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131st General Assembly
Regular Session
2015-2016

Sub. S. B. No. 288

A BILL

To amend sections 901.13, 5733.01, 5733.04, 1
5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 2
5747.012, 5747.02, 5747.03, 5747.08, 5747.082, 3
5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 4
5747.20, 5747.21, 5747.212, 5747.22, 5747.221, 5
5747.231, 5747.28, 5747.30, 5747.331, 5747.44, 6
5747.65, 5747.98, and 5748.01, to enact new 7
sections 5747.40, 5747.41, 5747.42, and 5747.43, 8
and to repeal sections 5733.0611, 5733.40, 9
5733.401, 5733.402, 5733.41, 5747.059, 5747.40, 10
5747.401, 5747.41, 5747.42, 5747.43, 5747.45, 11
5747.451, 5747.453, and 5747.75 of the Revised 12
Code to revise the law governing how taxes on 13
income from pass-through entities is to be 14
reported and paid by the entities and their 15
investors. 16

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

Section 1. That sections 901.13, 5733.01, 5733.04, 17
5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 5747.012, 5747.02, 18



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5747.03, 5747.08, 5747.082, 5747.11, 5747.13, 5747.132, 5747.14, 19
5747.15, 5747.20, 5747.21, 5747.212, 5747.22, 5747.221, 20
5747.231, 5747.28, 5747.30, 5747.331, 5747.44, 5747.65, 5747.98, 21
and 5748.01 be amended and new sections 5747.40, 5747.41, 22
5747.42, and 5747.43 of the Revised Code be enacted to read as 23
follows: 24

Sec. 901.13. (A) As used in this section: 25

(1) "Ethanol" has the same meaning as in section 5733.46 26
of the Revised Code. 27

(2) "Facility" means an ethanol production plant that will 28
be located in this state. 29

(B) There is hereby created the ethanol incentive board. 30
The board shall consist of the following five members: the 31
director of agriculture, who shall serve as chairperson of the 32
board, the director of development, the executive director of 33
the Ohio air quality development authority, one member appointed 34
by the speaker of the house of representatives, and one member 35
appointed by the president of the senate. Initial appointments 36
to the board shall be made within thirty days of ~~the effective~~ 37
~~date of this section~~ March 21, 2002. Vacancies shall be filled 38
in the same manner provided for original appointments. Members 39
of the board shall serve without compensation. The board shall 40
meet and conduct its business as directed by the chairperson. 41
The board shall cease to exist January 1, 2014. 42

(C) The board's sole duty is to review any application 43
that is submitted to it under this section. The board shall 44
approve an application only if it determines, by the affirmative 45
vote of all members of the board, that the applicant's business 46
plan for a facility meets the requirements established by 47

division (D) of this section. 48

(D) The owner of a facility may apply to the board, on an 49
application provided by the director of agriculture, for 50
approval of the facility's business plan under this section. 51
Within sixty days of receipt of an application, the board shall 52
determine whether the applicant's business plan meets the 53
following requirements: 54

(1) The business plan is for the construction and 55
operation of a facility. 56

(2) The business plan contains detailed information 57
regarding: 58

(a) The availability and price of corn in the area where 59
the facility will be located; 60

(b) The availability and cost of energy needed for 61
operation of the facility; 62

(c) The availability of water and waste disposal systems 63
in the area where the facility will be located; 64

(d) The availability of labor and a qualified site manager 65
for the facility. 66

(3) The business plan analyzes any proposed marketing 67
agreements for the products produced by the facility. 68

(4) The facility to be constructed and operated under the 69
business plan is majority-owned by Ohio farmers or will be prior 70
to the first day the facility commences production. 71

(5) The business plan meets any other requirements 72
established by the board under rules adopted in accordance with 73
division (G) of this section. 74

The board shall issue a certificate of approval for each 75
application approved under this section, and any taxpayer that 76
invests money in the facility for which a business plan has been 77
approved may claim a tax credit for such investment under 78
section 5733.46 or former section 5747.75 of the Revised Code. 79

(E) Any business plan submitted to the board under this 80
section is not a public record subject to section 149.43 of the 81
Revised Code. 82

(F) The board shall notify the tax commissioner of any 83
certificate of approval issued under this section, within ten 84
days of its issuance. 85

(G) The director of agriculture, in consultation with the 86
director of development and in accordance with Chapter 119. of 87
the Revised Code, shall adopt rules necessary to implement this 88
section, including rules prescribing procedures and forms for 89
administering this section. 90

(H) The ethanol incentive board created by this section is 91
not an agency for purposes of ~~section~~ sections 101.82 to 101.87 92
of the Revised Code. 93

Sec. 5733.01. (A) The tax provided by this chapter for 94
domestic corporations shall be the amount charged against each 95
corporation organized for profit under the laws of this state 96
and each nonprofit corporation organized pursuant to Chapter 97
1729. of the Revised Code, except as provided in sections 98
5733.09 and 5733.10 of the Revised Code, for the privilege of 99
exercising its franchise during the calendar year in which that 100
amount is payable, and the tax provided by this chapter for 101
foreign corporations shall be the amount charged against each 102
corporation organized for profit and each nonprofit corporation 103

organized or operating in the same or similar manner as 104
nonprofit corporations organized under Chapter 1729. of the 105
Revised Code, under the laws of any state or country other than 106
this state, except as provided in sections 5733.09 and 5733.10 107
of the Revised Code, for the privilege of doing business in this 108
state, owning or using a part or all of its capital or property 109
in this state, holding a certificate of compliance with the laws 110
of this state authorizing it to do business in this state, or 111
otherwise having nexus in or with this state under the 112
Constitution of the United States, during the calendar year in 113
which that amount is payable. 114

(B) A corporation is subject to the tax imposed by section 115
5733.06 of the Revised Code for each calendar year prior to 2014 116
that it is so organized, doing business, owning or using a part 117
or all of its capital or property, holding a certificate of 118
compliance, or otherwise having nexus in or with this state 119
under the Constitution of the United States, on the first day of 120
January of that calendar year. No credit authorized by this 121
chapter may be claimed for tax year 2014 or any tax year 122
thereafter. 123

(C) Any corporation subject to this chapter that is not 124
subject to the federal income tax shall file its returns and 125
compute its tax liability as required by this chapter in the 126
same manner as if that corporation were subject to the federal 127
income tax. 128

(D) For purposes of this chapter, a federally chartered 129
financial institution shall be deemed to be organized under the 130
laws of the state within which its principal office is located. 131

(E) For purposes of this chapter, any person, as defined 132
in section 5701.01 of the Revised Code, shall be treated as a 133

corporation if the person is classified for federal income tax 134
purposes as an association taxable as a corporation, and an 135
equity interest in the person shall be treated as capital stock 136
of the person. 137

(F) For the purposes of this chapter, "disregarded entity" 138
has the same meaning as in division (D) of section 5745.01 of 139
the Revised Code. 140

(1) A person's interest in a disregarded entity, whether 141
held directly or indirectly, shall be treated as the person's 142
ownership of the assets and liabilities of the disregarded 143
entity, and the income, including gain or loss, shall be 144
included in the person's net income under this chapter. 145

(2) Any sale, exchange, or other disposition of the 146
person's interest in the disregarded entity, whether held 147
directly or indirectly, shall be treated as a sale, exchange, or 148
other disposition of the person's share of the disregarded 149
entity's underlying assets or liabilities, and the gain or loss 150
from such sale, exchange, or disposition shall be included in 151
the person's net income under this chapter. 152

(3) The disregarded entity's payroll, property, and sales 153
factors shall be included in the person's factors. 154

(G) The tax a corporation is required to pay under this 155
chapter shall be as follows: 156

(1) (a) For financial institutions, the greater of the 157
minimum payment required under division (E) of section 5733.06 158
of the Revised Code or the difference between all taxes charged 159
the financial institution under this chapter, without regard to 160
division (G) (2) of this section, less any credits allowable 161
against such tax. 162

(b) A corporation satisfying the description in division 163
(E) (5), (6), (7), (8), or (10) of section 5751.01 of the Revised 164
Code, as that section existed before its amendment by H.B. 510 165
of the 129th general assembly, that is not a financial 166
institution, insurance company, or dealer in intangibles is 167
subject to the taxes imposed under this chapter as a corporation 168
and not subject to tax as a financial institution, and shall pay 169
the greater of the minimum payment required under division (E) 170
of section 5733.06 of the Revised Code or the difference between 171
all the taxes charged under this chapter, without regard to 172
division (G) (2) of this section, less any credits allowable 173
against such tax. 174

(2) For all corporations other than those persons 175
described in division (G) (1) (a) or (b) of this section, the 176
amount under division (G) (2) (a) of this section applicable to 177
the tax year specified less the amount under division (G) (2) (b) 178
of this section: 179

(a) (i) For tax year 2005, the greater of the minimum 180
payment required under division (E) of section 5733.06 of the 181
Revised Code or the difference between all taxes charged the 182
corporation under this chapter and any credits allowable against 183
such tax; 184

(ii) For tax year 2006, the greater of the minimum payment 185
required under division (E) of section 5733.06 of the Revised 186
Code or four-fifths of the difference between all taxes charged 187
the corporation under this chapter and any credits allowable 188
against such tax, except the qualifying pass-through entity tax 189
credit described in division (A) (30) and the refundable credits 190
described in divisions (A) (31) to (35) of section 5733.98 of the 191
Revised Code; 192

(iii) For tax year 2007, the greater of the minimum 193
payment required under division (E) of section 5733.06 of the 194
Revised Code or three-fifths of the difference between all taxes 195
charged the corporation under this chapter and any credits 196
allowable against such tax, except the qualifying pass-through 197
entity tax credit described in division (A) (30) and the 198
refundable credits described in divisions (A) (31) to (35) of 199
section 5733.98 of the Revised Code; 200

(iv) For tax year 2008, the greater of the minimum payment 201
required under division (E) of section 5733.06 of the Revised 202
Code or two-fifths of the difference between all taxes charged 203
the corporation under this chapter and any credits allowable 204
against such tax, except the qualifying pass-through entity tax 205
credit described in division (A) (30) and the refundable credits 206
described in divisions (A) (31) to (35) of section 5733.98 of the 207
Revised Code; 208

(v) For tax year 2009, the greater of the minimum payment 209
required under division (E) of section 5733.06 of the Revised 210
Code or one-fifth of the difference between all taxes charged 211
the corporation under this chapter and any credits allowable 212
against such tax, except the qualifying pass-through entity tax 213
credit described in division (A) (30) and the refundable credits 214
described in divisions (A) (31), (32), (33), and (34) of section 215
5733.98 of the Revised Code; 216

(vi) For tax year 2010 and each tax year thereafter, no 217
tax. 218

(b) A corporation shall subtract from the amount 219
calculated under division (G) (2) (a) (ii), (iii), (iv), or (v) of 220
this section ~~any qualifying pass-through entity tax credit~~ 221
~~described in division (A) (30) and any refundable credits~~ 222

described in divisions (A) (31) to (35) of section 5733.98 of the Revised Code to which the corporation is entitled. ~~Any unused qualifying pass-through entity tax credit is not refundable.~~

(c) For the purposes of computing the amount of a credit that may be carried forward to a subsequent tax year under division (G) (2) of this section, a credit is utilized against the tax for a tax year to the extent the credit applies against the tax for that tax year, even if the difference is then multiplied by the applicable fraction under division (G) (2) (a) of this section.

(d) References in division (G) (2) of this section to section 5733.98 of the Revised Code is to that section before its amendment by H.B. 59 of the 130th general assembly.

~~(3) Nothing in division (G) of this section eliminates or reduces the tax imposed by section 5733.41 of the Revised Code on a qualifying pass-through entity.~~

Sec. 5733.04. As used in this chapter:

(A) "Issued and outstanding shares of stock" applies to nonprofit corporations, as provided in section 5733.01 of the Revised Code, and includes, but is not limited to, membership certificates and other instruments evidencing ownership of an interest in such nonprofit corporations, and with respect to a financial institution that does not have capital stock, "issued and outstanding shares of stock" includes, but is not limited to, ownership interests of depositors in the capital employed in such an institution.

(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code.

(C) "Resident" means a corporation organized under the

laws of this state. 252

(D) "Commercial domicile" means the principal place from 253
which the trade or business of the taxpayer is directed or 254
managed. 255

(E) "Taxable year" means the period prescribed by division 256
(A) of section 5733.031 of the Revised Code upon the net income 257
of which the value of the taxpayer's issued and outstanding 258
shares of stock is determined under division (B) of section 259
5733.05 of the Revised Code or the period prescribed by division 260
(A) of section 5733.031 of the Revised Code that immediately 261
precedes the date as of which the total value of the corporation 262
is determined under division (A) or (C) of section 5733.05 of 263
the Revised Code. 264

(F) "Tax year" means the calendar year in and for which 265
the tax imposed by section 5733.06 of the Revised Code is 266
required to be paid. 267

(G) "Internal Revenue Code" means the "Internal Revenue 268
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 269

(H) "Federal income tax" means the income tax imposed by 270
the Internal Revenue Code. 271

(I) Except as provided in section 5733.058 of the Revised 272
Code, "net income" means the taxpayer's taxable income before 273
operating loss deduction and special deductions, as required to 274
be reported for the taxpayer's taxable year under the Internal 275
Revenue Code, subject to the following adjustments: 276

(1) (a) Deduct any net operating loss incurred in any 277
taxable years ending in 1971 or thereafter, but exclusive of any 278
net operating loss incurred in taxable years ending prior to 279
January 1, 1971. This deduction shall not be allowed in any tax 280

year commencing before December 31, 1973, but shall be carried 281
over and allowed in tax years commencing after December 31, 282
1973, until fully utilized in the next succeeding taxable year 283
or years in which the taxpayer has net income, but in no case 284
for more than the designated carryover period as described in 285
division (I)(1)(b) of this section. The amount of such net 286
operating loss, as determined under the allocation and 287
apportionment provisions of section 5733.051 and division (B) of 288
section 5733.05 of the Revised Code for the year in which the 289
net operating loss occurs, shall be deducted from net income, as 290
determined under the allocation and apportionment provisions of 291
section 5733.051 and division (B) of section 5733.05 of the 292
Revised Code, to the extent necessary to reduce net income to 293
zero with the remaining unused portion of the deduction, if any, 294
carried forward to the remaining years of the designated 295
carryover period as described in division (I)(1)(b) of this 296
section, or until fully utilized, whichever occurs first. 297

(b) For losses incurred in taxable years ending on or 298
before December 31, 1981, the designated carryover period shall 299
be the five consecutive taxable years after the taxable year in 300
which the net operating loss occurred. For losses incurred in 301
taxable years ending on or after January 1, 1982, and beginning 302
before August 6, 1997, the designated carryover period shall be 303
the fifteen consecutive taxable years after the taxable year in 304
which the net operating loss occurs. For losses incurred in 305
taxable years beginning on or after August 6, 1997, the 306
designated carryover period shall be the twenty consecutive 307
taxable years after the taxable year in which the net operating 308
loss occurs. 309

(c) The tax commissioner may require a taxpayer to furnish 310
any information necessary to support a claim for deduction under 311

division (I) (1) (a) of this section and no deduction shall be 312
allowed unless the information is furnished. 313

(2) Deduct any amount included in net income by 314
application of section 78 or 951 of the Internal Revenue Code, 315
amounts received for royalties, technical or other services 316
derived from sources outside the United States, and dividends 317
received from a subsidiary, associate, or affiliated corporation 318
that neither transacts any substantial portion of its business 319
nor regularly maintains any substantial portion of its assets 320
within the United States. For purposes of determining net 321
foreign source income deductible under division (I) (2) of this 322
section, the amount of gross income from all such sources other 323
than dividend income and income derived by application of 324
section 78 or 951 of the Internal Revenue Code shall be reduced 325
by: 326

