported for any 340
of the taxpayer's taxable years under the Internal Revenue Code. 341

(17) Deduct the amount contributed by the taxpayer to an 342
individual development account program established by a county 343
department of job and family services pursuant to sections 344
329.11 to 329.14 of the Revised Code for the purpose of matching 345
funds deposited by program participants. On request of the tax 346
commissioner, the taxpayer shall provide any information that, 347
in the tax commissioner's opinion, is necessary to establish the 348
amount deducted under division (A) (17) of this section. 349

(18) Beginning in taxable year 2001 but not for any 350
taxable year beginning after December 31, 2005, if the taxpayer 351
is married and files a joint return and the combined federal 352
adjusted gross income of the taxpayer and the taxpayer's spouse 353
for the taxable year does not exceed one hundred thousand 354
dollars, or if the taxpayer is single and has a federal adjusted 355
gross income for the taxable year not exceeding fifty thousand 356
dollars, deduct amounts paid during the taxable year for 357
qualified tuition and fees paid to an eligible institution for 358
the taxpayer, the taxpayer's spouse, or any dependent of the 359
taxpayer, who is a resident of this state and is enrolled in or 360
attending a program that culminates in a degree or diploma at an 361
eligible institution. The deduction may be claimed only to the 362
extent that qualified tuition and fees are not otherwise 363
deducted or excluded for any taxable year from federal or Ohio 364
adjusted gross income. The deduction may not be claimed for 365
educational expenses for which the taxpayer claims a credit 366
under section 5747.27 of the Revised Code. 367

(19) Add any reimbursement received during the taxable 368
year of any amount the taxpayer deducted under division (A) (18) 369
of this section in any previous taxable year to the extent the 370
amount is not otherwise included in Ohio adjusted gross income. 371

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 372
(v) of this section, add five-sixths of the amount of 373
depreciation expense allowed by subsection (k) of section 168 of 374
the Internal Revenue Code, including the taxpayer's 375
proportionate or distributive share of the amount of 376
depreciation expense allowed by that subsection to a pass- 377
through entity in which the taxpayer has a direct or indirect 378
ownership interest. 379

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 380
of this section, add five-sixths of the amount of qualifying 381
section 179 depreciation expense, including the taxpayer's 382
proportionate or distributive share of the amount of qualifying 383
section 179 depreciation expense allowed to any pass-through 384
entity in which the taxpayer has a direct or indirect ownership 385
interest. 386

(iii) Subject to division (A) (20) (a) (v) of this section, 387
for taxable years beginning in 2012 or thereafter, if the 388
increase in income taxes withheld by the taxpayer is equal to or 389
greater than ten per cent of income taxes withheld by the 390
taxpayer during the taxpayer's immediately preceding taxable 391
year, "two-thirds" shall be substituted for "five-sixths" for 392
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 393

(iv) Subject to division (A) (20) (a) (v) of this section, 394
for taxable years beginning in 2012 or thereafter, a taxpayer is 395
not required to add an amount under division (A) (20) of this 396
section if the increase in income taxes withheld by the taxpayer 397

and by any pass-through entity in which the taxpayer has a 398
direct or indirect ownership interest is equal to or greater 399
than the sum of (I) the amount of qualifying section 179 400
depreciation expense and (II) the amount of depreciation expense 401
allowed to the taxpayer by subsection (k) of section 168 of the 402
Internal Revenue Code, and including the taxpayer's 403
proportionate or distributive shares of such amounts allowed to 404
any such pass-through entities. 405

(v) If a taxpayer directly or indirectly incurs a net 406
operating loss for the taxable year for federal income tax 407
purposes, to the extent such loss resulted from depreciation 408
expense allowed by subsection (k) of section 168 of the Internal 409
Revenue Code and by qualifying section 179 depreciation expense, 410
"the entire" shall be substituted for "five-sixths of the" for 411
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 412

The tax commissioner, under procedures established by the 413
commissioner, may waive the add-backs related to a pass-through 414
entity if the taxpayer owns, directly or indirectly, less than 415
five per cent of the pass-through entity. 416

(b) Nothing in division (A) (20) of this section shall be 417
construed to adjust or modify the adjusted basis of any asset. 418

(c) To the extent the add-back required under division (A) 419
(20) (a) of this section is attributable to property generating 420
nonbusiness income or loss allocated under section 5747.20 of 421
the Revised Code, the add-back shall be situated to the same 422
location as the nonbusiness income or loss generated by the 423
property for the purpose of determining the credit under 424
division (A) of section 5747.05 of the Revised Code. Otherwise, 425
the add-back shall be apportioned, subject to one or more of the 426
four alternative methods of apportionment enumerated in section 427

5747.21 of the Revised Code. 428

(d) For the purposes of division (A) (20) (a) (v) of this 429
section, net operating loss carryback and carryforward shall not 430
include the allowance of any net operating loss deduction 431
carryback or carryforward to the taxable year to the extent such 432
loss resulted from depreciation allowed by section 168(k) of the 433
Internal Revenue Code and by the qualifying section 179 434
depreciation expense amount. 435

(e) For the purposes of divisions (A) (20) and (21) of this 436
section: 437

(i) "Income taxes withheld" means the total amount 438
withheld and remitted under sections 5747.06 and 5747.07 of the 439
Revised Code by an employer during the employer's taxable year. 440

(ii) "Increase in income taxes withheld" means the amount 441
by which the amount of income taxes withheld by an employer 442
during the employer's current taxable year exceeds the amount of 443
income taxes withheld by that employer during the employer's 444
immediately preceding taxable year. 445

(iii) "Qualifying section 179 depreciation expense" means 446
the difference between (I) the amount of depreciation expense 447
directly or indirectly allowed to a taxpayer under section 179 448
of the Internal Revised Code, and (II) the amount of 449
depreciation expense directly or indirectly allowed to the 450
taxpayer under section 179 of the Internal Revenue Code as that 451
section existed on December 31, 2002. 452

(21) (a) If the taxpayer was required to add an amount 453
under division (A) (20) (a) of this section for a taxable year, 454
deduct one of the following: 455

(i) One-fifth of the amount so added for each of the five 456

succeeding taxable years if the amount so added was five-sixths 457
of qualifying section 179 depreciation expense or depreciation 458
expense allowed by subsection (k) of section 168 of the Internal 459
Revenue Code; 460

(ii) One-half of the amount so added for each of the two 461
succeeding taxable years if the amount so added was two-thirds 462
of such depreciation expense; 463

(iii) One-sixth of the amount so added for each of the six 464
succeeding taxable years if the entire amount of such 465
depreciation expense was so added. 466

(b) If the amount deducted under division (A) (21) (a) of 467
this section is attributable to an add-back allocated under 468
division (A) (20) (c) of this section, the amount deducted shall 469
be situated to the same location. Otherwise, the add-back shall 470
be apportioned using the apportionment factors for the taxable 471
year in which the deduction is taken, subject to one or more of 472
the four alternative methods of apportionment enumerated in 473
section 5747.21 of the Revised Code. 474

(c) No deduction is available under division (A) (21) (a) of 475
this section with regard to any depreciation allowed by section 476
168(k) of the Internal Revenue Code and by the qualifying 477
section 179 depreciation expense amount to the extent that such 478
depreciation results in or increases a federal net operating 479
loss carryback or carryforward. If no such deduction is 480
available for a taxable year, the taxpayer may carry forward the 481
amount not deducted in such taxable year to the next taxable 482
year and add that amount to any deduction otherwise available 483
under division (A) (21) (a) of this section for that next taxable 484
year. The carryforward of amounts not so deducted shall continue 485
until the entire addition required by division (A) (20) (a) of 486

this section has been deducted. 487

(d) No refund shall be allowed as a result of adjustments 488
made by division (A) (21) of this section. 489

(22) Deduct, to the extent not otherwise deducted or 490
excluded in computing federal or Ohio adjusted gross income for 491
the taxable year, the amount the taxpayer received during the 492
taxable year as reimbursement for life insurance premiums under 493
section 5919.31 of the Revised Code. 494

(23) Deduct, to the extent not otherwise deducted or 495
excluded in computing federal or Ohio adjusted gross income for 496
the taxable year, the amount the taxpayer received during the 497
taxable year as a death benefit paid by the adjutant general 498
under section 5919.33 of the Revised Code. 499

(24) Deduct, to the extent included in federal adjusted 500
gross income and not otherwise allowable as a deduction or 501
exclusion in computing federal or Ohio adjusted gross income for 502
the taxable year, military pay and allowances received by the 503
taxpayer during the taxable year for active duty service in the 504
United States army, air force, navy, marine corps, or coast 505
guard or reserve components thereof or the national guard. The 506
deduction may not be claimed for military pay and allowances 507
received by the taxpayer while the taxpayer is stationed in this 508
state. 509

(25) Deduct, to the extent not otherwise allowable as a 510
deduction or exclusion in computing federal or Ohio adjusted 511
gross income for the taxable year and not otherwise compensated 512
for by any other source, the amount of qualified organ donation 513
expenses incurred by the taxpayer during the taxable year, not 514
to exceed ten thousand dollars. A taxpayer may deduct qualified 515

organ donation expenses only once for all taxable years 516
beginning with taxable years beginning in 2007. 517

For the purposes of division (A) (25) of this section: 518

(a) "Human organ" means all or any portion of a human 519
liver, pancreas, kidney, intestine, or lung, and any portion of 520
human bone marrow. 521

(b) "Qualified organ donation expenses" means travel 522
expenses, lodging expenses, and wages and salary forgone by a 523
taxpayer in connection with the taxpayer's donation, while 524
living, of one or more of the taxpayer's human organs to another 525
human being. 526

(26) Deduct, to the extent not otherwise deducted or 527
excluded in computing federal or Ohio adjusted gross income for 528
the taxable year, amounts received by the taxpayer as retired 529
personnel pay for service in the uniformed services or reserve 530
components thereof, or the national guard, or received by the 531
surviving spouse or former spouse of such a taxpayer under the 532
survivor benefit plan on account of such a taxpayer's death. If 533
the taxpayer receives income on account of retirement paid under 534
the federal civil service retirement system or federal employees 535
retirement system, or under any successor retirement program 536
enacted by the congress of the United States that is established 537
and maintained for retired employees of the United States 538
government, and such retirement income is based, in whole or in 539
part, on credit for the taxpayer's uniformed service, the 540
deduction allowed under this division shall include only that 541
portion of such retirement income that is attributable to the 542
taxpayer's uniformed service, to the extent that portion of such 543
retirement income is otherwise included in federal adjusted 544
gross income and is not otherwise deducted under this section. 545

Any amount deducted under division (A) (26) of this section is 546
not included in a taxpayer's adjusted gross income for the 547
purposes of section 5747.055 of the Revised Code. No amount may 548
be deducted under division (A) (26) of this section on the basis 549
of which a credit was claimed under section 5747.055 of the 550
Revised Code. 551

(27) Deduct, to the extent not otherwise deducted or 552
excluded in computing federal or Ohio adjusted gross income for 553
the taxable year, the amount the taxpayer received during the 554
taxable year from the military injury relief fund created in 555
section 5902.05 of the Revised Code. 556

(28) Deduct, to the extent not otherwise deducted or 557
excluded in computing federal or Ohio adjusted gross income for 558
the taxable year, the amount the taxpayer received as a veterans 559
bonus during the taxable year from the Ohio department of 560
veterans services as authorized by Section 2r of Article VIII, 561
Ohio Constitution. 562