(a) The amount of any reimbursed expenses for personal 327
services performed by employees of the taxpayer for the 328
subsidiary, associate, or affiliated corporation; 329

(b) Ten per cent of the amount of royalty income and 330
technical assistance fees; 331

(c) Fifteen per cent of the amount of all other income. 332

The amounts described in divisions (I) (2) (a) to (c) of 333
this section are deemed to be the expenses attributable to the 334
production of deductible foreign source income unless the 335
taxpayer shows, by clear and convincing evidence, less actual 336
expenses, or the tax commissioner shows, by clear and convincing 337
evidence, more actual expenses. 338

(3) Add any loss or deduct any gain resulting from the 339
sale, exchange, or other disposition of a capital asset, or an 340

asset described in section 1231 of the Internal Revenue Code, to 341
the extent that such loss or gain occurred prior to the first 342
taxable year on which the tax provided for in section 5733.06 of 343
the Revised Code is computed on the corporation's net income. 344
For purposes of division (I) (3) of this section, the amount of 345
the prior loss or gain shall be measured by the difference 346
between the original cost or other basis of the asset and the 347
fair market value as of the beginning of the first taxable year 348
on which the tax provided for in section 5733.06 of the Revised 349
Code is computed on the corporation's net income. At the option 350
of the taxpayer, the amount of the prior loss or gain may be a 351
percentage of the gain or loss, which percentage shall be 352
determined by multiplying the gain or loss by a fraction, the 353
numerator of which is the number of months from the acquisition 354
of the asset to the beginning of the first taxable year on which 355
the fee provided in section 5733.06 of the Revised Code is 356
computed on the corporation's net income, and the denominator of 357
which is the number of months from the acquisition of the asset 358
to the sale, exchange, or other disposition of the asset. The 359
adjustments described in this division do not apply to any gain 360
or loss where the gain or loss is recognized by a qualifying 361
taxpayer, as defined in section 5733.0510 of the Revised Code, 362
with respect to a qualifying taxable event, as defined in that 363
section. 364

(4) Deduct the dividend received deduction provided by 365
section 243 of the Internal Revenue Code. 366

(5) Deduct any interest or interest equivalent on public 367
obligations and purchase obligations to the extent included in 368
federal taxable income. As used in divisions (I) (5) and (6) of 369
this section, "public obligations," "purchase obligations," and 370
"interest or interest equivalent" have the same meanings as in 371

section 5709.76 of the Revised Code. 372

(6) Add any loss or deduct any gain resulting from the 373
sale, exchange, or other disposition of public obligations to 374
the extent included in federal taxable income. 375

(7) To the extent not otherwise allowed, deduct any 376
dividends or distributions received by a taxpayer from a public 377
utility, excluding an electric company and a combined company, 378
and, for tax years 2005 and thereafter, a telephone company, if 379
the taxpayer owns at least eighty per cent of the issued and 380
outstanding common stock of the public utility. As used in 381
division (I)(7) of this section, "public utility" means a public 382
utility as defined in Chapter 5727. of the Revised Code, whether 383
or not the public utility is doing business in the state. 384

(8) To the extent not otherwise allowed, deduct any 385
dividends received by a taxpayer from an insurance company, if 386
the taxpayer owns at least eighty per cent of the issued and 387
outstanding common stock of the insurance company. As used in 388
division (I)(8) of this section, "insurance company" means an 389
insurance company that is taxable under Chapter 5725. or 5729. 390
of the Revised Code. 391

(9) Deduct expenditures for modifying existing buildings 392
or structures to meet American national standards institute 393
standard A-117.1-1961 (R-1971), as amended; provided, that no 394
deduction shall be allowed to the extent that such deduction is 395
not permitted under federal law or under rules of the tax 396
commissioner. Those deductions as are allowed may be taken over 397
a period of five years. The tax commissioner shall adopt rules 398
under Chapter 119. of the Revised Code establishing reasonable 399
limitations on the extent that expenditures for modifying 400
existing buildings or structures are attributable to the purpose 401

of making the buildings or structures accessible to and usable 402
by physically handicapped persons. 403

(10) Deduct the amount of wages and salaries, if any, not 404
otherwise allowable as a deduction but that would have been 405
allowable as a deduction in computing federal taxable income 406
before operating loss deduction and special deductions for the 407
taxable year, had the targeted jobs credit allowed and 408
determined under sections 38, 51, and 52 of the Internal Revenue 409
Code not been in effect. 410

(11) Deduct net interest income on obligations of the 411
United States and its territories and possessions or of any 412
authority, commission, or instrumentality of the United States 413
to the extent the laws of the United States prohibit inclusion 414
of the net interest for purposes of determining the value of the 415
taxpayer's issued and outstanding shares of stock under division 416
(B) of section 5733.05 of the Revised Code. As used in division 417
(I) (11) of this section, "net interest" means interest net of 418
any expenses taken on the federal income tax return that would 419
not have been allowed under section 265 of the Internal Revenue 420
Code if the interest were exempt from federal income tax. 421

(12) (a) Except as set forth in division (I) (12) (d) of this 422
section, to the extent not included in computing the taxpayer's 423
federal taxable income before operating loss deduction and 424
special deductions, add gains and deduct losses from direct or 425
indirect sales, exchanges, or other dispositions, made by a 426
related entity who is not a taxpayer, of the taxpayer's 427
indirect, beneficial, or constructive investment in the stock or 428
debt of another entity, unless the gain or loss has been 429
included in computing the federal taxable income before 430
operating loss deduction and special deductions of another 431

taxpayer with a more closely related investment in the stock or 432
debt of the other entity. The amount of gain added or loss 433
deducted shall not exceed the product obtained by multiplying 434
such gain or loss by the taxpayer's proportionate share, 435
directly, indirectly, beneficially, or constructively, of the 436
outstanding stock of the related entity immediately prior to the 437
direct or indirect sale, exchange, or other disposition. 438

(b) Except as set forth in division (I)(12)(e) of this 439
section, to the extent not included in computing the taxpayer's 440
federal taxable income before operating loss deduction and 441
special deductions, add gains and deduct losses from direct or 442
indirect sales, exchanges, or other dispositions made by a 443
related entity who is not a taxpayer, of intangible property 444
other than stock, securities, and debt, if such property was 445
owned, or used in whole or in part, at any time prior to or at 446
the time of the sale, exchange, or disposition by either the 447
taxpayer or by a related entity that was a taxpayer at any time 448
during the related entity's ownership or use of such property, 449
unless the gain or loss has been included in computing the 450
federal taxable income before operating loss deduction and 451
special deductions of another taxpayer with a more closely 452
related ownership or use of such intangible property. The amount 453
of gain added or loss deducted shall not exceed the product 454
obtained by multiplying such gain or loss by the taxpayer's 455
proportionate share, directly, indirectly, beneficially, or 456
constructively, of the outstanding stock of the related entity 457
immediately prior to the direct or indirect sale, exchange, or 458
other disposition. 459

(c) As used in division (I)(12) of this section, "related 460
entity" means those entities described in divisions (I)(12)(c) 461
(i) to (iii) of this section: 462

(i) An individual stockholder, or a member of the 463
stockholder's family enumerated in section 318 of the Internal 464
Revenue Code, if the stockholder and the members of the 465
stockholder's family own, directly, indirectly, beneficially, or 466
constructively, in the aggregate, at least fifty per cent of the 467
value of the taxpayer's outstanding stock; 468

(ii) A stockholder, or a stockholder's partnership, 469
estate, trust, or corporation, if the stockholder and the 470
stockholder's partnerships, estates, trusts, and corporations 471
own directly, indirectly, beneficially, or constructively, in 472
the aggregate, at least fifty per cent of the value of the 473
taxpayer's outstanding stock; 474

(iii) A corporation, or a party related to the corporation 475
in a manner that would require an attribution of stock from the 476
corporation to the party or from the party to the corporation 477
under division (I) (12) (c) (iv) of this section, if the taxpayer 478
owns, directly, indirectly, beneficially, or constructively, at 479
least fifty per cent of the value of the corporation's 480
outstanding stock. 481

(iv) The attribution rules of section 318 of the Internal 482
Revenue Code apply for purposes of determining whether the 483
ownership requirements in divisions (I) (12) (c) (i) to (iii) of 484
this section have been met. 485

(d) For purposes of the adjustments required by division 486
(I) (12) (a) of this section, the term "investment in the stock or 487
debt of another entity" means only those investments where the 488
taxpayer and the taxpayer's related entities directly, 489
indirectly, beneficially, or constructively own, in the 490
aggregate, at any time during the twenty-four month period 491
commencing one year prior to the direct or indirect sale, 492

exchange, or other disposition of such investment at least fifty 493
per cent or more of the value of either the outstanding stock or 494
such debt of such other entity. 495

(e) For purposes of the adjustments required by division 496
(I) (12) (b) of this section, the term "related entity" excludes 497
all of the following: 498

(i) Foreign corporations as defined in section 7701 of the 499
Internal Revenue Code; 500

(ii) Foreign partnerships as defined in section 7701 of 501
the Internal Revenue Code; 502

(iii) Corporations, partnerships, estates, and trusts 503
created or organized in or under the laws of the Commonwealth of 504
Puerto Rico or any possession of the United States; 505

(iv) Foreign estates and foreign trusts as defined in 506
section 7701 of the Internal Revenue Code. 507

The exclusions described in divisions (I) (12) (e) (i) to 508
(iv) of this section do not apply if the corporation, 509
partnership, estate, or trust is described in any one of 510
divisions (C) (1) to (5) of section 5733.042 of the Revised Code. 511

(f) Nothing in division (I) (12) of this section shall 512
require or permit a taxpayer to add any gains or deduct any 513
losses described in divisions (I) (12) (f) (i) and (ii) of this 514
section: 515

(i) Gains or losses recognized for federal income tax 516
purposes by an individual, estate, or trust without regard to 517
the attribution rules described in division (I) (12) (c) of this 518
section; 519

(ii) A related entity's gains or losses described in 520

division (I) (12) (b) of this section if the taxpayer's ownership 521
of or use of such intangible property was limited to a period 522
not exceeding nine months and was attributable to a transaction 523
or a series of transactions executed in accordance with the 524
election or elections made by the taxpayer or a related entity 525
pursuant to section 338 of the Internal Revenue Code. 526

(13) Any adjustment required by section 5733.042 of the 527
Revised Code. 528

~~(14) Add any amount claimed as a credit under section 529~~
~~5733.0611 of the Revised Code to the extent that such amount 530~~
~~satisfies either of the following: 531~~

~~(a) It was deducted or excluded from the computation of 532~~
~~the corporation's taxable income before operating loss deduction 533~~
~~and special deductions as required to be reported for the 534~~
~~corporation's taxable year under the Internal Revenue Code; 535~~

~~(b) It resulted in a reduction of the corporation's 536~~
~~taxable income before operating loss deduction and special 537~~
~~deductions as required to be reported for any of the 538~~
~~corporation's taxable years under the Internal Revenue Code. 539~~

~~(15)~~ Deduct the amount contributed by the taxpayer to an 540
individual development account program established by a county 541
department of job and family services pursuant to sections 542
329.11 to 329.14 of the Revised Code for the purpose of matching 543
funds deposited by program participants. On request of the tax 544
commissioner, the taxpayer shall provide any information that, 545
in the tax commissioner's opinion, is necessary to establish the 546
amount deducted under division (I) ~~(15)~~ (14) of this section. 547

~~(16)~~ (15) Any adjustment required by section 5733.0510 or 548
5733.0511 of the Revised Code. 549

~~(17)~~(16)(a)(i) Add five-sixths of the amount of 550
depreciation expense allowed under subsection (k) of section 168 551
of the Internal Revenue Code, including a person's proportionate 552
or distributive share of the amount of depreciation expense 553
allowed by that subsection to any pass-through entity in which 554
the person has direct or indirect ownership. 555

(ii) Add five-sixths of the amount of qualifying section 556
179 depreciation expense, including a person's proportionate or 557
distributive share of the amount of qualifying section 179 558
depreciation expense allowed to any pass-through entity in which 559
the person has a direct or indirect ownership. For the purposes 560
of this division, "qualifying section 179 depreciation expense" 561
means the difference between (I) the amount of depreciation 562
expense directly or indirectly allowed to the taxpayer under 563
section 179 of the Internal Revenue Code, and (II) the amount of 564
depreciation expense directly or indirectly allowed to the 565
taxpayer under section 179 of the Internal Revenue Code as that 566
section existed on December 31, 2002. 567

The tax commissioner, under procedures established by the 568
commissioner, may waive the add-backs related to a pass-through 569
entity if the person owns, directly or indirectly, less than 570
five per cent of the pass-through entity. 571

(b) Nothing in division (I)~~(17)~~(16) of this section shall 572
be construed to adjust or modify the adjusted basis of any 573
asset. 574

(c) To the extent the add-back is attributable to property 575
generating income or loss allocable under section 5733.051 of 576
the Revised Code, the add-back shall be allocated to the same 577
location as the income or loss generated by that property. 578
Otherwise, the add-back shall be apportioned, subject to 579

division (B) (2) (d) of section 5733.05 of the Revised Code. 580

~~(18)~~ (17) (a) If a person is required to make the add-back 581
under division (I) ~~(17)~~ (16) (a) of this section for a tax year, 582
the person shall deduct one-fifth of the amount added back for 583
each of the succeeding five tax years. 584

(b) If the amount deducted under division (I) ~~(18)~~ (17) (a) 585
of this section is attributable to an add-back allocated under 586
division (I) ~~(17)~~ (16) (c) of this section, the amount deducted 587
shall be allocated to the same location. Otherwise, the amount 588
shall be apportioned using the apportionment factors for the 589
taxable year in which the deduction is taken, subject to 590
division (B) (2) (d) of section 5733.05 of the Revised Code. 591

(J) Except as otherwise expressly provided or clearly 592
appearing from the context, any term used in this chapter has 593
the same meaning as when used in a comparable context in the 594
laws of the United States relating to federal income taxes. Any 595
reference in this chapter to the Internal Revenue Code includes 596
other laws of the United States relating to federal income 597
taxes. 598

(K) "Financial institution" has the meaning given by 599
section 5725.01 of the Revised Code but does not include a 600
production credit association as described in 85 Stat. 597, 12 601
U.S.C.A. 2091. 602

(L) (1) A "qualifying holding company" is any corporation 603
satisfying all of the following requirements: 604

(a) Subject to divisions (L) (2) and (3) of this section, 605
the net book value of the corporation's intangible assets is 606
greater than or equal to ninety per cent of the net book value 607
of all of its assets and at least fifty per cent of the net book 608

value of all of its assets represents direct or indirect 609
investments in the equity of, loans and advances to, and 610
accounts receivable due from related members; 611

(b) At least ninety per cent of the corporation's gross 612
income for the taxable year is attributable to the following: 613

(i) The maintenance, management, ownership, acquisition, 614
use, and disposition of its intangible property, its aircraft 615
the use of which is not subject to regulation under 14 C.F.R. 616
part 121 or part 135, and any real property described in 617
division (L) (2) (c) of this section; 618

(ii) The collection and distribution of income from such 619
property. 620

(c) The corporation is not a financial institution on the 621
last day of the taxable year ending prior to the first day of 622
the tax year; 623

(d) The corporation's related members make a good faith 624
and reasonable effort to make timely and fully the adjustments 625
required by division (D) of section 5733.05 of the Revised Code 626
and to pay timely and fully all uncontested taxes, interest, 627
penalties, and other fees and charges imposed under this 628
chapter; 629

(e) Subject to division (L) (4) of this section, the 630
corporation elects to be treated as a qualifying holding company 631
for the tax year. 632

A corporation otherwise satisfying divisions (L) (1) (a) to 633
(e) of this section that does not elect to be a qualifying 634
holding company is not a qualifying holding company for the 635
purposes of this chapter. 636