(29) Deduct, to the extent not otherwise deducted or 563
excluded in computing federal or Ohio adjusted gross income for 564
the taxable year, any income derived from a transfer agreement 565
or from the enterprise transferred under that agreement under 566
section 4313.02 of the Revised Code. 567

(30) Deduct, to the extent not otherwise deducted or 568
excluded in computing federal or Ohio adjusted gross income for 569
the taxable year, Ohio college opportunity or federal Pell grant 570
amounts received by the taxpayer or the taxpayer's spouse or 571
dependent pursuant to section 3333.122 of the Revised Code or 20 572
U.S.C. 1070a, et seq., and used to pay room or board furnished 573
by the educational institution for which the grant was awarded 574
at the institution's facilities, including meal plans 575

administered by the institution. For the purposes of this 576
division, receipt of a grant includes the distribution of a 577
grant directly to an educational institution and the crediting 578
of the grant to the enrollee's account with the institution. 579

(31)(a) For taxable years beginning in 2015, deduct from 580
the portion of an individual's adjusted gross income that is 581
business income, to the extent not otherwise deducted or 582
excluded in computing federal or Ohio adjusted gross income for 583
the taxable year, the lesser of the following amounts: 584

(i) Seventy-five per cent of the individual's business 585
income; 586

(ii) Ninety-three thousand seven hundred fifty dollars for 587
each spouse if spouses file separate returns under section 588
5747.08 of the Revised Code or one hundred eighty-seven thousand 589
five hundred dollars for all other individuals. 590

(b) For taxable years beginning in 2016 or thereafter, 591
deduct from the portion of an individual's adjusted gross income 592
that is business income, to the extent not otherwise deducted or 593
excluded in computing federal adjusted gross income for the 594
taxable year, one hundred twenty-five thousand dollars for each 595
spouse if spouses file separate returns under section 5747.08 of 596
the Revised Code or two hundred fifty thousand dollars for all 597
other individuals. 598

(32) Deduct, as provided under section 5747.78 of the 599
Revised Code, contributions to ABLE savings accounts made in 600
accordance with sections 113.50 to 113.56 of the Revised Code. 601

(33)(a) Deduct, to the extent not otherwise deducted or 602
excluded in computing federal or Ohio adjusted gross income 603
during the taxable year, all of the following: 604

(i) Compensation paid to a qualifying employee described 605
in division (A) (14) (a) of section 5703.94 of the Revised Code to 606
the extent such compensation is for disaster work conducted in 607
this state during a disaster response period pursuant to a 608
qualifying solicitation received by the employee's employer; 609

(ii) Compensation paid to a qualifying employee described 610
in division (A) (14) (b) of section 5703.94 of the Revised Code to 611
the extent such compensation is for disaster work conducted in 612
this state by the employee during the disaster response period 613
on critical infrastructure owned or used by the employee's 614
employer; 615

(iii) Income received by an out-of-state disaster business 616
for disaster work conducted in this state during a disaster 617
response period, or, if the out-of-state disaster business is a 618
pass-through entity, a taxpayer's distributive share of the 619
pass-through entity's income from the business conducting 620
disaster work in this state during a disaster response period, 621
if, in either case, the disaster work is conducted pursuant to a 622
qualifying solicitation received by the business. 623

(b) All terms used in division (A) (33) of this section 624
have the same meanings as in section 5703.94 of the Revised 625
Code. 626

(34) Deduct, to the extent included in federal adjusted 627
gross income, income attributable to loan repayments on behalf 628
of the taxpayer under the Ohio public defender state loan 629
repayment program under section 120.66 of the Revised Code. 630

(B) "Business income" means income, including gain or 631
loss, arising from transactions, activities, and sources in the 632
regular course of a trade or business and includes income, gain, 633

or loss from real property, tangible property, and intangible 634
property if the acquisition, rental, management, and disposition 635
of the property constitute integral parts of the regular course 636
of a trade or business operation. "Business income" includes 637
income, including gain or loss, from a partial or complete 638
liquidation of a business, including, but not limited to, gain 639
or loss from the sale or other disposition of goodwill. 640

(C) "Nonbusiness income" means all income other than 641
business income and may include, but is not limited to, 642
compensation, rents and royalties from real or tangible personal 643
property, capital gains, interest, dividends and distributions, 644
patent or copyright royalties, or lottery winnings, prizes, and 645
awards. 646

(D) "Compensation" means any form of remuneration paid to 647
an employee for personal services. 648

(E) "Fiduciary" means a guardian, trustee, executor, 649
administrator, receiver, conservator, or any other person acting 650
in any fiduciary capacity for any individual, trust, or estate. 651

(F) "Fiscal year" means an accounting period of twelve 652
months ending on the last day of any month other than December. 653

(G) "Individual" means any natural person. 654

(H) "Internal Revenue Code" means the "Internal Revenue 655
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 656

(I) "Resident" means any of the following, provided that 657
division (I)(3) of this section applies only to taxable years of 658
a trust beginning in 2002 or thereafter: 659

(1) An individual who is domiciled in this state, subject 660
to section 5747.24 of the Revised Code; 661

(2) The estate of a decedent who at the time of death was 662
domiciled in this state. The domicile tests of section 5747.24 663
of the Revised Code are not controlling for purposes of division 664
(I) (2) of this section. 665

(3) A trust that, in whole or part, resides in this state. 666
If only part of a trust resides in this state, the trust is a 667
resident only with respect to that part. 668

For the purposes of division (I) (3) of this section: 669

(a) A trust resides in this state for the trust's current 670
taxable year to the extent, as described in division (I) (3) (d) 671
of this section, that the trust consists directly or indirectly, 672
in whole or in part, of assets, net of any related liabilities, 673
that were transferred, or caused to be transferred, directly or 674
indirectly, to the trust by any of the following: 675

(i) A person, a court, or a governmental entity or 676
instrumentality on account of the death of a decedent, but only 677
if the trust is described in division (I) (3) (e) (i) or (ii) of 678
this section; 679

(ii) A person who was domiciled in this state for the 680
purposes of this chapter when the person directly or indirectly 681
transferred assets to an irrevocable trust, but only if at least 682
one of the trust's qualifying beneficiaries is domiciled in this 683
state for the purposes of this chapter during all or some 684
portion of the trust's current taxable year; 685

(iii) A person who was domiciled in this state for the 686
purposes of this chapter when the trust document or instrument 687
or part of the trust document or instrument became irrevocable, 688
but only if at least one of the trust's qualifying beneficiaries 689
is a resident domiciled in this state for the purposes of this 690

chapter during all or some portion of the trust's current 691
taxable year. If a trust document or instrument became 692
irrevocable upon the death of a person who at the time of death 693
was domiciled in this state for purposes of this chapter, that 694
person is a person described in division (I) (3) (a) (iii) of this 695
section. 696

(b) A trust is irrevocable to the extent that the 697
transferor is not considered to be the owner of the net assets 698
of the trust under sections 671 to 678 of the Internal Revenue 699
Code. 700

(c) With respect to a trust other than a charitable lead 701
trust, "qualifying beneficiary" has the same meaning as 702
"potential current beneficiary" as defined in section 1361(e) (2) 703
of the Internal Revenue Code, and with respect to a charitable 704
lead trust "qualifying beneficiary" is any current, future, or 705
contingent beneficiary, but with respect to any trust 706
"qualifying beneficiary" excludes a person or a governmental 707
entity or instrumentality to any of which a contribution would 708
qualify for the charitable deduction under section 170 of the 709
Internal Revenue Code. 710

(d) For the purposes of division (I) (3) (a) of this 711
section, the extent to which a trust consists directly or 712
indirectly, in whole or in part, of assets, net of any related 713
liabilities, that were transferred directly or indirectly, in 714
whole or part, to the trust by any of the sources enumerated in 715
that division shall be ascertained by multiplying the fair 716
market value of the trust's assets, net of related liabilities, 717
by the qualifying ratio, which shall be computed as follows: 718

(i) The first time the trust receives assets, the 719
numerator of the qualifying ratio is the fair market value of 720

those assets at that time, net of any related liabilities, from 721
sources enumerated in division (I) (3) (a) of this section. The 722
denominator of the qualifying ratio is the fair market value of 723
all the trust's assets at that time, net of any related 724
liabilities. 725

(ii) Each subsequent time the trust receives assets, a 726
revised qualifying ratio shall be computed. The numerator of the 727
revised qualifying ratio is the sum of (1) the fair market value 728
of the trust's assets immediately prior to the subsequent 729
transfer, net of any related liabilities, multiplied by the 730
qualifying ratio last computed without regard to the subsequent 731
transfer, and (2) the fair market value of the subsequently 732
transferred assets at the time transferred, net of any related 733
liabilities, from sources enumerated in division (I) (3) (a) of 734
this section. The denominator of the revised qualifying ratio is 735
the fair market value of all the trust's assets immediately 736
after the subsequent transfer, net of any related liabilities. 737

(iii) Whether a transfer to the trust is by or from any of 738
the sources enumerated in division (I) (3) (a) of this section 739
shall be ascertained without regard to the domicile of the 740
trust's beneficiaries. 741

(e) For the purposes of division (I) (3) (a) (i) of this 742
section: 743

(i) A trust is described in division (I) (3) (e) (i) of this 744
section if the trust is a testamentary trust and the testator of 745
that testamentary trust was domiciled in this state at the time 746
of the testator's death for purposes of the taxes levied under 747
Chapter 5731. of the Revised Code. 748

(ii) A trust is described in division (I) (3) (e) (ii) of 749

this section if the transfer is a qualifying transfer described 750
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 751
trust is an irrevocable inter vivos trust, and at least one of 752
the trust's qualifying beneficiaries is domiciled in this state 753
for purposes of this chapter during all or some portion of the 754
trust's current taxable year. 755

(f) For the purposes of division (I) (3) (e) (ii) of this 756
section, a "qualifying transfer" is a transfer of assets, net of 757
any related liabilities, directly or indirectly to a trust, if 758
the transfer is described in any of the following: 759

(i) The transfer is made to a trust, created by the 760
decedent before the decedent's death and while the decedent was 761
domiciled in this state for the purposes of this chapter, and, 762
prior to the death of the decedent, the trust became irrevocable 763
while the decedent was domiciled in this state for the purposes 764
of this chapter. 765

(ii) The transfer is made to a trust to which the 766
decedent, prior to the decedent's death, had directly or 767
indirectly transferred assets, net of any related liabilities, 768
while the decedent was domiciled in this state for the purposes 769
of this chapter, and prior to the death of the decedent the 770
trust became irrevocable while the decedent was domiciled in 771
this state for the purposes of this chapter. 772

(iii) The transfer is made on account of a contractual 773
relationship existing directly or indirectly between the 774
transferor and either the decedent or the estate of the decedent 775
at any time prior to the date of the decedent's death, and the 776
decedent was domiciled in this state at the time of death for 777
purposes of the taxes levied under Chapter 5731. of the Revised 778
Code. 779

(iv) The transfer is made to a trust on account of a 780
contractual relationship existing directly or indirectly between 781
the transferor and another person who at the time of the 782
decedent's death was domiciled in this state for purposes of 783
this chapter. 784

(v) The transfer is made to a trust on account of the will 785
of a testator who was domiciled in this state at the time of the 786
testator's death for purposes of the taxes levied under Chapter 787
5731. of the Revised Code. 788