(2) (a) (i) For purposes of making the ninety per cent 637
computation under division (L) (1) (a) of this section, the net 638
book value of the corporation's assets shall not include the net 639
book value of aircraft or real property described in division 640
(L) (1) (b) (i) of this section. 641

(ii) For purposes of making the fifty per cent computation 642
under division (L) (1) (a) of this section, the net book value of 643
assets shall include the net book value of aircraft or real 644
property described in division (L) (1) (b) (i) of this section. 645

(b) (i) As used in division (L) of this section, 646
"intangible asset" includes, but is not limited to, the 647
corporation's direct interest in each pass-through entity only 648
if at all times during the corporation's taxable year ending 649
prior to the first day of the tax year the corporation's and the 650
corporation's related members' combined direct and indirect 651
interests in the capital or profits of such pass-through entity 652
do not exceed fifty per cent. If the corporation's interest in 653
the pass-through entity is an intangible asset for that taxable 654
year, then the distributive share of any income from the pass- 655
through entity shall be income from an intangible asset for that 656
taxable year. 657

(ii) If a corporation's and the corporation's related 658
members' combined direct and indirect interests in the capital 659
or profits of a pass-through entity exceed fifty per cent at any 660
time during the corporation's taxable year ending prior to the 661
first day of the tax year, "intangible asset" does not include 662
the corporation's direct interest in the pass-through entity, 663
and the corporation shall include in its assets its 664
proportionate share of the assets of any such pass-through 665
entity and shall include in its gross income its distributive 666

share of the gross income of such pass-through entity in the 667
same form as was earned by the pass-through entity. 668

(iii) A pass-through entity's direct or indirect 669
proportionate share of any other pass-through entity's assets 670
shall be included for the purpose of computing the corporation's 671
proportionate share of the pass-through entity's assets under 672
division (L) (2) (b) (ii) of this section, and such pass-through 673
entity's distributive share of any other pass-through entity's 674
gross income shall be included for purposes of computing the 675
corporation's distributive share of the pass-through entity's 676
gross income under division (L) (2) (b) (ii) of this section. 677

(c) For the purposes of divisions (L) (1) (b) (i), (1) (b) 678
(ii), (2) (a) (i), and (2) (a) (ii) of this section, real property 679
is described in division (L) (2) (c) of this section only if all 680
of the following conditions are present at all times during the 681
taxable year ending prior to the first day of the tax year: 682

(i) The real property serves as the headquarters of the 683
corporation's trade or business, or is the place from which the 684
corporation's trade or business is principally managed or 685
directed; 686

(ii) Not more than ten per cent of the value of the real 687
property and not more than ten per cent of the square footage of 688
the building or buildings that are part of the real property is 689
used, made available, or occupied for the purpose of providing, 690
acquiring, transferring, selling, or disposing of tangible 691
property or services in the normal course of business to persons 692
other than related members, the corporation's employees and 693
their families, and such related members' employees and their 694
families. 695

(d) As used in division (L) of this section, "related member" has the same meaning as in division (A) (6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(3) The percentages described in division (L) (1) (a) of this section shall be equal to the quarterly average of those percentages as calculated during the corporation's taxable year ending prior to the first day of the tax year.

(4) With respect to the election described in division (L) (1) (e) of this section:

(a) The election need not accompany a timely filed report;

(b) The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund and timely amended report, or a subsequently filed but timely petition for reassessment;

(c) The election is not irrevocable;

(d) The election applies only to the tax year specified by the corporation;

(e) The corporation's related members comply with division (L) (1) (d) of this section.

Nothing in division (L) (4) of this section shall be construed to extend any statute of limitations set forth in this chapter.

(M) "Qualifying controlled group" means two or more corporations that satisfy the ownership and control requirements of division (A) of section 5733.052 of the Revised Code.

(N) "Limited liability company" means any limited

liability company formed under Chapter 1705. of the Revised Code 723
or under the laws of any other state. 724

(O) "Pass-through entity" means a corporation that has 725
made an election under subchapter S of Chapter 1 of Subtitle A 726
of the Internal Revenue Code for its taxable year under that 727
code, or a partnership, limited liability company, or any other 728
person, other than an individual, trust, or estate, if the 729
partnership, limited liability company, or other person is not 730
classified for federal income tax purposes as an association 731
taxed as a corporation. 732

(P) "Electric company," "combined company," and "telephone 733
company" have the same meanings as in section 5727.01 of the 734
Revised Code. 735

(Q) "Business income" means income arising from 736
transactions, activities, and sources in the regular course of a 737
trade or business and includes income from real property, 738
tangible personal property, and intangible personal property if 739
the acquisition, rental, management, and disposition of the 740
property constitute integral parts of the regular course of a 741
trade or business operation. "Business income" includes income, 742
including gain or loss, from a partial or complete liquidation 743
of a business, including, but not limited to, gain or loss from 744
the sale or other disposition of goodwill. 745

(R) "Nonbusiness income" means all income other than 746
business income. 747

Sec. 5733.057. ~~As used in this section, "adjusted-~~ 748
~~qualifying amount" has the same meaning as in section 5733.40 of~~ 749
~~the Revised Code.~~ 750

This section does not apply to divisions (E) and (F) of 751

section 5733.051 of the Revised Code. 752

Except as otherwise provided in ~~divisions (A) and (B) of~~ 753
~~section 5733.401 and in sections~~ section 5733.058 and 5747.401 754
of the Revised Code, in making all apportionment, allocation, 755
income, gain, loss, deduction, tax, and credit computations 756
under this chapter ~~and under sections 5747.41 and 5747.43 of the~~ 757
~~Revised Code~~, each person shall include in that person's items 758
of business income, nonbusiness income, ~~adjusted qualifying~~ 759
~~amounts~~, allocable income or loss, if any, apportionable income 760
or loss, property, compensation, and sales, the person's entire 761
distributive share or proportionate share of the items of 762
business income, nonbusiness income, ~~adjusted qualifying~~ 763
~~amounts~~, allocable income or loss, apportionable income or loss, 764
property, compensation, and sales of any pass-through entity in 765
which the person has a direct or indirect ownership interest at 766
any time during the pass-through entity's calendar or fiscal 767
year ending within, or with the last day of the person's taxable 768
year. A pass-through entity's direct or indirect distributive 769
share or proportionate share of any other pass-through entity's 770
items of business income, nonbusiness income, ~~adjusted~~ 771
~~qualifying amounts~~, allocable income or loss, apportionable 772
income or loss, property, compensation, and sales shall be 773
included for the purposes of computing the person's distributive 774
share or proportionate share of the pass-through entity's items 775
of business income, nonbusiness income, ~~adjusted qualifying~~ 776
~~amounts~~, allocable income or loss, apportionable income or loss, 777
property, compensation, and sales under this section. Those 778
items shall be in the same form as was recognized by the pass- 779
through entity. 780

Sec. 5733.09. (A) (1) Except as provided in divisions (A) 781
(2) and (3) of this section, an incorporated company, whether 782

foreign or domestic, owning and operating a public utility in 783
this state, and required by law to file reports with the tax 784
commissioner and to pay an excise tax upon its gross receipts, 785
and insurance, fraternal, beneficial, bond investment, and other 786
corporations required by law to file annual reports with the 787
superintendent of insurance and dealers in intangibles, the 788
shares of which are, or the capital or ownership in capital 789
employed by such dealer is, subject to the taxes imposed by 790
section 5707.03 of the Revised Code, shall not be subject to 791
this chapter, except for sections 5733.031, 5733.042, 5733.05, 792
5733.052, 5733.053, 5733.069, ~~5733.0611, 5733.40, 5733.41,~~ and 793
sections 5747.40 to ~~5747.453~~ 5747.44 of the Revised Code. 794
However, for reports required to be filed under section 5725.14 795
of the Revised Code in 2003 and thereafter, nothing in this 796
section shall be construed to exempt the property of any dealer 797
in intangibles under section 5725.13 of the Revised Code from 798
the tax imposed under section 5707.03 of the Revised Code. 799

(2) An electric company subject to the filing requirements 800
of section 5727.08 of the Revised Code or otherwise having nexus 801
with or in this state under the Constitution of the United 802
States, or any other corporation having any gross receipts 803
directly attributable to providing public utility service as an 804
electric company or having any property directly attributable to 805
providing public utility service as an electric company, is 806
subject to this chapter. 807

(3) A telephone company that no longer pays an excise tax 808
under section 5727.30 of the Revised Code on its gross receipts 809
billed after June 30, 2004, is first subject to taxation under 810
this chapter for tax year 2005. For that tax year, a telephone 811
company with a taxable year ending in 2004 shall compute the tax 812
imposed under this chapter, and shall compute the net operating 813

loss carry forward for tax year 2005, by multiplying the tax 814
owed under this chapter, net of all nonrefundable credits, or 815
the loss for the taxable year, by fifty per cent. 816

(B) A corporation that has made an election under 817
subchapter S, chapter one, subtitle A, of the Internal Revenue 818
Code for its taxable year under such code is exempt from the tax 819
imposed by section 5733.06 of the Revised Code that is based on 820
that taxable year. 821

A corporation that makes such an election shall file a 822
notice of such election with the tax commissioner between the 823
first day of January and the thirty-first day of March of each 824
tax year that the election is in effect. 825

(C) An entity defined to be a "real estate investment 826
trust" by section 856 of the Internal Revenue Code, a "regulated 827
investment company" by section 851 of the Internal Revenue Code, 828
or a "real estate mortgage investment conduit" by section 860D 829
of the Internal Revenue Code, is exempt from taxation for a tax 830
year as a corporation under this chapter and is exempt from 831
taxation for a return year as a dealer in intangibles under 832
Chapter 5725. of the Revised Code if it provides the report 833
required by this division. By the last day of March of the tax 834
or return year the entity shall submit to the tax commissioner 835
the name of the entity with a list of the names, addresses, and 836
social security or federal identification numbers of all 837
investors, shareholders, and other similar investors who owned 838
any interest or invested in the entity during the preceding 839
calendar year. The commissioner may extend the date by which the 840
report must be submitted for reasonable cause shown by the 841
entity. The commissioner may prescribe the form of the report 842
required for exemption under this division. 843

(D) (1) As used in this division: 844

(a) "Commercial printer" means a person primarily engaged 845
in the business of commercial printing. However, "commercial 846
printer" does not include a person primarily engaged in the 847
business of providing duplicating services using photocopy 848
machines or other xerographic processes. 849

(b) "Commercial printing" means printing by one or more 850
common processes such as letterpress, lithography, gravure, 851
screen, or digital imaging, and includes related activities such 852
as binding, platemaking, prepress operation, cartographic 853
composition, and typesetting. 854

(c) "Contract for printing" means an oral or written 855
agreement for the purchase of printed materials produced by a 856
commercial printer. 857

(d) "Intangible property located at the premises of a 858
commercial printer" means intangible property of any kind owned 859
or licensed by a customer of the commercial printer and 860
furnished to the commercial printer for use in commercial 861
printing. 862

(e) "Printed material" means any tangible personal 863
property produced or processed by a commercial printer pursuant 864
to a contract for printing. 865

(f) "Related member" has the same meaning as in section 866
5733.042 of the Revised Code without regard to division (B) of 867
that section. 868

(2) Except as provided in divisions (D) (3) and (4) of this 869
section, a corporation not otherwise subject to the tax imposed 870
by section 5733.06 of the Revised Code for a tax year does not 871
become subject to that tax for the tax year solely by reason of 872

any one or more of the following occurring in this state during 873
the taxable year that ends immediately prior to the tax year: 874

(a) Ownership by the corporation or a related member of 875
the corporation of tangible personal property or intangible 876
property located during all or any portion of the taxable year 877
or on the first day of the tax year at the premises of a 878
commercial printer with which the corporation or the 879
corporation's related member has a contract for printing with 880
respect to such property or the premises of a commercial 881
printer's related member with which the corporation or the 882
corporation's related member has a contract for printing with 883
respect to such property; 884

(b) Sales by the corporation or a related member of the 885
corporation of property produced at and shipped or distributed 886
from the premises of a commercial printer with which the 887
corporation or the corporation's related member has a contract 888
for printing with respect to such property or the premises of a 889
commercial printer's related member with which the corporation 890
or the corporation's related member has a contract for printing 891
with respect to such property; 892

(c) Activities of employees, officers, agents, or 893
contractors of the corporation or a related member of the 894
corporation on the premises of a commercial printer with which 895
the corporation or the corporation's related member has a 896
contract for printing or the premises of a commercial printer's 897
related member with which the corporation or the corporation's 898
related member has a contract for printing, where the activities 899
are directly and solely related to quality control, 900
distribution, or printing services, or any combination thereof, 901
performed by or at the direction of the commercial printer or 902

the commercial printer's related member. 903

(3) The exemption under this division does not apply for a 904
taxable year to any corporation having on the first day of 905
January of the tax year or at any time during the taxable year 906
ending immediately preceding the first day of January of the tax 907
year a related member which, on the first day of January of the 908
tax year or during any portion of such taxable year of the 909
corporation, has nexus in or with this state under the 910
Constitution of the United States or holds a certificate of 911
compliance with the laws of this state authorizing it to do 912
business in this state. 913

(4) With respect to allowing the exemption under this 914
division, the tax commissioner shall be guided by the doctrines 915
of "economic reality," "sham transaction," "step transaction," 916
and "substance over form." A corporation shall bear the burden 917
of establishing by a preponderance of the evidence that any 918
transaction giving rise to an exemption claimed under this 919
division did not have as a principal purpose the avoidance of 920
any portion of the tax imposed by section 5733.06 of the Revised 921
Code. 922

Application of the doctrines listed in division (D) (4) of 923
this section is not limited to this division. 924

Sec. 5733.12. (A) All payments received from the taxes 925
imposed under ~~sections~~ section 5733.06 and ~~5733.41~~ of the 926
Revised Code shall be credited to the general revenue fund. 927

(B) Except as otherwise provided under divisions (C) and 928
(D) of this section, an application to refund to the corporation 929
the amount of taxes imposed under section 5733.06 of the Revised 930
Code that are overpaid, paid illegally or erroneously, or paid 931

on any illegal, erroneous, or excessive assessment, with 932
interest thereon as provided by section 5733.26 of the Revised 933
Code, shall be filed with the tax commissioner, on the form 934
prescribed by the commissioner, within three years from the date 935
of the illegal, erroneous, or excessive payment of the tax, or 936
within any additional period allowed by division (C) (2) of 937
section 5733.031, division (D) (2) of section 5733.067, or 938
division (A) of section 5733.11 of the Revised Code. For 939
purposes of division (B) of this section, any payment that the 940
applicant made before the due date or extended due date for 941
filing the report to which the payment relates shall be deemed 942
to have been made on the due date or extended due date. 943

On the filing of the refund application, the commissioner 944
shall determine the amount of refund to which the applicant is 945
entitled. If the amount is not less than that claimed the 946
commissioner shall certify the amount to the director of budget 947
and management and treasurer of state for payment from the tax 948
refund fund created by section 5703.052 of the Revised Code. If 949
the amount is less than that claimed, the commissioner shall 950
proceed in accordance with section 5703.70 of the Revised Code. 951

~~(C) "Ninety days" shall be substituted for "three years"~~ 952
~~in division (B) of this section if the taxpayer satisfies both~~ 953
~~of the following:~~ 954

~~(1) The taxpayer has applied for a refund based in whole~~ 955
~~or in part upon section 5733.0611 of the Revised Code;~~ 956

~~(2) The taxpayer asserts that the imposition or collection~~ 957
~~of the tax imposed or charged by section 5733.06 of the Revised~~ 958
~~Code or any portion of such tax violates the Constitution of the~~ 959
~~United States or the Constitution of this state.~~ 960

~~(D) (1) Division (D) (2) of this section applies only if all~~ 961
~~of the following conditions are satisfied.~~ 962