(vi) The transfer is made to a trust created by or caused 789
to be created by a court, and the trust was directly or 790
indirectly created in connection with or as a result of the 791
death of an individual who, for purposes of the taxes levied 792
under Chapter 5731. of the Revised Code, was domiciled in this 793
state at the time of the individual's death. 794

(g) The tax commissioner may adopt rules to ascertain the 795
part of a trust residing in this state. 796

(J) "Nonresident" means an individual or estate that is 797
not a resident. An individual who is a resident for only part of 798
a taxable year is a nonresident for the remainder of that 799
taxable year. 800

(K) "Pass-through entity" has the same meaning as in 801
section 5733.04 of the Revised Code. 802

(L) "Return" means the notifications and reports required 803
to be filed pursuant to this chapter for the purpose of 804
reporting the tax due and includes declarations of estimated tax 805
when so required. 806

(M) "Taxable year" means the calendar year or the 807
taxpayer's fiscal year ending during the calendar year, or 808

fractional part thereof, upon which the adjusted gross income is 809
calculated pursuant to this chapter. 810

(N) "Taxpayer" means any person subject to the tax imposed 811
by section 5747.02 of the Revised Code or any pass-through 812
entity that makes the election under division (D) of section 813
5747.08 of the Revised Code. 814

(O) "Dependents" means dependents as defined in the 815
Internal Revenue Code and as claimed in the taxpayer's federal 816
income tax return for the taxable year or which the taxpayer 817
would have been permitted to claim had the taxpayer filed a 818
federal income tax return. 819

(P) "Principal county of employment" means, in the case of 820
a nonresident, the county within the state in which a taxpayer 821
performs services for an employer or, if those services are 822
performed in more than one county, the county in which the major 823
portion of the services are performed. 824

(Q) As used in sections 5747.50 to 5747.55 of the Revised 825
Code: 826

(1) "Subdivision" means any county, municipal corporation, 827
park district, or township. 828

(2) "Essential local government purposes" includes all 829
functions that any subdivision is required by general law to 830
exercise, including like functions that are exercised under a 831
charter adopted pursuant to the Ohio Constitution. 832

(R) "Overpayment" means any amount already paid that 833
exceeds the figure determined to be the correct amount of the 834
tax. 835

(S) "Taxable income" or "Ohio taxable income" applies only 836

to estates and trusts, and means federal taxable income, as 837
defined and used in the Internal Revenue Code, adjusted as 838
follows: 839

(1) Add interest or dividends, net of ordinary, necessary, 840
and reasonable expenses not deducted in computing federal 841
taxable income, on obligations or securities of any state or of 842
any political subdivision or authority of any state, other than 843
this state and its subdivisions and authorities, but only to the 844
extent that such net amount is not otherwise includible in Ohio 845
taxable income and is described in either division (S) (1) (a) or 846
(b) of this section: 847

(a) The net amount is not attributable to the S portion of 848
an electing small business trust and has not been distributed to 849
beneficiaries for the taxable year; 850

(b) The net amount is attributable to the S portion of an 851
electing small business trust for the taxable year. 852

(2) Add interest or dividends, net of ordinary, necessary, 853
and reasonable expenses not deducted in computing federal 854
taxable income, on obligations of any authority, commission, 855
instrumentality, territory, or possession of the United States 856
to the extent that the interest or dividends are exempt from 857
federal income taxes but not from state income taxes, but only 858
to the extent that such net amount is not otherwise includible 859
in Ohio taxable income and is described in either division (S) 860
(1) (a) or (b) of this section; 861

(3) Add the amount of personal exemption allowed to the 862
estate pursuant to section 642(b) of the Internal Revenue Code; 863

(4) Deduct interest or dividends, net of related expenses 864
deducted in computing federal taxable income, on obligations of 865

the United States and its territories and possessions or of any 866
authority, commission, or instrumentality of the United States 867
to the extent that the interest or dividends are exempt from 868
state taxes under the laws of the United States, but only to the 869
extent that such amount is included in federal taxable income 870
and is described in either division (S)(1)(a) or (b) of this 871
section; 872

(5) Deduct the amount of wages and salaries, if any, not 873
otherwise allowable as a deduction but that would have been 874
allowable as a deduction in computing federal taxable income for 875
the taxable year, had the targeted jobs credit allowed under 876
sections 38, 51, and 52 of the Internal Revenue Code not been in 877
effect, but only to the extent such amount relates either to 878
income included in federal taxable income for the taxable year 879
or to income of the S portion of an electing small business 880
trust for the taxable year; 881

(6) Deduct any interest or interest equivalent, net of 882
related expenses deducted in computing federal taxable income, 883
on public obligations and purchase obligations, but only to the 884
extent that such net amount relates either to income included in 885
federal taxable income for the taxable year or to income of the 886
S portion of an electing small business trust for the taxable 887
year; 888

(7) Add any loss or deduct any gain resulting from sale, 889
exchange, or other disposition of public obligations to the 890
extent that such loss has been deducted or such gain has been 891
included in computing either federal taxable income or income of 892
the S portion of an electing small business trust for the 893
taxable year; 894

(8) Except in the case of the final return of an estate, 895

add any amount deducted by the taxpayer on both its Ohio estate 896
tax return pursuant to section 5731.14 of the Revised Code, and 897
on its federal income tax return in determining federal taxable 898
income; 899

(9) (a) Deduct any amount included in federal taxable 900
income solely because the amount represents a reimbursement or 901
refund of expenses that in a previous year the decedent had 902
deducted as an itemized deduction pursuant to section 63 of the 903
Internal Revenue Code and applicable treasury regulations. The 904
deduction otherwise allowed under division (S) (9) (a) of this 905
section shall be reduced to the extent the reimbursement is 906
attributable to an amount the taxpayer or decedent deducted 907
under this section in any taxable year. 908

(b) Add any amount not otherwise included in Ohio taxable 909
income for any taxable year to the extent that the amount is 910
attributable to the recovery during the taxable year of any 911
amount deducted or excluded in computing federal or Ohio taxable 912
income in any taxable year, but only to the extent such amount 913
has not been distributed to beneficiaries for the taxable year. 914

(10) Deduct any portion of the deduction described in 915
section 1341(a) (2) of the Internal Revenue Code, for repaying 916
previously reported income received under a claim of right, that 917
meets both of the following requirements: 918

(a) It is allowable for repayment of an item that was 919
included in the taxpayer's taxable income or the decedent's 920
adjusted gross income for a prior taxable year and did not 921
qualify for a credit under division (A) or (B) of section 922
5747.05 of the Revised Code for that year. 923

(b) It does not otherwise reduce the taxpayer's taxable 924

income or the decedent's adjusted gross income for the current 925
or any other taxable year. 926

(11) Add any amount claimed as a credit under section 927
5747.059 or 5747.65 of the Revised Code to the extent that the 928
amount satisfies either of the following: 929

(a) The amount was deducted or excluded from the 930
computation of the taxpayer's federal taxable income as required 931
to be reported for the taxpayer's taxable year under the 932
Internal Revenue Code; 933

(b) The amount resulted in a reduction in the taxpayer's 934
federal taxable income as required to be reported for any of the 935
taxpayer's taxable years under the Internal Revenue Code. 936

(12) Deduct any amount, net of related expenses deducted 937
in computing federal taxable income, that a trust is required to 938
report as farm income on its federal income tax return, but only 939
if the assets of the trust include at least ten acres of land 940
satisfying the definition of "land devoted exclusively to 941
agricultural use" under section 5713.30 of the Revised Code, 942
regardless of whether the land is valued for tax purposes as 943
such land under sections 5713.30 to 5713.38 of the Revised Code. 944
If the trust is a pass-through entity investor, section 5747.231 945
of the Revised Code applies in ascertaining if the trust is 946
eligible to claim the deduction provided by division (S)(12) of 947
this section in connection with the pass-through entity's farm 948
income. 949

Except for farm income attributable to the S portion of an 950
electing small business trust, the deduction provided by 951
division (S)(12) of this section is allowed only to the extent 952
that the trust has not distributed such farm income. Division 953

(S) (12) of this section applies only to taxable years of a trust 954
beginning in 2002 or thereafter. 955

(13) Add the net amount of income described in section 956
641(c) of the Internal Revenue Code to the extent that amount is 957
not included in federal taxable income. 958

(14) Add or deduct the amount the taxpayer would be 959
required to add or deduct under division (A) (20) or (21) of this 960
section if the taxpayer's Ohio taxable income were computed in 961
the same manner as an individual's Ohio adjusted gross income is 962
computed under this section. In the case of a trust, division 963
(S) (14) of this section applies only to any of the trust's 964
taxable years beginning in 2002 or thereafter. 965

(T) "School district income" and "school district income 966
tax" have the same meanings as in section 5748.01 of the Revised 967
Code. 968

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 969
(7) of this section, "public obligations," "purchase 970
obligations," and "interest or interest equivalent" have the 971
same meanings as in section 5709.76 of the Revised Code. 972

(V) "Limited liability company" means any limited 973
liability company formed under Chapter 1705. of the Revised Code 974
or under the laws of any other state. 975

(W) "Pass-through entity investor" means any person who, 976
during any portion of a taxable year of a pass-through entity, 977
is a partner, member, shareholder, or equity investor in that 978
pass-through entity. 979

(X) "Banking day" has the same meaning as in section 980
1304.01 of the Revised Code. 981

(Y) "Month" means a calendar month.	982
(Z) "Quarter" means the first three months, the second	983
three months, the third three months, or the last three months	984
of the taxpayer's taxable year.	985
(AA) (1) "Eligible institution" means a state university or	986
state institution of higher education as defined in section	987
3345.011 of the Revised Code, or a private, nonprofit college,	988
university, or other post-secondary institution located in this	989
state that possesses a certificate of authorization issued by	990
the chancellor of higher education pursuant to Chapter 1713. of	991
the Revised Code or a certificate of registration issued by the	992
state board of career colleges and schools under Chapter 3332.	993
of the Revised Code.	994
(2) "Qualified tuition and fees" means tuition and fees	995
imposed by an eligible institution as a condition of enrollment	996
or attendance, not exceeding two thousand five hundred dollars	997
in each of the individual's first two years of post-secondary	998
education. If the individual is a part-time student, "qualified	999
tuition and fees" includes tuition and fees paid for the	1000
academic equivalent of the first two years of post-secondary	1001
education during a maximum of five taxable years, not exceeding	1002
a total of five thousand dollars. "Qualified tuition and fees"	1003
does not include:	1004
(a) Expenses for any course or activity involving sports,	1005
games, or hobbies unless the course or activity is part of the	1006
individual's degree or diploma program;	1007
(b) The cost of books, room and board, student activity	1008
fees, athletic fees, insurance expenses, or other expenses	1009
unrelated to the individual's academic course of instruction;	1010

(c) Tuition, fees, or other expenses paid or reimbursed 1011
through an employer, scholarship, grant in aid, or other 1012
educational benefit program. 1013

(BB)(1) "Modified business income" means the business 1014
income included in a trust's Ohio taxable income after such 1015
taxable income is first reduced by the qualifying trust amount, 1016
if any. 1017

(2) "Qualifying trust amount" of a trust means capital 1018
gains and losses from the sale, exchange, or other disposition 1019
of equity or ownership interests in, or debt obligations of, a 1020
qualifying investee to the extent included in the trust's Ohio 1021
taxable income, but only if the following requirements are 1022
satisfied: 1023