~~(a) A qualifying pass-through entity pays an amount of the~~ 963
~~tax imposed by section 5733.41 of the Revised Code;~~ 964

~~(b) The taxpayer is a qualifying investor as to that~~ 965
~~qualifying pass-through entity;~~ 966

~~(c) The taxpayer did not claim the credit provided for in~~ 967
~~section 5733.0611 of the Revised Code as to the tax described in~~ 968
~~division (D) (1) (a) of this section;~~ 969

~~(d) The three year period described in division (B) of~~ 970
~~this section has ended as to the taxable year for which the~~ 971
~~taxpayer otherwise would have claimed that credit.~~ 972

~~(2) A taxpayer shall file an application for refund~~ 973
~~pursuant to this division within one year after the date the~~ 974
~~payment described in division (D) (1) (a) of this section is made.~~ 975
~~An application filed under this division shall only claim refund~~ 976
~~of overpayments resulting from the taxpayer's failure to claim~~ 977
~~the credit described in division (D) (1) (c) of this section.~~ 978
~~Nothing in this division shall be construed to relieve a~~ 979
~~taxpayer from complying with the provisions of division (I) (14)~~ 980
~~of section 5733.04 of the Revised Code.~~ 981

Sec. 5733.98. (A) To provide a uniform procedure for 982
calculating the amount of tax imposed by section 5733.06 of the 983
Revised Code that is due under this chapter, a taxpayer shall 984
claim any credits to which it is entitled in the following 985
order, except as otherwise provided in section 5733.058 of the 986
Revised Code: 987

~~(1) For tax year 2005, the credit for taxes paid by a~~ 988
~~qualifying pass-through entity allowed under section 5733.0611~~ 989

| | |
|--|------|
| of the Revised Code; | 990 |
| (2) The credit allowed for financial institutions under | 991 |
| section 5733.45 of the Revised Code; | 992 |
| (3) <u>(2)</u> The credit for qualifying affiliated groups under | 993 |
| section 5733.068 of the Revised Code; | 994 |
| (4) <u>(3)</u> The subsidiary corporation credit under section | 995 |
| 5733.067 of the Revised Code; | 996 |
| (5) <u>(4)</u> The credit for recycling and litter prevention | 997 |
| donations under section 5733.064 of the Revised Code; | 998 |
| (6) <u>(5)</u> The credit for employers that enter into | 999 |
| agreements with child day-care centers under section 5733.36 of | 1000 |
| the Revised Code; | 1001 |
| (7) <u>(6)</u> The credit for employers that reimburse employee | 1002 |
| child care expenses under section 5733.38 of the Revised Code; | 1003 |
| (8) <u>(7)</u> The credit for maintaining railroad active grade | 1004 |
| crossing warning devices under section 5733.43 of the Revised | 1005 |
| Code; | 1006 |
| (9) <u>(8)</u> The credit for purchases of lights and reflectors | 1007 |
| under section 5733.44 of the Revised Code; | 1008 |
| (10) <u>(9)</u> The nonrefundable job retention credit under | 1009 |
| division (B) of section 5733.0610 of the Revised Code; | 1010 |
| (11) <u>(10)</u> The second credit for purchases of new | 1011 |
| manufacturing machinery and equipment under section 5733.33 of | 1012 |
| the Revised Code; | 1013 |
| (12) <u>(11)</u> The job training credit under section 5733.42 of | 1014 |
| the Revised Code; | 1015 |
| (13) <u>(12)</u> The credit for qualified research expenses under | 1016 |

| | |
|--|------|
| section 5733.351 of the Revised Code; | 1017 |
| (14) <u>(13)</u> The enterprise zone credit under section 5709.66 | 1018 |
| of the Revised Code; | 1019 |
| (15) <u>(14)</u> The credit for the eligible costs associated | 1020 |
| with a voluntary action under section 5733.34 of the Revised | 1021 |
| Code; | 1022 |
| (16) <u>(15)</u> The credit for employers that establish on-site | 1023 |
| child day-care centers under section 5733.37 of the Revised | 1024 |
| Code; | 1025 |
| (17) <u>(16)</u> The ethanol plant investment credit under | 1026 |
| section 5733.46 of the Revised Code; | 1027 |
| (18) <u>(17)</u> The credit for purchases of qualifying grape | 1028 |
| production property under section 5733.32 of the Revised Code; | 1029 |
| (19) <u>(18)</u> The export sales credit under section 5733.069 | 1030 |
| of the Revised Code; | 1031 |
| (20) <u>(19)</u> The enterprise zone credits under section | 1032 |
| 5709.65 of the Revised Code; | 1033 |
| (21) <u>(20)</u> The credit for using Ohio coal under section | 1034 |
| 5733.39 of the Revised Code; | 1035 |
| (22) <u>(21)</u> The credit for purchases of qualified low-income | 1036 |
| community investments under section 5733.58 of the Revised Code; | 1037 |
| (23) <u>(22)</u> The credit for small telephone companies under | 1038 |
| section 5733.57 of the Revised Code; | 1039 |
| (24) <u>(23)</u> The credit for eligible nonrecurring 9-1-1 | 1040 |
| charges under section 5733.55 of the Revised Code; | 1041 |
| (25) <u>(24)</u> For tax year 2005, the credit for providing | 1042 |
| programs to aid the communicatively impaired under division (A) | 1043 |

of section 5733.56 of the Revised Code; 1044

~~(26)~~ (25) The research and development credit under 1045
section 5733.352 of the Revised Code; 1046

~~(27)~~ For tax years 2006 and subsequent tax years, the 1047
credit for taxes paid by a qualifying pass-through entity 1048
allowed under section 5733.0611 of the Revised Code; 1049

~~(28)~~ (26) The refundable credit for rehabilitating a 1050
historic building under section 5733.47 of the Revised Code; 1051

~~(29)~~ (27) The refundable jobs creation credit or job 1052
retention credit under division (A) of section 5733.0610 of the 1053
Revised Code; 1054

~~(30)~~ (28) The refundable credit for tax withheld under 1055
division (B) (2) of section 5747.062 of the Revised Code; 1056

~~(31)~~ (29) The refundable credit under section 5733.49 of 1057
the Revised Code for losses on loans made to the Ohio venture 1058
capital program under sections 150.01 to 150.10 of the Revised 1059
Code; 1060

~~(32)~~ (30) For tax years 2006, 2007, and 2008, the 1061
refundable credit allowable under division (B) of section 1062
5733.56 of the Revised Code; 1063

~~(33)~~ (31) The refundable motion picture production credit 1064
under section 5733.59 of the Revised Code. 1065

(B) For any credit except the refundable credits 1066
enumerated in this section, the amount of the credit for a tax 1067
year shall not exceed the tax due after allowing for any other 1068
credit that precedes it in the order required under this 1069
section. Any excess amount of a particular credit may be carried 1070
forward if authorized under the section creating that credit. 1071

Sec. 5747.01. Except as otherwise expressly provided or 1072
clearly appearing from the context, any term used in this 1073
chapter that is not otherwise defined in this section has the 1074
same meaning as when used in a comparable context in the laws of 1075
the United States relating to federal income taxes ~~or if not~~ 1076
~~used in a comparable context in those laws, has the same meaning~~ 1077
~~as in section 5733.40 of the Revised Code.~~ Any reference in this 1078
chapter to the Internal Revenue Code includes other laws of the 1079
United States relating to federal income taxes. 1080

As used in this chapter: 1081

(A) "Adjusted gross income" or "Ohio adjusted gross 1082
income" means federal adjusted gross income, as defined and used 1083
in the Internal Revenue Code, adjusted as provided in this 1084
section: 1085

(1) Add interest or dividends on obligations or securities 1086
of any state or of any political subdivision or authority of any 1087
state, other than this state and its subdivisions and 1088
authorities. 1089

(2) Add interest or dividends on obligations of any 1090
authority, commission, instrumentality, territory, or possession 1091
of the United States to the extent that the interest or 1092
dividends are exempt from federal income taxes but not from 1093
state income taxes. 1094

(3) Deduct interest or dividends on obligations of the 1095
United States and its territories and possessions or of any 1096
authority, commission, or instrumentality of the United States 1097
to the extent that the interest or dividends are included in 1098
federal adjusted gross income but exempt from state income taxes 1099
under the laws of the United States. 1100

(4) Deduct disability and survivor's benefits to the 1101
extent included in federal adjusted gross income. 1102

(5) Deduct benefits under Title II of the Social Security 1103
Act and tier 1 railroad retirement benefits to the extent 1104
included in federal adjusted gross income under section 86 of 1105
the Internal Revenue Code. 1106

~~(6) In the case of a taxpayer who is a beneficiary of a 1107
trust that makes an accumulation distribution as defined in 1108
section 665 of the Internal Revenue Code, add, for the 1109
beneficiary's taxable years beginning before 2002, the portion, 1110
if any, of such distribution that does not exceed the 1111
undistributed net income of the trust for the three taxable 1112
years preceding the taxable year in which the distribution is 1113
made to the extent that the portion was not included in the 1114
trust's taxable income for any of the trust's taxable years 1115
beginning in 2002 or thereafter. "Undistributed net income of a 1116
trust" means the taxable income of the trust increased by (a) (i) 1117
the additions to adjusted gross income required under division 1118
(A) of this section and (ii) the personal exemptions allowed to 1119
the trust pursuant to section 642(b) of the Internal Revenue 1120
Code, and decreased by (b) (i) the deductions to adjusted gross 1121
income required under division (A) of this section, (ii) the 1122
amount of federal income taxes attributable to such income, and 1123
(iii) the amount of taxable income that has been included in the 1124
adjusted gross income of a beneficiary by reason of a prior 1125
accumulation distribution. Any undistributed net income included 1126
in the adjusted gross income of a beneficiary shall reduce the 1127
undistributed net income of the trust commencing with the 1128
earliest years of the accumulation period. 1129~~

~~(7)~~ Deduct the amount of wages and salaries, if any, not 1130

otherwise allowable as a deduction but that would have been 1131
allowable as a deduction in computing federal adjusted gross 1132
income for the taxable year, had the targeted jobs credit 1133
allowed and determined under sections 38, 51, and 52 of the 1134
Internal Revenue Code not been in effect. 1135

~~(8)~~ (7) Deduct any interest or interest equivalent on 1136
public obligations and purchase obligations to the extent that 1137
the interest or interest equivalent is included in federal 1138
adjusted gross income. 1139

~~(9)~~ (8) Add any loss or deduct any gain resulting from the 1140
sale, exchange, or other disposition of public obligations to 1141
the extent that the loss has been deducted or the gain has been 1142
included in computing federal adjusted gross income. 1143

~~(10)~~ (9) Deduct or add amounts, as provided under section 1144
5747.70 of the Revised Code, related to contributions to 1145
variable college savings program accounts made or tuition units 1146
purchased pursuant to Chapter 3334. of the Revised Code. 1147

~~(11)~~ (10) (a) Deduct, to the extent not otherwise allowable 1148
as a deduction or exclusion in computing federal or Ohio 1149
adjusted gross income for the taxable year, the amount the 1150
taxpayer paid during the taxable year for medical care insurance 1151
and qualified long-term care insurance for the taxpayer, the 1152
taxpayer's spouse, and dependents. No deduction for medical care 1153
insurance under division (A) ~~(11)~~ (10) of this section shall be 1154
allowed either to any taxpayer who is eligible to participate in 1155
any subsidized health plan maintained by any employer of the 1156
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 1157
entitled to, or on application would be entitled to, benefits 1158
under part A of Title XVIII of the "Social Security Act," 49 1159
Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 1160

division (A)~~(11)~~(10) (a) of this section, "subsidized health 1161
plan" means a health plan for which the employer pays any 1162
portion of the plan's cost. The deduction allowed under division 1163
(A)~~(11)~~(10) (a) of this section shall be the net of any related 1164
premium refunds, related premium reimbursements, or related 1165
insurance premium dividends received during the taxable year. 1166

(b) Deduct, to the extent not otherwise deducted or 1167
excluded in computing federal or Ohio adjusted gross income 1168
during the taxable year, the amount the taxpayer paid during the 1169
taxable year, not compensated for by any insurance or otherwise, 1170
for medical care of the taxpayer, the taxpayer's spouse, and 1171
dependents, to the extent the expenses exceed seven and one-half 1172
per cent of the taxpayer's federal adjusted gross income. 1173

(c) Deduct, to the extent not otherwise deducted or 1174
excluded in computing federal or Ohio adjusted gross income, any 1175
amount included in federal adjusted gross income under section 1176
105 or not excluded under section 106 of the Internal Revenue 1177
Code solely because it relates to an accident and health plan 1178
for a person who otherwise would be a "qualifying relative" and 1179
thus a "dependent" under section 152 of the Internal Revenue 1180
Code but for the fact that the person fails to meet the income 1181
and support limitations under section 152(d)(1)(B) and (C) of 1182
the Internal Revenue Code. 1183

(d) For purposes of division (A)~~(11)~~(10) of this section, 1184
"medical care" has the meaning given in section 213 of the 1185
Internal Revenue Code, subject to the special rules, 1186
limitations, and exclusions set forth therein, and "qualified 1187
long-term care" has the same meaning given in section 7702B(c) 1188
of the Internal Revenue Code. Solely for purposes of divisions 1189
(A)~~(11)~~(10) (a) and (c) of this section, "dependent" includes a 1190

person who otherwise would be a "qualifying relative" and thus a 1191
"dependent" under section 152 of the Internal Revenue Code but 1192
for the fact that the person fails to meet the income and 1193
support limitations under section 152(d)(1)(B) and (C) of the 1194
Internal Revenue Code. 1195

~~(12)~~(11)(a) Deduct any amount included in federal adjusted 1196
gross income solely because the amount represents a 1197
reimbursement or refund of expenses that in any year the 1198
taxpayer had deducted as an itemized deduction pursuant to 1199
section 63 of the Internal Revenue Code and applicable United 1200
States department of the treasury regulations. The deduction 1201
otherwise allowed under division (A)~~(12)~~(11)(a) of this section 1202
shall be reduced to the extent the reimbursement is attributable 1203
to an amount the taxpayer deducted under this section in any 1204
taxable year. 1205

(b) Add any amount not otherwise included in Ohio adjusted 1206
gross income for any taxable year to the extent that the amount 1207
is attributable to the recovery during the taxable year of any 1208
amount deducted or excluded in computing federal or Ohio 1209
adjusted gross income in any taxable year. 1210

~~(13)~~(12) Deduct any portion of the deduction described in 1211
section 1341(a)(2) of the Internal Revenue Code, for repaying 1212
previously reported income received under a claim of right, that 1213
meets both of the following requirements: 1214

(a) It is allowable for repayment of an item that was 1215
included in the taxpayer's adjusted gross income for a prior 1216
taxable year and did not qualify for a credit under division (A) 1217
or (B) of section 5747.05 of the Revised Code for that year; 1218

(b) It does not otherwise reduce the taxpayer's adjusted 1219

gross income for the current or any other taxable year. 1220

~~(14)~~ (13) Deduct an amount equal to the deposits made to, 1221
and net investment earnings of, a medical savings account during 1222
the taxable year, in accordance with section 3924.66 of the 1223
Revised Code. The deduction allowed by division (A) ~~(14)~~ (13) of 1224
this section does not apply to medical savings account deposits 1225
and earnings otherwise deducted or excluded for the current or 1226
any other taxable year from the taxpayer's federal adjusted 1227
gross income. 1228

~~(15)~~ (14) (a) Add an amount equal to the funds withdrawn 1229
from a medical savings account during the taxable year, and the 1230
net investment earnings on those funds, when the funds withdrawn 1231
were used for any purpose other than to reimburse an account 1232
holder for, or to pay, eligible medical expenses, in accordance 1233
with section 3924.66 of the Revised Code; 1234