(a) The book value of the qualifying investee's physical 1024
assets in this state and everywhere, as of the last day of the 1025
qualifying investee's fiscal or calendar year ending immediately 1026
prior to the date on which the trust recognizes the gain or 1027
loss, is available to the trust. 1028

(b) The requirements of section 5747.011 of the Revised 1029
Code are satisfied for the trust's taxable year in which the 1030
trust recognizes the gain or loss. 1031

Any gain or loss that is not a qualifying trust amount is 1032
modified business income, qualifying investment income, or 1033
modified nonbusiness income, as the case may be. 1034

(3) "Modified nonbusiness income" means a trust's Ohio 1035
taxable income other than modified business income, other than 1036
the qualifying trust amount, and other than qualifying 1037
investment income, as defined in section 5747.012 of the Revised 1038
Code, to the extent such qualifying investment income is not 1039

otherwise part of modified business income. 1040

(4) "Modified Ohio taxable income" applies only to trusts, 1041
and means the sum of the amounts described in divisions (BB) (4) 1042
(a) to (c) of this section: 1043

(a) The fraction, calculated under section 5747.013, and 1044
applying section 5747.231 of the Revised Code, multiplied by the 1045
sum of the following amounts: 1046

(i) The trust's modified business income; 1047

(ii) The trust's qualifying investment income, as defined 1048
in section 5747.012 of the Revised Code, but only to the extent 1049
the qualifying investment income does not otherwise constitute 1050
modified business income and does not otherwise constitute a 1051
qualifying trust amount. 1052

(b) The qualifying trust amount multiplied by a fraction, 1053
the numerator of which is the sum of the book value of the 1054
qualifying investee's physical assets in this state on the last 1055
day of the qualifying investee's fiscal or calendar year ending 1056
immediately prior to the day on which the trust recognizes the 1057
qualifying trust amount, and the denominator of which is the sum 1058
of the book value of the qualifying investee's total physical 1059
assets everywhere on the last day of the qualifying investee's 1060
fiscal or calendar year ending immediately prior to the day on 1061
which the trust recognizes the qualifying trust amount. If, for 1062
a taxable year, the trust recognizes a qualifying trust amount 1063
with respect to more than one qualifying investee, the amount 1064
described in division (BB) (4) (b) of this section shall equal the 1065
sum of the products so computed for each such qualifying 1066
investee. 1067

(c) (i) With respect to a trust or portion of a trust that 1068

is a resident as ascertained in accordance with division (I) (3) 1069
(d) of this section, its modified nonbusiness income. 1070

(ii) With respect to a trust or portion of a trust that is 1071
not a resident as ascertained in accordance with division (I) (3) 1072
(d) of this section, the amount of its modified nonbusiness 1073
income satisfying the descriptions in divisions (B) (2) to (5) of 1074
section 5747.20 of the Revised Code, except as otherwise 1075
provided in division (BB) (4) (c) (ii) of this section. With 1076
respect to a trust or portion of a trust that is not a resident 1077
as ascertained in accordance with division (I) (3) (d) of this 1078
section, the trust's portion of modified nonbusiness income 1079
recognized from the sale, exchange, or other disposition of a 1080
debt interest in or equity interest in a section 5747.212 1081
entity, as defined in section 5747.212 of the Revised Code, 1082
without regard to division (A) of that section, shall not be 1083
allocated to this state in accordance with section 5747.20 of 1084
the Revised Code but shall be apportioned to this state in 1085
accordance with division (B) of section 5747.212 of the Revised 1086
Code without regard to division (A) of that section. 1087

If the allocation and apportionment of a trust's income 1088
under divisions (BB) (4) (a) and (c) of this section do not fairly 1089
represent the modified Ohio taxable income of the trust in this 1090
state, the alternative methods described in division (C) of 1091
section 5747.21 of the Revised Code may be applied in the manner 1092
and to the same extent provided in that section. 1093

(5) (a) Except as set forth in division (BB) (5) (b) of this 1094
section, "qualifying investee" means a person in which a trust 1095
has an equity or ownership interest, or a person or unit of 1096
government the debt obligations of either of which are owned by 1097
a trust. For the purposes of division (BB) (2) (a) of this section 1098

and for the purpose of computing the fraction described in 1099
division (BB) (4) (b) of this section, all of the following apply: 1100

(i) If the qualifying investee is a member of a qualifying 1101
controlled group on the last day of the qualifying investee's 1102
fiscal or calendar year ending immediately prior to the date on 1103
which the trust recognizes the gain or loss, then "qualifying 1104
investee" includes all persons in the qualifying controlled 1105
group on such last day. 1106

(ii) If the qualifying investee, or if the qualifying 1107
investee and any members of the qualifying controlled group of 1108
which the qualifying investee is a member on the last day of the 1109
qualifying investee's fiscal or calendar year ending immediately 1110
prior to the date on which the trust recognizes the gain or 1111
loss, separately or cumulatively own, directly or indirectly, on 1112
the last day of the qualifying investee's fiscal or calendar 1113
year ending immediately prior to the date on which the trust 1114
recognizes the qualifying trust amount, more than fifty per cent 1115
of the equity of a pass-through entity, then the qualifying 1116
investee and the other members are deemed to own the 1117
proportionate share of the pass-through entity's physical assets 1118
which the pass-through entity directly or indirectly owns on the 1119
last day of the pass-through entity's calendar or fiscal year 1120
ending within or with the last day of the qualifying investee's 1121
fiscal or calendar year ending immediately prior to the date on 1122
which the trust recognizes the qualifying trust amount. 1123

(iii) For the purposes of division (BB) (5) (a) (iii) of this 1124
section, "upper level pass-through entity" means a pass-through 1125
entity directly or indirectly owning any equity of another pass- 1126
through entity, and "lower level pass-through entity" means that 1127
other pass-through entity. 1128