(b) Add the amounts distributed from a medical savings 1235
account under division (A) (2) of section 3924.68 of the Revised 1236
Code during the taxable year. 1237

~~(16) Add any amount claimed as a credit under section~~ 1238
~~5747.059 or 5747.65 of the Revised Code to the extent that such~~ 1239
~~amount satisfies either of the following:—~~ 1240

~~(a) The amount was deducted or excluded from the~~ 1241
~~computation of the taxpayer's federal adjusted gross income as~~ 1242
~~required to be reported for the taxpayer's taxable year under~~ 1243
~~the Internal Revenue Code;—~~ 1244

~~(b) The amount resulted in a reduction of the taxpayer's~~ 1245
~~federal adjusted gross income as required to be reported for any~~ 1246
~~of the taxpayer's taxable years under the Internal Revenue Code.—~~ 1247

~~(17)~~ (15) Deduct the amount contributed by the taxpayer to 1248

an individual development account program established by a 1249
county department of job and family services pursuant to 1250
sections 329.11 to 329.14 of the Revised Code for the purpose of 1251
matching funds deposited by program participants. On request of 1252
the tax commissioner, the taxpayer shall provide any information 1253
that, in the tax commissioner's opinion, is necessary to 1254
establish the amount deducted under division (A) ~~(17)~~ (15) of 1255
this section. 1256

~~(18)~~ (16) Beginning in taxable year 2001 but not for any 1257
taxable year beginning after December 31, 2005, if the taxpayer 1258
is married and files a joint return and the combined federal 1259
adjusted gross income of the taxpayer and the taxpayer's spouse 1260
for the taxable year does not exceed one hundred thousand 1261
dollars, or if the taxpayer is single and has a federal adjusted 1262
gross income for the taxable year not exceeding fifty thousand 1263
dollars, deduct amounts paid during the taxable year for 1264
qualified tuition and fees paid to an eligible institution for 1265
the taxpayer, the taxpayer's spouse, or any dependent of the 1266
taxpayer, who is a resident of this state and is enrolled in or 1267
attending a program that culminates in a degree or diploma at an 1268
eligible institution. The deduction may be claimed only to the 1269
extent that qualified tuition and fees are not otherwise 1270
deducted or excluded for any taxable year from federal or Ohio 1271
adjusted gross income. The deduction may not be claimed for 1272
educational expenses for which the taxpayer claims a credit 1273
under section 5747.27 of the Revised Code. 1274

~~(19)~~ (17) Add any reimbursement received during the 1275
taxable year of any amount the taxpayer deducted under division 1276
(A) ~~(18)~~ (16) of this section in any previous taxable year to the 1277
extent the amount is not otherwise included in Ohio adjusted 1278
gross income. 1279

~~(20)~~(18) (a) (i) Subject to divisions (A) ~~(20)~~(18) (a) (iii), 1280
(iv), and (v) of this section, add five-sixths of the amount of 1281
depreciation expense allowed by subsection (k) of section 168 of 1282
the Internal Revenue Code, including the taxpayer's 1283
proportionate or distributive share of the amount of 1284
depreciation expense allowed by that subsection to a pass- 1285
through entity in which the taxpayer has a direct or indirect 1286
ownership interest. 1287

(ii) Subject to divisions (A) ~~(20)~~(18) (a) (iii), (iv), and 1288
(v) of this section, add five-sixths of the amount of qualifying 1289
section 179 depreciation expense, including the taxpayer's 1290
proportionate or distributive share of the amount of qualifying 1291
section 179 depreciation expense allowed to any pass-through 1292
entity in which the taxpayer has a direct or indirect ownership 1293
interest. 1294

(iii) Subject to division (A) ~~(20)~~(18) (a) (v) of this 1295
section, for taxable years beginning in 2012 or thereafter, if 1296
the increase in income taxes withheld by the taxpayer is equal 1297
to or greater than ten per cent of income taxes withheld by the 1298
taxpayer during the taxpayer's immediately preceding taxable 1299
year, "two-thirds" shall be substituted for "five-sixths" for 1300
the purpose of divisions (A) ~~(20)~~(18) (a) (i) and (ii) of this 1301
section. 1302

(iv) Subject to division (A) ~~(20)~~(18) (a) (v) of this 1303
section, for taxable years beginning in 2012 or thereafter, a 1304
taxpayer is not required to add an amount under division (A) ~~(20)~~(18) 1305
(18) of this section if the increase in income taxes withheld by 1306
the taxpayer and by any pass-through entity in which the 1307
taxpayer has a direct or indirect ownership interest is equal to 1308
or greater than the sum of (I) the amount of qualifying section 1309

179 depreciation expense and (II) the amount of depreciation 1310
expense allowed to the taxpayer by subsection (k) of section 168 1311
of the Internal Revenue Code, and including the taxpayer's 1312
proportionate or distributive shares of such amounts allowed to 1313
any such pass-through entities. 1314

(v) If a taxpayer directly or indirectly incurs a net 1315
operating loss for the taxable year for federal income tax 1316
purposes, to the extent such loss resulted from depreciation 1317
expense allowed by subsection (k) of section 168 of the Internal 1318
Revenue Code and by qualifying section 179 depreciation expense, 1319
"the entire" shall be substituted for "five-sixths of the" for 1320
the purpose of divisions (A) ~~(20)~~ (18) (a) (i) and (ii) of this 1321
section. 1322

The tax commissioner, under procedures established by the 1323
commissioner, may waive the add-backs related to a pass-through 1324
entity if the taxpayer owns, directly or indirectly, less than 1325
five per cent of the pass-through entity. 1326

(b) Nothing in division (A) ~~(20)~~ (18) of this section shall 1327
be construed to adjust or modify the adjusted basis of any 1328
asset. 1329

(c) To the extent the add-back required under division (A) 1330
~~(20)~~ (18) (a) of this section is attributable to property 1331
generating nonbusiness income or loss allocated under section 1332
5747.20 of the Revised Code, the add-back shall be situated to 1333
the same location as the nonbusiness income or loss generated by 1334
the property for the purpose of determining the credit under 1335
division (A) of section 5747.05 of the Revised Code. Otherwise, 1336
the add-back shall be apportioned, subject to one or more of the 1337
four alternative methods of apportionment enumerated in section 1338
5747.21 of the Revised Code. 1339

(d) For the purposes of division (A) ~~(20)~~ (18) (a) (v) of this 1340
section, net operating loss carryback and carryforward shall not 1341
include the allowance of any net operating loss deduction 1342
carryback or carryforward to the taxable year to the extent such 1343
loss resulted from depreciation allowed by section 168(k) of the 1344
Internal Revenue Code and by the qualifying section 179 1345
depreciation expense amount. 1346

(e) For the purposes of divisions (A) ~~(20)~~ (18) and ~~(21)~~ 1347
(19) of this section: 1348

(i) "Income taxes withheld" means the total amount 1349
withheld and remitted under sections 5747.06 and 5747.07 of the 1350
Revised Code by an employer during the employer's taxable year. 1351

(ii) "Increase in income taxes withheld" means the amount 1352
by which the amount of income taxes withheld by an employer 1353
during the employer's current taxable year exceeds the amount of 1354
income taxes withheld by that employer during the employer's 1355
immediately preceding taxable year. 1356

(iii) "Qualifying section 179 depreciation expense" means 1357
the difference between (I) the amount of depreciation expense 1358
directly or indirectly allowed to a taxpayer under section 179 1359
of the Internal Revised Code, and (II) the amount of 1360
depreciation expense directly or indirectly allowed to the 1361
taxpayer under section 179 of the Internal Revenue Code as that 1362
section existed on December 31, 2002. 1363

~~(21)~~ (19) (a) If the taxpayer was required to add an amount 1364
under division (A) ~~(20)~~ (18) (a) of this section for a taxable 1365
year, deduct one of the following: 1366

(i) One-fifth of the amount so added for each of the five 1367
succeeding taxable years if the amount so added was five-sixths 1368

of qualifying section 179 depreciation expense or depreciation 1369
expense allowed by subsection (k) of section 168 of the Internal 1370
Revenue Code; 1371

(ii) One-half of the amount so added for each of the two 1372
succeeding taxable years if the amount so added was two-thirds 1373
of such depreciation expense; 1374

(iii) One-sixth of the amount so added for each of the six 1375
succeeding taxable years if the entire amount of such 1376
depreciation expense was so added. 1377

(b) If the amount deducted under division (A) ~~(21)~~ (19) (a) 1378
of this section is attributable to an add-back allocated under 1379
division (A) ~~(20)~~ (18) (c) of this section, the amount deducted 1380
shall be situated to the same location. Otherwise, the add-back 1381
shall be apportioned using the apportionment factors for the 1382
taxable year in which the deduction is taken, subject to one or 1383
more of the four alternative methods of apportionment enumerated 1384
in section 5747.21 of the Revised Code. 1385

(c) No deduction is available under division (A) ~~(21)~~ (19) 1386
(a) of this section with regard to any depreciation allowed by 1387
section 168(k) of the Internal Revenue Code and by the 1388
qualifying section 179 depreciation expense amount to the extent 1389
that such depreciation results in or increases a federal net 1390
operating loss carryback or carryforward. If no such deduction 1391
is available for a taxable year, the taxpayer may carry forward 1392
the amount not deducted in such taxable year to the next taxable 1393
year and add that amount to any deduction otherwise available 1394
under division (A) ~~(21)~~ (19) (a) of this section for that next 1395
taxable year. The carryforward of amounts not so deducted shall 1396
continue until the entire addition required by division (A) ~~(20)~~ 1397
(18) (a) of this section has been deducted. 1398

~~(d) No refund shall be allowed as a result of adjustments~~ 1399
~~made by division (A) (21) of this section.~~ 1400

~~(22)~~ (20) Deduct, to the extent not otherwise deducted or 1401
excluded in computing federal or Ohio adjusted gross income for 1402
the taxable year, the amount the taxpayer received during the 1403
taxable year as reimbursement for life insurance premiums under 1404
section 5919.31 of the Revised Code. 1405

~~(23)~~ (21) Deduct, to the extent not otherwise deducted or 1406
excluded in computing federal or Ohio adjusted gross income for 1407
the taxable year, the amount the taxpayer received during the 1408
taxable year as a death benefit paid by the adjutant general 1409
under section 5919.33 of the Revised Code. 1410

~~(24)~~ (22) Deduct, to the extent included in federal 1411
adjusted gross income and not otherwise allowable as a deduction 1412
or exclusion in computing federal or Ohio adjusted gross income 1413
for the taxable year, military pay and allowances received by 1414
the taxpayer during the taxable year for active duty service in 1415
the United States army, air force, navy, marine corps, or coast 1416
guard or reserve components thereof or the national guard. The 1417
deduction may not be claimed for military pay and allowances 1418
received by the taxpayer while the taxpayer is stationed in this 1419
state. 1420

~~(25)~~ (23) Deduct, to the extent not otherwise allowable as 1421
a deduction or exclusion in computing federal or Ohio adjusted 1422
gross income for the taxable year and not otherwise compensated 1423
for by any other source, the amount of qualified organ donation 1424
expenses incurred by the taxpayer during the taxable year, not 1425
to exceed ten thousand dollars. A taxpayer may deduct qualified 1426
organ donation expenses only once for all taxable years 1427
beginning with taxable years beginning in 2007. 1428

For the purposes of division (A) ~~(25)~~ (23) of this section: 1429

(a) "Human organ" means all or any portion of a human 1430
liver, pancreas, kidney, intestine, or lung, and any portion of 1431
human bone marrow. 1432

(b) "Qualified organ donation expenses" means travel 1433
expenses, lodging expenses, and wages and salary forgone by a 1434
taxpayer in connection with the taxpayer's donation, while 1435
living, of one or more of the taxpayer's human organs to another 1436
human being. 1437

~~(26)~~ (24) Deduct, to the extent not otherwise deducted or 1438
excluded in computing federal or Ohio adjusted gross income for 1439
the taxable year, amounts received by the taxpayer as retired 1440
personnel pay for service in the uniformed services or reserve 1441
components thereof, or the national guard, or received by the 1442
surviving spouse or former spouse of such a taxpayer under the 1443
survivor benefit plan on account of such a taxpayer's death. If 1444
the taxpayer receives income on account of retirement paid under 1445
the federal civil service retirement system or federal employees 1446
retirement system, or under any successor retirement program 1447
enacted by the congress of the United States that is established 1448
and maintained for retired employees of the United States 1449
government, and such retirement income is based, in whole or in 1450
part, on credit for the taxpayer's uniformed service, the 1451
deduction allowed under this division shall include only that 1452
portion of such retirement income that is attributable to the 1453
taxpayer's uniformed service, to the extent that portion of such 1454
retirement income is otherwise included in federal adjusted 1455
gross income and is not otherwise deducted under this section. 1456
Any amount deducted under division (A) ~~(26)~~ (24) of this section 1457
is not included in a taxpayer's adjusted gross income for the 1458

purposes of section 5747.055 of the Revised Code. No amount may 1459
be deducted under division (A) ~~(26)~~ (24) of this section on the 1460
basis of which a credit was claimed under section 5747.055 of 1461
the Revised Code. 1462

~~(27)~~ (25) Deduct, to the extent not otherwise deducted or 1463
excluded in computing federal or Ohio adjusted gross income for 1464
the taxable year, the amount the taxpayer received during the 1465
taxable year from the military injury relief fund created in 1466
section 5902.05 of the Revised Code. 1467

~~(28)~~ (26) Deduct, to the extent not otherwise deducted or 1468
excluded in computing federal or Ohio adjusted gross income for 1469
the taxable year, the amount the taxpayer received as a veterans 1470
bonus during the taxable year from the Ohio department of 1471
veterans services as authorized by Section 2r of Article VIII, 1472
Ohio Constitution. 1473

~~(29)~~ (27) Deduct, to the extent not otherwise deducted or 1474
excluded in computing federal or Ohio adjusted gross income for 1475
the taxable year, any income derived from a transfer agreement 1476
or from the enterprise transferred under that agreement under 1477
section 4313.02 of the Revised Code. 1478

~~(30)~~ (28) Deduct, to the extent not otherwise deducted or 1479
excluded in computing federal or Ohio adjusted gross income for 1480
the taxable year, Ohio college opportunity or federal Pell grant 1481
amounts received by the taxpayer or the taxpayer's spouse or 1482
dependent pursuant to section 3333.122 of the Revised Code or 20 1483
U.S.C. 1070a, et seq., and used to pay room or board furnished 1484
by the educational institution for which the grant was awarded 1485
at the institution's facilities, including meal plans 1486
administered by the institution. For the purposes of this 1487
division, receipt of a grant includes the distribution of a 1488

grant directly to an educational institution and the crediting 1489
of the grant to the enrollee's account with the institution. 1490

~~(31)~~ (29) (a) For taxable years beginning in 2015, deduct 1491
from the portion of an individual's adjusted gross income that 1492
is business income, to the extent not otherwise deducted or 1493
excluded in computing federal or Ohio adjusted gross income for 1494
the taxable year, the lesser of the following amounts: 1495

(i) Seventy-five per cent of the individual's business 1496
income; 1497

(ii) Ninety-three thousand seven hundred fifty dollars for 1498
each spouse if spouses file separate returns under section 1499
5747.08 of the Revised Code or one hundred eighty-seven thousand 1500
five hundred dollars for all other individuals. 1501

(b) For taxable years beginning in 2016 or thereafter, 1502
deduct from the portion of an individual's adjusted gross income 1503
that is business income, to the extent not otherwise deducted or 1504
excluded in computing federal adjusted gross income for the 1505
taxable year, one hundred twenty-five thousand dollars for each 1506
spouse if spouses file separate returns under section 5747.08 of 1507
the Revised Code or two hundred fifty thousand dollars for all 1508
other individuals. 1509

(30) Add the taxpayer's proportionate share of any amounts 1510
described in divisions (A) (2) (a), (b), and (c) of section 1511
5747.40 of the Revised Code to the extent that such amounts are 1512
not otherwise included in federal adjusted gross income for the 1513
taxable year. 1514

(B) "Business income" means income, including gain or 1515
loss, arising from transactions, activities, and sources in the 1516
regular course of a trade or business and includes income, gain, 1517

or loss from real property, tangible property, and intangible 1518
property if the acquisition, rental, management, and disposition 1519
of the property constitute integral parts of the regular course 1520
of a trade or business operation. "Business income" includes 1521
income, including gain or loss, from a partial or complete 1522
liquidation of a business, including, but not limited to, gain 1523
or loss from the sale or other disposition of goodwill. 1524

(C) "Nonbusiness income" means all income other than 1525
business income and may include, but is not limited to, 1526
compensation, rents and royalties from real or tangible personal 1527
property, capital gains, interest, dividends and distributions, 1528
patent or copyright royalties, or lottery winnings, prizes, and 1529
awards. 1530

(D) "Compensation" means any form of remuneration paid to 1531
an employee for personal services. 1532

(E) "Fiduciary" means a guardian, trustee, executor, 1533
administrator, receiver, conservator, or any other person acting 1534
in any fiduciary capacity for any individual, trust, or estate. 1535

(F) "Fiscal year" means an accounting period of twelve 1536
months ending on the last day of any month other than December. 1537

(G) "Individual" means any natural person. 1538

(H) "Internal Revenue Code" means the "Internal Revenue 1539
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 1540

(I) "Resident" means any of the following, provided that 1541
division (I)(3) of this section applies only to taxable years of 1542
a trust beginning in 2002 or thereafter: 1543

(1) An individual who is domiciled in this state, subject 1544
to section 5747.24 of the Revised Code; 1545

(2) The estate of a decedent who at the time of death was 1546
domiciled in this state. The domicile tests of section 5747.24 1547
of the Revised Code are not controlling for purposes of division 1548
(I) (2) of this section. 1549

(3) A trust that, in whole or part, resides in this state. 1550
If only part of a trust resides in this state, the trust is a 1551
resident only with respect to that part. 1552

For the purposes of division (I) (3) of this section: 1553

(a) A trust resides in this state for the trust's current 1554
taxable year to the extent, as described in division (I) (3) (d) 1555
of this section, that the trust consists directly or indirectly, 1556
in whole or in part, of assets, net of any related liabilities, 1557
that were transferred, or caused to be transferred, directly or 1558
indirectly, to the trust by any of the following: 1559

(i) A person, a court, or a governmental entity or 1560
instrumentality on account of the death of a decedent, but only 1561
if the trust is described in division (I) (3) (e) (i) or (ii) of 1562
this section; 1563

(ii) A person who was domiciled in this state for the 1564
purposes of this chapter when the person directly or indirectly 1565
transferred assets to an irrevocable trust, but only if at least 1566
one of the trust's qualifying beneficiaries is domiciled in this 1567
state for the purposes of this chapter during all or some 1568
portion of the trust's current taxable year; 1569

(iii) A person who was domiciled in this state for the 1570
purposes of this chapter when the trust document or instrument 1571
or part of the trust document or instrument became irrevocable, 1572
but only if at least one of the trust's qualifying beneficiaries 1573
is a resident domiciled in this state for the purposes of this 1574

chapter during all or some portion of the trust's current 1575
taxable year. If a trust document or instrument became 1576
irrevocable upon the death of a person who at the time of death 1577
was domiciled in this state for purposes of this chapter, that 1578
person is a person described in division (I) (3) (a) (iii) of this 1579
section. 1580

(b) A trust is irrevocable to the extent that the 1581
transferor is not considered to be the owner of the net assets 1582
of the trust under sections 671 to 678 of the Internal Revenue 1583
Code. 1584

(c) With respect to a trust other than a charitable lead 1585
trust, "qualifying beneficiary" has the same meaning as 1586
"potential current beneficiary" as defined in section 1361(e) (2) 1587
of the Internal Revenue Code, and with respect to a charitable 1588
lead trust "qualifying beneficiary" is any current, future, or 1589
contingent beneficiary, but with respect to any trust 1590
"qualifying beneficiary" excludes a person or a governmental 1591
entity or instrumentality to any of which a contribution would 1592
qualify for the charitable deduction under section 170 of the 1593
Internal Revenue Code. 1594

(d) For the purposes of division (I) (3) (a) of this 1595
section, the extent to which a trust consists directly or 1596
indirectly, in whole or in part, of assets, net of any related 1597
liabilities, that were transferred directly or indirectly, in 1598
whole or part, to the trust by any of the sources enumerated in 1599
that division shall be ascertained by multiplying the fair 1600
market value of the trust's assets, net of related liabilities, 1601
by the qualifying ratio, which shall be computed as follows: 1602

(i) The first time the trust receives assets, the 1603
numerator of the qualifying ratio is the fair market value of 1604

those assets at that time, net of any related liabilities, from 1605
sources enumerated in division (I) (3) (a) of this section. The 1606
denominator of the qualifying ratio is the fair market value of 1607
all the trust's assets at that time, net of any related 1608
liabilities. 1609

(ii) Each subsequent time the trust receives assets, a 1610
revised qualifying ratio shall be computed. The numerator of the 1611
revised qualifying ratio is the sum of (1) the fair market value 1612
of the trust's assets immediately prior to the subsequent 1613
transfer, net of any related liabilities, multiplied by the 1614
qualifying ratio last computed without regard to the subsequent 1615
transfer, and (2) the fair market value of the subsequently 1616
transferred assets at the time transferred, net of any related 1617
liabilities, from sources enumerated in division (I) (3) (a) of 1618
this section. The denominator of the revised qualifying ratio is 1619
the fair market value of all the trust's assets immediately 1620
after the subsequent transfer, net of any related liabilities. 1621

(iii) Whether a transfer to the trust is by or from any of 1622
the sources enumerated in division (I) (3) (a) of this section 1623
shall be ascertained without regard to the domicile of the 1624
trust's beneficiaries. 1625

(e) For the purposes of division (I) (3) (a) (i) of this 1626
section: 1627

(i) A trust is described in division (I) (3) (e) (i) of this 1628
section if the trust is a testamentary trust and the testator of 1629
that testamentary trust was domiciled in this state at the time 1630
of the testator's death for purposes of the taxes levied under 1631
Chapter 5731. of the Revised Code. 1632

(ii) A trust is described in division (I) (3) (e) (ii) of 1633

this section if the transfer is a qualifying transfer described 1634
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 1635
trust is an irrevocable inter vivos trust, and at least one of 1636
the trust's qualifying beneficiaries is domiciled in this state 1637
for purposes of this chapter during all or some portion of the 1638
trust's current taxable year. 1639

(f) For the purposes of division (I) (3) (e) (ii) of this 1640
section, a "qualifying transfer" is a transfer of assets, net of 1641
any related liabilities, directly or indirectly to a trust, if 1642
the transfer is described in any of the following: 1643

(i) The transfer is made to a trust, created by the 1644
decedent before the decedent's death and while the decedent was 1645
domiciled in this state for the purposes of this chapter, and, 1646
prior to the death of the decedent, the trust became irrevocable 1647
while the decedent was domiciled in this state for the purposes 1648
of this chapter. 1649

(ii) The transfer is made to a trust to which the 1650
decedent, prior to the decedent's death, had directly or 1651
indirectly transferred assets, net of any related liabilities, 1652
while the decedent was domiciled in this state for the purposes 1653
of this chapter, and prior to the death of the decedent the 1654
trust became irrevocable while the decedent was domiciled in 1655
this state for the purposes of this chapter. 1656

(iii) The transfer is made on account of a contractual 1657
relationship existing directly or indirectly between the 1658
transferor and either the decedent or the estate of the decedent 1659
at any time prior to the date of the decedent's death, and the 1660
decedent was domiciled in this state at the time of death for 1661
purposes of the taxes levied under Chapter 5731. of the Revised 1662
Code. 1663

(iv) The transfer is made to a trust on account of a 1664
contractual relationship existing directly or indirectly between 1665
the transferor and another person who at the time of the 1666
decedent's death was domiciled in this state for purposes of 1667
this chapter. 1668

(v) The transfer is made to a trust on account of the will 1669
of a testator who was domiciled in this state at the time of the 1670
testator's death for purposes of the taxes levied under Chapter 1671
5731. of the Revised Code. 1672

(vi) The transfer is made to a trust created by or caused 1673
to be created by a court, and the trust was directly or 1674
indirectly created in connection with or as a result of the 1675
death of an individual who, for purposes of the taxes levied 1676
under Chapter 5731. of the Revised Code, was domiciled in this 1677
state at the time of the individual's death. 1678

(g) The tax commissioner may adopt rules to ascertain the 1679
part of a trust residing in this state. 1680

(J) "Nonresident" means an individual or estate that is 1681
not a resident. An individual who is a resident for only part of 1682
a taxable year is a nonresident for the remainder of that 1683
taxable year. 1684

(K) "Pass-through entity" ~~has the same meaning as in~~ 1685
~~section 5733.04 of the Revised Code~~ means a corporation that has 1686
made an election under subchapter S of Chapter 1 of Subtitle A 1687
of the Internal Revenue Code for its taxable year under that 1688
code, or a partnership, limited liability company, or any other 1689
person, other than an individual, trust, estate, or disregarded 1690
entity, if the partnership, limited liability company, or other 1691
person is not classified for federal income tax purposes as an 1692

association taxed as a corporation. 1693

(L) "Return" means the notifications and reports required 1694
to be filed pursuant to this chapter for the purpose of 1695
reporting the tax due and includes declarations of estimated tax 1696
when so required. 1697

(M) "Taxable year" means the calendar year or the 1698
taxpayer's fiscal year ending during the calendar year, or 1699
fractional part thereof, upon which the adjusted gross income is 1700
calculated pursuant to this chapter. 1701

(N) "Taxpayer" means any person subject to the tax imposed 1702
by section 5747.02 of the Revised Code or any pass-through 1703
entity ~~that makes the election under division (D) of section~~ 1704
~~5747.08 required to file a return under section 5747.41~~ of the 1705
Revised Code. 1706

(O) "Dependents" means dependents as defined in the 1707
Internal Revenue Code and as claimed in the taxpayer's federal 1708
income tax return for the taxable year or which the taxpayer 1709
would have been permitted to claim had the taxpayer filed a 1710
federal income tax return. 1711

(P) "Principal county of employment" means, in the case of 1712
a nonresident, the county within the state in which a taxpayer 1713
performs services for an employer or, if those services are 1714
performed in more than one county, the county in which the major 1715
portion of the services are performed. 1716

(Q) As used in sections 5747.50 to 5747.55 of the Revised 1717
Code: 1718

(1) "Subdivision" means any county, municipal corporation, 1719
park district, or township. 1720

(2) "Essential local government purposes" includes all 1721
functions that any subdivision is required by general law to 1722
exercise, including like functions that are exercised under a 1723
charter adopted pursuant to the Ohio Constitution. 1724

(R) "Overpayment" means any amount already paid that 1725
exceeds the figure determined to be the correct amount of the 1726
tax. 1727

(S) "Taxable income" or "Ohio taxable income" applies only 1728
to estates and trusts, and means federal taxable income, as 1729
defined and used in the Internal Revenue Code, adjusted as 1730
follows: 1731

(1) Add interest or dividends, net of ordinary, necessary, 1732
and reasonable expenses not deducted in computing federal 1733
taxable income, on obligations or securities of any state or of 1734
any political subdivision or authority of any state, other than 1735
this state and its subdivisions and authorities, but only to the 1736
extent that such net amount is not otherwise includible in Ohio 1737
taxable income and is described in either division (S)(1)(a) or 1738
(b) of this section: 1739

(a) The net amount is not attributable to the S portion of 1740
an electing small business trust and has not been distributed to 1741
beneficiaries for the taxable year; 1742

(b) The net amount is attributable to the S portion of an 1743
electing small business trust for the taxable year. 1744

(2) Add interest or dividends, net of ordinary, necessary, 1745
and reasonable expenses not deducted in computing federal 1746
taxable income, on obligations of any authority, commission, 1747
instrumentality, territory, or possession of the United States 1748
to the extent that the interest or dividends are exempt from 1749

federal income taxes but not from state income taxes, but only 1750
to the extent that such net amount is not otherwise includible 1751
in Ohio taxable income and is described in either division (S) 1752
(1) (a) or (b) of this section; 1753

(3) Add the amount of personal exemption allowed to the 1754
estate pursuant to section 642(b) of the Internal Revenue Code; 1755

(4) Deduct interest or dividends, net of related expenses 1756
deducted in computing federal taxable income, on obligations of 1757
the United States and its territories and possessions or of any 1758
authority, commission, or instrumentality of the United States 1759
to the extent that the interest or dividends are exempt from 1760
state taxes under the laws of the United States, but only to the 1761
extent that such amount is included in federal taxable income 1762
and is described in either division (S) (1) (a) or (b) of this 1763
section; 1764

(5) Deduct the amount of wages and salaries, if any, not 1765
otherwise allowable as a deduction but that would have been 1766
allowable as a deduction in computing federal taxable income for 1767
the taxable year, had the targeted jobs credit allowed under 1768
sections 38, 51, and 52 of the Internal Revenue Code not been in 1769
effect, but only to the extent such amount relates either to 1770
income included in federal taxable income for the taxable year 1771
or to income of the S portion of an electing small business 1772
trust for the taxable year; 1773

(6) Deduct any interest or interest equivalent, net of 1774
related expenses deducted in computing federal taxable income, 1775
on public obligations and purchase obligations, but only to the 1776
extent that such net amount relates either to income included in 1777
federal taxable income for the taxable year or to income of the 1778
S portion of an electing small business trust for the taxable 1779

year; 1780

(7) Add any loss or deduct any gain resulting from sale, 1781
exchange, or other disposition of public obligations to the 1782
extent that such loss has been deducted or such gain has been 1783
included in computing either federal taxable income or income of 1784
the S portion of an electing small business trust for the 1785
taxable year; 1786

(8) Except in the case of the final return of an estate, 1787
add any amount deducted by the taxpayer on both its Ohio estate 1788
tax return pursuant to section 5731.14 of the Revised Code, and 1789
on its federal income tax return in determining federal taxable 1790
income; 1791

(9) (a) Deduct any amount included in federal taxable 1792
income solely because the amount represents a reimbursement or 1793
refund of expenses that in a previous year the decedent had 1794
deducted as an itemized deduction pursuant to section 63 of the 1795
Internal Revenue Code and applicable treasury regulations. The 1796
deduction otherwise allowed under division (S) (9) (a) of this 1797
section shall be reduced to the extent the reimbursement is 1798
attributable to an amount the taxpayer or decedent deducted 1799
under this section in any taxable year. 1800

(b) Add any amount not otherwise included in Ohio taxable 1801
income for any taxable year to the extent that the amount is 1802
attributable to the recovery during the taxable year of any 1803
amount deducted or excluded in computing federal or Ohio taxable 1804
income in any taxable year, but only to the extent such amount 1805
has not been distributed to beneficiaries for the taxable year. 1806

(10) Deduct any portion of the deduction described in 1807
section 1341(a) (2) of the Internal Revenue Code, for repaying 1808

previously reported income received under a claim of right, that 1809
meets both of the following requirements: 1810

(a) It is allowable for repayment of an item that was 1811
included in the taxpayer's taxable income or the decedent's 1812
adjusted gross income for a prior taxable year and did not 1813
qualify for a credit under division (A) or (B) of section 1814
5747.05 of the Revised Code for that year. 1815

(b) It does not otherwise reduce the taxpayer's taxable 1816
income or the decedent's adjusted gross income for the current 1817
or any other taxable year. 1818