An upper level pass-through entity, whether or not it is 1129
also a qualifying investee, is deemed to own, on the last day of 1130
the upper level pass-through entity's calendar or fiscal year, 1131
the proportionate share of the lower level pass-through entity's 1132
physical assets that the lower level pass-through entity 1133
directly or indirectly owns on the last day of the lower level 1134
pass-through entity's calendar or fiscal year ending within or 1135
with the last day of the upper level pass-through entity's 1136
fiscal or calendar year. If the upper level pass-through entity 1137
directly and indirectly owns less than fifty per cent of the 1138
equity of the lower level pass-through entity on each day of the 1139
upper level pass-through entity's calendar or fiscal year in 1140
which or with which ends the calendar or fiscal year of the 1141
lower level pass-through entity and if, based upon clear and 1142
convincing evidence, complete information about the location and 1143
cost of the physical assets of the lower pass-through entity is 1144
not available to the upper level pass-through entity, then 1145
solely for purposes of ascertaining if a gain or loss 1146
constitutes a qualifying trust amount, the upper level pass- 1147
through entity shall be deemed as owning no equity of the lower 1148
level pass-through entity for each day during the upper level 1149
pass-through entity's calendar or fiscal year in which or with 1150
which ends the lower level pass-through entity's calendar or 1151
fiscal year. Nothing in division (BB)(5)(a)(iii) of this section 1152
shall be construed to provide for any deduction or exclusion in 1153
computing any trust's Ohio taxable income. 1154

(b) With respect to a trust that is not a resident for the 1155
taxable year and with respect to a part of a trust that is not a 1156
resident for the taxable year, "qualifying investee" for that 1157
taxable year does not include a C corporation if both of the 1158
following apply: 1159

(i) During the taxable year the trust or part of the trust 1160
recognizes a gain or loss from the sale, exchange, or other 1161
disposition of equity or ownership interests in, or debt 1162
obligations of, the C corporation. 1163

(ii) Such gain or loss constitutes nonbusiness income. 1164

(6) "Available" means information is such that a person is 1165
able to learn of the information by the due date plus 1166
extensions, if any, for filing the return for the taxable year 1167
in which the trust recognizes the gain or loss. 1168

(CC) "Qualifying controlled group" has the same meaning as 1169
in section 5733.04 of the Revised Code. 1170

(DD) "Related member" has the same meaning as in section 1171
5733.042 of the Revised Code. 1172

(EE) (1) For the purposes of division (EE) of this section: 1173

(a) "Qualifying person" means any person other than a 1174
qualifying corporation. 1175

(b) "Qualifying corporation" means any person classified 1176
for federal income tax purposes as an association taxable as a 1177
corporation, except either of the following: 1178

(i) A corporation that has made an election under 1179
subchapter S, chapter one, subtitle A, of the Internal Revenue 1180
Code for its taxable year ending within, or on the last day of, 1181
the investor's taxable year; 1182

(ii) A subsidiary that is wholly owned by any corporation 1183
that has made an election under subchapter S, chapter one, 1184
subtitle A of the Internal Revenue Code for its taxable year 1185
ending within, or on the last day of, the investor's taxable 1186
year. 1187

(2) For the purposes of this chapter, unless expressly 1188
stated otherwise, no qualifying person indirectly owns any asset 1189
directly or indirectly owned by any qualifying corporation. 1190

(FF) For purposes of this chapter and Chapter 5751. of the 1191
Revised Code: 1192

(1) "Trust" does not include a qualified pre-income tax 1193
trust. 1194

(2) A "qualified pre-income tax trust" is any pre-income 1195
tax trust that makes a qualifying pre-income tax trust election 1196
as described in division (FF)(3) of this section. 1197

(3) A "qualifying pre-income tax trust election" is an 1198
election by a pre-income tax trust to subject to the tax imposed 1199
by section 5751.02 of the Revised Code the pre-income tax trust 1200
and all pass-through entities of which the trust owns or 1201
controls, directly, indirectly, or constructively through 1202
related interests, five per cent or more of the ownership or 1203
equity interests. The trustee shall notify the tax commissioner 1204
in writing of the election on or before April 15, 2006. The 1205
election, if timely made, shall be effective on and after 1206
January 1, 2006, and shall apply for all tax periods and tax 1207
years until revoked by the trustee of the trust. 1208

(4) A "pre-income tax trust" is a trust that satisfies all 1209
of the following requirements: 1210

(a) The document or instrument creating the trust was 1211
executed by the grantor before January 1, 1972; 1212

(b) The trust became irrevocable upon the creation of the 1213
trust; and 1214

(c) The grantor was domiciled in this state at the time 1215

the trust was created. 1216

(GG) "Uniformed services" has the same meaning as in 10 1217
U.S.C. 101. 1218

(HH) "Taxable business income" means the amount by which 1219
an individual's business income that is included in federal 1220
adjusted gross income exceeds the amount of business income the 1221
individual is authorized to deduct under division (A) (31) of 1222
this section for the taxable year. 1223

(II) "Employer" does not include a franchisor with respect 1224
to the franchisor's relationship with a franchisee or an 1225
employee of a franchisee, unless the franchisor agrees to assume 1226
that role in writing or a court of competent jurisdiction 1227
determines that the franchisor exercises a type or degree of 1228
control over the franchisee or the franchisee's employees that 1229
is not customarily exercised by a franchisor for the purpose of 1230
protecting the franchisor's trademark, brand, or both. For 1231
purposes of this division, "franchisor" and "franchisee" have 1232
the same meanings as in 16 C.F.R. 436.1. 1233

Section 2. That existing section 5747.01 of the Revised 1234
Code is hereby repealed. 1235