~~(11) Add any amount claimed as a credit under section 1819
5747.059 or 5747.65 of the Revised Code to the extent that the 1820
amount satisfies either of the following: 1821~~

~~(a) The amount was deducted or excluded from the 1822
computation of the taxpayer's federal taxable income as required 1823
to be reported for the taxpayer's taxable year under the 1824
Internal Revenue Code; 1825~~

~~(b) The amount resulted in a reduction in the taxpayer's 1826
federal taxable income as required to be reported for any of the 1827
taxpayer's taxable years under the Internal Revenue Code. 1828~~

~~(12)~~ Deduct any amount, net of related expenses deducted 1829
in computing federal taxable income, that a trust is required to 1830
report as farm income on its federal income tax return, but only 1831
if the assets of the trust include at least ten acres of land 1832
satisfying the definition of "land devoted exclusively to 1833
agricultural use" under section 5713.30 of the Revised Code, 1834
regardless of whether the land is valued for tax purposes as 1835
such land under sections 5713.30 to 5713.38 of the Revised Code. 1836
If the trust is a pass-through entity investor, section 5747.231 1837

of the Revised Code applies in ascertaining if the trust is 1838
eligible to claim the deduction provided by division (S) ~~(12)~~ 1839
(11) of this section in connection with the pass-through 1840
entity's farm income. 1841

Except for farm income attributable to the S portion of an 1842
electing small business trust, the deduction provided by 1843
division (S) ~~(12)~~ (11) of this section is allowed only to the 1844
extent that the trust has not distributed such farm income. 1845
Division (S) ~~(12)~~ (11) of this section applies only to taxable 1846
years of a trust beginning in 2002 or thereafter. 1847

~~(13)~~ (12) Add the net amount of income described in 1848
section 641(c) of the Internal Revenue Code to the extent that 1849
amount is not included in federal taxable income. 1850

~~(14)~~ (13) Add or deduct the amount the taxpayer would be 1851
required to add or deduct under division (A) ~~(20)~~ (18) or ~~(21)~~ 1852
(19) of this section if the taxpayer's Ohio taxable income were 1853
computed in the same manner as an individual's Ohio adjusted 1854
gross income is computed under this section. In the case of a 1855
trust, division (S) ~~(14)~~ (13) of this section applies only to any 1856
of the trust's taxable years beginning in 2002 or thereafter. 1857

(T) "School district income" and "school district income 1858
tax" have the same meanings as in section 5748.01 of the Revised 1859
Code. 1860

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 1861
(7) of this section, "public obligations," "purchase 1862
obligations," and "interest or interest equivalent" have the 1863
same meanings as in section 5709.76 of the Revised Code. 1864

(V) "Limited liability company" means any limited 1865
liability company formed under Chapter 1705. of the Revised Code 1866

or under the laws of any other state. 1867

(W) "Pass-through entity investor" or "investor" means any 1868
person who, during any portion of a taxable year of a pass- 1869
through entity, is a partner, member, shareholder, or equity 1870
investor in that pass-through entity. 1871

(X) "Banking day" has the same meaning as in section 1872
1304.01 of the Revised Code. 1873

(Y) "Month" means a calendar month. 1874

(Z) "Quarter" means the first three months, the second 1875
three months, the third three months, or the last three months 1876
of the taxpayer's taxable year. 1877

(AA) (1) "Eligible institution" means a state university or 1878
state institution of higher education as defined in section 1879
3345.011 of the Revised Code, or a private, nonprofit college, 1880
university, or other post-secondary institution located in this 1881
state that possesses a certificate of authorization issued by 1882
the chancellor of higher education pursuant to Chapter 1713. of 1883
the Revised Code or a certificate of registration issued by the 1884
state board of career colleges and schools under Chapter 3332. 1885
of the Revised Code. 1886

(2) "Qualified tuition and fees" means tuition and fees 1887
imposed by an eligible institution as a condition of enrollment 1888
or attendance, not exceeding two thousand five hundred dollars 1889
in each of the individual's first two years of post-secondary 1890
education. If the individual is a part-time student, "qualified 1891
tuition and fees" includes tuition and fees paid for the 1892
academic equivalent of the first two years of post-secondary 1893
education during a maximum of five taxable years, not exceeding 1894
a total of five thousand dollars. "Qualified tuition and fees" 1895

does not include: 1896

(a) Expenses for any course or activity involving sports, 1897
games, or hobbies unless the course or activity is part of the 1898
individual's degree or diploma program; 1899

(b) The cost of books, room and board, student activity 1900
fees, athletic fees, insurance expenses, or other expenses 1901
unrelated to the individual's academic course of instruction; 1902

(c) Tuition, fees, or other expenses paid or reimbursed 1903
through an employer, scholarship, grant in aid, or other 1904
educational benefit program. 1905

(BB) (1) "Modified business income" means the business 1906
income included in a trust's Ohio taxable income after such 1907
taxable income is first reduced by the qualifying trust amount, 1908
if any. 1909

(2) "Qualifying trust amount" of a trust means capital 1910
gains and losses from the sale, exchange, or other disposition 1911
of equity or ownership interests in, or debt obligations of, a 1912
qualifying investee to the extent included in the trust's Ohio 1913
taxable income, but only if the following requirements are 1914
satisfied: 1915

(a) The book value of the qualifying investee's physical 1916
assets in this state and everywhere, as of the last day of the 1917
qualifying investee's fiscal or calendar year ending immediately 1918
prior to the date on which the trust recognizes the gain or 1919
loss, is available to the trust. 1920

(b) The requirements of section 5747.011 of the Revised 1921
Code are satisfied for the trust's taxable year in which the 1922
trust recognizes the gain or loss. 1923

Any gain or loss that is not a qualifying trust amount is 1924
modified business income, qualifying investment income, or 1925
modified nonbusiness income, as the case may be. 1926

(3) "Modified nonbusiness income" means a trust's Ohio 1927
taxable income other than modified business income, other than 1928
the qualifying trust amount, and other than qualifying 1929
investment income, as defined in section 5747.012 of the Revised 1930
Code, to the extent such qualifying investment income is not 1931
otherwise part of modified business income. 1932

(4) "Modified Ohio taxable income" applies only to trusts, 1933
and means the sum of the amounts described in divisions (BB)(4) 1934
(a) to (c) of this section: 1935

(a) The fraction, calculated under section 5747.013, and 1936
applying section 5747.231 of the Revised Code, multiplied by the 1937
sum of the following amounts: 1938

(i) The trust's modified business income; 1939

(ii) The trust's qualifying investment income, as defined 1940
in section 5747.012 of the Revised Code, but only to the extent 1941
the qualifying investment income does not otherwise constitute 1942
modified business income and does not otherwise constitute a 1943
qualifying trust amount. 1944

(b) The qualifying trust amount multiplied by a fraction, 1945
the numerator of which is the sum of the book value of the 1946
qualifying investee's physical assets in this state on the last 1947
day of the qualifying investee's fiscal or calendar year ending 1948
immediately prior to the day on which the trust recognizes the 1949
qualifying trust amount, and the denominator of which is the sum 1950
of the book value of the qualifying investee's total physical 1951
assets everywhere on the last day of the qualifying investee's 1952

fiscal or calendar year ending immediately prior to the day on 1953
which the trust recognizes the qualifying trust amount. If, for 1954
a taxable year, the trust recognizes a qualifying trust amount 1955
with respect to more than one qualifying investee, the amount 1956
described in division (BB) (4) (b) of this section shall equal the 1957
sum of the products so computed for each such qualifying 1958
investee. 1959

(c) (i) With respect to a trust or portion of a trust that 1960
is a resident as ascertained in accordance with division (I) (3) 1961
(d) of this section, its modified nonbusiness income. 1962

(ii) With respect to a trust or portion of a trust that is 1963
not a resident as ascertained in accordance with division (I) (3) 1964
(d) of this section, the amount of its modified nonbusiness 1965
income satisfying the descriptions in divisions (B) (2) to (5) of 1966
section 5747.20 of the Revised Code, except as otherwise 1967
provided in division (BB) (4) (c) (ii) of this section. With 1968
respect to a trust or portion of a trust that is not a resident 1969
as ascertained in accordance with division (I) (3) (d) of this 1970
section, the trust's portion of modified nonbusiness income 1971
recognized from the sale, exchange, or other disposition of a 1972
debt interest in or equity interest in a section 5747.212 1973
entity, as defined in section 5747.212 of the Revised Code, 1974
without regard to division (A) of that section, shall not be 1975
allocated to this state in accordance with section 5747.20 of 1976
the Revised Code but shall be apportioned to this state in 1977
accordance with division (B) of section 5747.212 of the Revised 1978
Code without regard to division (A) of that section. 1979

If the allocation and apportionment of a trust's income 1980
under divisions (BB) (4) (a) and (c) of this section do not fairly 1981
represent the modified Ohio taxable income of the trust in this 1982

state, the alternative methods described in division (C) of 1983
section 5747.21 of the Revised Code may be applied in the manner 1984
and to the same extent provided in that section. 1985

(5) (a) Except as set forth in division (BB) (5) (b) of this 1986
section, "qualifying investee" means a person in which a trust 1987
has an equity or ownership interest, or a person or unit of 1988
government the debt obligations of either of which are owned by 1989
a trust. For the purposes of division (BB) (2) (a) of this section 1990
and for the purpose of computing the fraction described in 1991
division (BB) (4) (b) of this section, all of the following apply: 1992

(i) If the qualifying investee is a member of a qualifying 1993
controlled group on the last day of the qualifying investee's 1994
fiscal or calendar year ending immediately prior to the date on 1995
which the trust recognizes the gain or loss, then "qualifying 1996
investee" includes all persons in the qualifying controlled 1997
group on such last day. 1998

(ii) If the qualifying investee, or if the qualifying 1999
investee and any members of the qualifying controlled group of 2000
which the qualifying investee is a member on the last day of the 2001
qualifying investee's fiscal or calendar year ending immediately 2002
prior to the date on which the trust recognizes the gain or 2003
loss, separately or cumulatively own, directly or indirectly, on 2004
the last day of the qualifying investee's fiscal or calendar 2005
year ending immediately prior to the date on which the trust 2006
recognizes the qualifying trust amount, more than fifty per cent 2007
of the equity of a pass-through entity, then the qualifying 2008
investee and the other members are deemed to own the 2009
proportionate share of the pass-through entity's physical assets 2010
which the pass-through entity directly or indirectly owns on the 2011
last day of the pass-through entity's calendar or fiscal year 2012

ending within or with the last day of the qualifying investee's 2013
fiscal or calendar year ending immediately prior to the date on 2014
which the trust recognizes the qualifying trust amount. 2015

(iii) For the purposes of division (BB) (5) (a) (iii) of this 2016
section, "upper level pass-through entity" means a pass-through 2017
entity directly or indirectly owning any equity of another pass- 2018
through entity, and "lower level pass-through entity" means that 2019
other pass-through entity. 2020

An upper level pass-through entity, whether or not it is 2021
also a qualifying investee, is deemed to own, on the last day of 2022
the upper level pass-through entity's calendar or fiscal year, 2023
the proportionate share of the lower level pass-through entity's 2024
physical assets that the lower level pass-through entity 2025
directly or indirectly owns on the last day of the lower level 2026
pass-through entity's calendar or fiscal year ending within or 2027
with the last day of the upper level pass-through entity's 2028
fiscal or calendar year. If the upper level pass-through entity 2029
directly and indirectly owns less than fifty per cent of the 2030
equity of the lower level pass-through entity on each day of the 2031
upper level pass-through entity's calendar or fiscal year in 2032
which or with which ends the calendar or fiscal year of the 2033
lower level pass-through entity and if, based upon clear and 2034
convincing evidence, complete information about the location and 2035
cost of the physical assets of the lower pass-through entity is 2036
not available to the upper level pass-through entity, then 2037
solely for purposes of ascertaining if a gain or loss 2038
constitutes a qualifying trust amount, the upper level pass- 2039
through entity shall be deemed as owning no equity of the lower 2040
level pass-through entity for each day during the upper level 2041
pass-through entity's calendar or fiscal year in which or with 2042
which ends the lower level pass-through entity's calendar or 2043

fiscal year. Nothing in division (BB) (5) (a) (iii) of this section
shall be construed to provide for any deduction or exclusion in
computing any trust's Ohio taxable income.

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

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

(ii) Such gain or loss constitutes nonbusiness income.

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

~~(CC) (7) "Qualifying controlled group" has the same~~
~~meaning as in section 5733.04 of the Revised Code~~ means a group
of two or more corporations each of which owns or controls
directly, indirectly, or constructively through related
interests more than fifty per cent of the capital stock with
voting rights of one or more other corporations in the group or
which has more than fifty per cent of its capital stock with
voting rights owned or controlled directly, indirectly, or
constructively through related interest by one or more other
corporations in the group.

(CC) "Partnership" has the same meaning as in section
1776.01 of the Revised Code.

(DD) (1) "Related member" has the same meaning as in 2073
section 5733.042 of the Revised Code means any of the following 2074
persons: 2075

(a) A person that, with respect to the taxpayer during all 2076
or any portion of the taxable year, is a component member as 2077
defined in section 1563(b) of the Internal Revenue Code; 2078

(b) An individual, or a member of the individual's family 2079
enumerated in section 318 of the Internal Revenue Code, if the 2080
individual and the members of the individual's family own, 2081
directly, indirectly, beneficially, or constructively, in the 2082
aggregate, at least fifty per cent of the value of the 2083
taxpayer's outstanding stock or ownership interest; 2084

(c) A stockholder, or a stockholder's partnership, estate, 2085
trust, or corporation, if the stockholder and the stockholder's 2086
partnerships, estates, trusts, and corporations own directly, 2087
indirectly, beneficially, or constructively, in the aggregate, 2088
at least fifty per cent of the value of the taxpayer's 2089
outstanding stock; 2090

(d) A corporation, or a party related to the corporation 2091
in a manner that would require an attribution of stock from the 2092
corporation to the party or from the party to the corporation, 2093
if the taxpayer owns, directly, indirectly, beneficially, or 2094
constructively, at least fifty per cent of the value of the 2095
corporation's outstanding stock; 2096

(e) A pass-through entity, or a partner or member thereof, 2097
if the pass-through entity, partner, or member owns directly, 2098
indirectly, beneficially, or constructively, in the aggregate, 2099
at least fifty per cent of the value of the taxpayer's ownership 2100
interest. 2101

(2) The attribution rules of section 318 of the Internal 2102
Revenue Code apply for purposes of determining whether the 2103
ownership requirements in divisions (DD) (1) (b) to (e) of this 2104
section have been met. 2105

(EE) (1) For the purposes of division (EE) of this section: 2106

(a) "Qualifying person" means any person other than a 2107
qualifying corporation. 2108

(b) "Qualifying corporation" means any person classified 2109
for federal income tax purposes as an association taxable as a 2110
corporation, except either of the following: 2111

(i) A corporation that has made an election under 2112
subchapter S, chapter one, subtitle A, of the Internal Revenue 2113
Code for its taxable year ending within, or on the last day of, 2114
the investor's taxable year; 2115

(ii) A subsidiary that is wholly owned by any corporation 2116
that has made an election under subchapter S, chapter one, 2117
subtitle A of the Internal Revenue Code for its taxable year 2118
ending within, or on the last day of, the investor's taxable 2119
year. 2120

(2) For the purposes of this chapter, unless expressly 2121
stated otherwise, no qualifying person indirectly owns any asset 2122
directly or indirectly owned by any qualifying corporation. 2123

(FF) For purposes of this chapter and Chapter 5751. of the 2124
Revised Code: 2125

(1) "Trust" does not include a qualified pre-income tax 2126
trust. 2127

(2) A "qualified pre-income tax trust" is any pre-income 2128
tax trust that makes a qualifying pre-income tax trust election 2129

as described in division (FF) (3) of this section. 2130

(3) A "qualifying pre-income tax trust election" is an 2131
election by a pre-income tax trust to subject to the tax imposed 2132
by section 5751.02 of the Revised Code the pre-income tax trust 2133
and all pass-through entities of which the trust owns or 2134
controls, directly, indirectly, or constructively through 2135
related interests, five per cent or more of the ownership or 2136
equity interests. The trustee shall notify the tax commissioner 2137
in writing of the election on or before April 15, 2006. The 2138
election, if timely made, shall be effective on and after 2139
January 1, 2006, and shall apply for all tax periods and tax 2140
years until revoked by the trustee of the trust. 2141

(4) A "pre-income tax trust" is a trust that satisfies all 2142
of the following requirements: 2143

(a) The document or instrument creating the trust was 2144
executed by the grantor before January 1, 1972; 2145

(b) The trust became irrevocable upon the creation of the 2146
trust; and 2147

(c) The grantor was domiciled in this state at the time 2148
the trust was created. 2149

(GG) "Uniformed services" has the same meaning as in 10 2150
U.S.C. 101. 2151

(HH) "Taxable business income" means the amount by which 2152
an individual's business income that is included in federal 2153
adjusted gross income exceeds the amount of business income the 2154
individual is authorized to deduct under division (A) ~~(31)~~ (29) 2155
of this section for the taxable year. 2156

(II) "Distributive share" includes the sum of the income, 2157

gain, expense, or loss of a disregarded entity or qualified 2158
subchapter S subsidiary. 2159

(JJ) "Disregarded entity" means an entity that, for its 2160
taxable year, is by default, or has elected to be, disregarded 2161
as an entity separate from its owner pursuant to 26 C.F.R. 2162
301.7701-3. 2163

Sec. 5747.012. This section applies for the purposes of 2164
divisions (BB) (3) and (BB) (4) (a) (ii) of section 5747.01 of the 2165
Revised Code. 2166

(A) As used in this section: 2167

(1) (a) Except as set forth in division (A) (1) (b) of this 2168
section, "qualifying investment income" means the portion of a 2169
qualifying investment pass-through entity's net income 2170
~~attributable to transaction fees in connection with the~~ 2171
~~acquisition, ownership, or disposition of intangible property;~~ 2172
~~loan fees; financing fees; consent fees; waiver fees;~~ 2173
~~application fees; net management fees; dividend income; interest~~ 2174
~~income; net capital gains from the sale or exchange or other~~ 2175
~~disposition of intangible property; and all types and~~ 2176
~~classifications of income attributable to distributive shares of~~ 2177
~~income from other pass-through entities~~ that is "investment 2178
income" as defined in section 5747.221 of the Revised Code. 2179

(b) (i) Notwithstanding division (A) (1) (a) of this section, 2180
"qualifying investment income" does not include any part of the 2181
qualifying investment pass-through entity's net capital gain 2182
which, after the application of section 5747.231 of the Revised 2183
Code with respect to a trust, would also constitute a qualifying 2184
trust amount. 2185

(ii) Notwithstanding division (A) (1) (a) of this section, 2186

"qualifying investment income" does not include any part of the 2187
qualifying investment pass-through entity's net income 2188
attributable to the portion of a distributive share of income 2189
directly or indirectly from another pass-through entity to the 2190
extent such portion constitutes the other pass-through entity's 2191
net capital gain which, after the application of section 2192
5747.231 of the Revised Code with respect to a trust, would also 2193
constitute a qualifying trust amount. 2194

(2) "Qualifying investment pass-through entity" means an 2195
investment pass-through entity, as defined in division (B) (3) of 2196
section 5733.401-5747.221 of the Revised Code, subject to the 2197
following qualifications: 2198

(a) "Forty per cent" shall be substituted for "ninety per 2199
cent" wherever "ninety per cent" appears in ~~section 5733.401 of~~ 2200
~~the Revised Code that division.~~ 2201

(b) The pass-through entity must have been formed or 2202
organized as an entity prior to June 5, 2002, and must exist as 2203
a pass-through entity for all of the taxable year of the trust. 2204

(c) The qualifying section 5747.012 trust or related 2205
persons to the qualifying section 5747.012 trust must directly 2206
or indirectly own at least five per cent of the equity of the 2207
investment pass-through entity each day of the entity's fiscal 2208
or calendar year ending within or with the last day of the 2209
qualifying section 5747.012 trust's taxable year; 2210

(d) During the investment pass-through entity's calendar 2211
or fiscal year ending within or with the last day of the 2212
qualifying section 5747.012 trust's taxable year, the qualifying 2213
section 5747.012 trust or related persons of or to the 2214
qualifying section 5747.012 trust must, on each day of the 2215

investment pass-through entity's year, own directly, or own 2216
through equity investments in other pass-through entities, more 2217
than sixty per cent of the equity of the investment pass-through 2218
entity. 2219

(B) "Qualifying section 5747.012 trust" means a trust 2220
satisfying one of the following: 2221

(1) The trust was created prior to, and was irrevocable 2222
on, June 5, 2002; or 2223

(2) If the trust was created after June 4, 2002, or if the 2224
trust became irrevocable after June 4, 2002, then at least 2225
eighty per cent of the assets transferred to the trust must have 2226
been previously owned by related persons to the trust or by a 2227
trust created prior to June 5, 2002, under which the creator did 2228
not retain the power to change beneficiaries, amend the trust, 2229
or revoke the trust. For purposes of division (B) (2) of this 2230
section, the power to substitute property of equal value shall 2231
not be considered to be a power to change beneficiaries, amend 2232
the trust, or revoke the trust. 2233

(C) For the purposes of this section, "related persons" 2234
means the family of a qualifying individual beneficiary, as 2235
defined in division (A) (5) of section 5747.011 of the Revised 2236
Code. For the purposes of this division, "family" has the same 2237
meaning as in division (A) (6) of section 5747.011 of the Revised 2238
Code. 2239

(D) For the purposes of applying divisions (A) (2) (c), (A) 2240
(2) (d), and (B) (2) of this section, the related persons or the 2241
qualifying section 5747.012 trust, as the case may be, shall be 2242
deemed to own the equity of the investment pass-through entity 2243
after the application of division (B) of section 5747.011 of the 2244

Revised Code. 2245

(E) "Irrevocable" has the same meaning as in division (I) 2246
(3) (b) of section 5747.01 of the Revised Code. 2247

(F) Nothing in this section requires any item of income, 2248
gain, or loss not satisfying the definition of qualifying 2249
investment income to be treated as modified nonbusiness income. 2250
Any item of income, gain, or loss that is not qualifying 2251
investment income is modified business income, modified 2252
nonbusiness income, or a qualifying trust amount, as the case 2253
may be. 2254

(G) For the purposes of this section, an investment in a 2255
pass-through entity shall be deemed to be an investment in an 2256
intangible asset, and section 5747.231 of the Revised Code shall 2257
not apply for the purpose of making the determinations required 2258
by division (A) (2) of this section. 2259

Sec. 5747.02. (A) For the purpose of providing revenue for 2260
the support of schools and local government functions, to 2261
provide relief to property taxpayers, to provide revenue for the 2262
general revenue fund, and to meet the expenses of administering 2263
the tax levied by this chapter, there is hereby levied on every 2264
individual, trust, and estate residing in or earning or 2265
receiving income in this state, on every individual, trust, and 2266
estate earning or receiving lottery winnings, prizes, or awards 2267
pursuant to Chapter 3770. of the Revised Code, on every 2268
individual, trust, and estate earning or receiving winnings on 2269
casino gaming, and on every individual, trust, and estate 2270
otherwise having nexus with or in this state under the 2271
Constitution of the United States, an annual tax measured as 2272
prescribed in divisions (A) (1) to (4) of this section. 2273

(1) In the case of trusts, the tax imposed by this section 2274
shall be measured by modified Ohio taxable income under division 2275
(D) of this section and levied at the same rates prescribed in 2276
division (A) (3) of this section for individuals. 2277

(2) In the case of estates, the tax imposed by this 2278
section shall be measured by Ohio taxable income and levied at 2279
the same rates prescribed in division (A) (3) of this section for 2280
individuals. 2281

(3) In the case of individuals, for taxable years 2282
beginning in 2015 or thereafter, the tax imposed by this section 2283
on income other than taxable business income shall be measured 2284
by Ohio adjusted gross income, less taxable business income and 2285
less an exemption for the taxpayer, the taxpayer's spouse, and 2286
each dependent as provided in section 5747.025 of the Revised 2287
Code. The tax imposed on the balance thus obtained is hereby 2288
levied as follows: 2289

OHIO ADJUSTED GROSS 2290
INCOME LESS TAXABLE 2291
BUSINESS INCOME AND EXEMPTIONS 2292
(INDIVIDUALS) 2293

OR 2294

MODIFIED OHIO 2295
TAXABLE INCOME (TRUSTS) 2296

OR 2297

OHIO TAXABLE INCOME (ESTATES) TAX 2298

| | | |
|------------------------|-----------------------------------|------|
| \$5,000 or less | .495% | 2299 |
| More than \$5,000 but | \$24.75 plus .990% of the amount | 2300 |
| not more than \$10,000 | in excess of \$5,000 | 2301 |
| More than \$10,000 but | \$74.25 plus 1.980% of the amount | 2302 |
| not more than \$15,000 | in excess of \$10,000 | 2303 |

| | | |
|-------------------------|--------------------------------------|------|
| More than \$15,000 but | \$173.25 plus 2.476% of the amount | 2304 |
| not more than \$20,000 | in excess of \$15,000 | 2305 |
| More than \$20,000 but | \$297.05 plus 2.969% of the amount | 2306 |
| not more than \$40,000 | in excess of \$20,000 | 2307 |
| More than \$40,000 but | \$890.85 plus 3.465% of the amount | 2308 |
| not more than \$80,000 | in excess of \$40,000 | 2309 |
| More than \$80,000 but | \$2,276.85 plus 3.960% of the amount | 2310 |
| not more than \$100,000 | in excess of \$80,000 | 2311 |
| More than \$100,000 but | \$3,068.85 plus 4.597% of the amount | 2312 |
| not more than \$200,000 | in excess of \$100,000 | 2313 |
| More than \$200,000 | \$7,665.85 plus 4.997% of the amount | 2314 |
| | in excess of \$200,000 | 2315 |

(4) (a) In the case of individuals, for taxable years
beginning in 2015, the tax imposed by this section on taxable
business income shall be measured by taxable business income
less any amount allowed under division (A) (4) (c) of this
section. The tax imposed on the balance thus obtained is hereby
levied as follows:

| | | |
|---------------------------------|---------------------------|------|
| TAXABLE BUSINESS INCOME | | 2322 |
| LESS ALLOWED EXEMPTION AMOUNT | TAX | 2323 |
| \$5,000 or less | .495% | 2324 |
| More than \$5,000 but not | \$24.75 plus .990% of the | 2325 |
| more than \$10,000 | amount in excess of | 2326 |
| | \$5,000 | 2327 |
| More than \$10,000 but not more | \$74.25 plus 1.980% of | 2328 |
| than \$15,000 | the amount in excess of | 2329 |
| | \$10,000 | 2330 |
| More than \$15,000 but not more | \$173.25 plus 2.476% of | 2331 |
| than \$20,000 | the amount in excess of | 2332 |

| | | |
|--|-------------------------|------|
| | \$15,000 | 2333 |
| More than \$20,000 but not more | \$297.05 plus 2.969% of | 2334 |
| than \$40,000 | the amount in excess of | 2335 |
| | \$20,000 | 2336 |
| More than \$40,000 | \$890.85 plus 3% of the | 2337 |
| | amount in excess of | 2338 |
| | \$40,000 | 2339 |
| (b) In the case of individuals, for taxable years | | 2340 |
| beginning in 2016 or thereafter, the tax imposed by this section | | 2341 |
| on taxable business income shall equal three per cent of the | | 2342 |
| result obtained by subtracting any amount allowed under division | | 2343 |
| (A) (4) (c) of this section from the individual's taxable business | | 2344 |
| income. | | 2345 |
| (c) If the exemptions allowed to an individual under | | 2346 |
| division (A) (3) of this section exceed the taxpayer's Ohio | | 2347 |
| adjusted gross income less taxable business income, the excess | | 2348 |
| shall be deducted from taxable business income before computing | | 2349 |
| the tax under division (A) (4) (a) or (b) of this section. | | 2350 |
| Except as otherwise provided in this division, in August | | 2351 |
| of each year, the tax commissioner shall make a new adjustment | | 2352 |
| to the income amounts prescribed in division (A) (3) of this | | 2353 |
| section by multiplying the percentage increase in the gross | | 2354 |
| domestic product deflator computed that year under section | | 2355 |
| 5747.025 of the Revised Code by each of the income amounts | | 2356 |
| resulting from the adjustment under this division in the | | 2357 |
| preceding year, adding the resulting product to the | | 2358 |
| corresponding income amount resulting from the adjustment in the | | 2359 |
| preceding year, and rounding the resulting sum to the nearest | | 2360 |
| multiple of fifty dollars. The tax commissioner also shall | | 2361 |

recompute each of the tax dollar amounts to the extent necessary 2362
to reflect the new adjustment of the income amounts. The rates 2363
of taxation shall not be adjusted. 2364

The adjusted amounts apply to taxable years beginning in 2365
the calendar year in which the adjustments are made and to 2366
taxable years beginning in each ensuing calendar year until a 2367
calendar year in which a new adjustment is made pursuant to this 2368
division. The tax commissioner shall not make a new adjustment 2369
in any year in which the amount resulting from the adjustment 2370
would be less than the amount resulting from the adjustment in 2371
the preceding year. The commissioner shall not make a new 2372
adjustment for taxable years beginning in 2013, 2014, or 2015. 2373

(B) If the director of budget and management makes a 2374
certification to the tax commissioner under division (B) of 2375
section 131.44 of the Revised Code, the amount of tax as 2376
determined under divisions (A) (1) to (3) of this section shall 2377
be reduced by the percentage prescribed in that certification 2378
for taxable years beginning in the calendar year in which that 2379
certification is made. 2380

(C) The levy of this tax on income does not prevent a 2381
municipal corporation, a joint economic development zone created 2382
under section 715.691, or a joint economic development district 2383
created under section 715.70 or 715.71 or sections 715.72 to 2384
715.81 of the Revised Code from levying a tax on income. 2385

(D) This division applies only to taxable years of a trust 2386
beginning in 2002 or thereafter. 2387

(1) The tax imposed by this section on a trust shall be 2388
computed by multiplying the Ohio modified taxable income of the 2389
trust by the rates prescribed by division (A) of this section. 2390

(2) A resident trust may claim a credit against the tax 2391
computed under division (D) of this section equal to the lesser 2392
of (1) the tax paid to another state or the District of Columbia 2393
on the resident trust's modified nonbusiness income, other than 2394
the portion of the resident trust's nonbusiness income that is 2395
qualifying investment income as defined in section 5747.012 of 2396
the Revised Code, or (2) the effective tax rate, based on 2397
modified Ohio taxable income, multiplied by the resident trust's 2398
modified nonbusiness income other than the portion of the 2399
resident trust's nonbusiness income that is qualifying 2400
investment income. The credit applies before any other 2401
applicable credits. 2402

(3) The credits enumerated in divisions (A)(1) to (10) and 2403
(A)(19) to (21) of section 5747.98 of the Revised Code do not 2404
apply to a trust subject to division (D) of this section. Any 2405
credits enumerated in other divisions of section 5747.98 of the 2406
Revised Code apply to a trust subject to division (D) of this 2407
section. To the extent that the trust distributes income for the 2408
taxable year for which a credit is available to the trust, the 2409
credit shall be shared by the trust and its beneficiaries. The 2410
tax commissioner and the trust shall be guided by applicable 2411
regulations of the United States treasury regarding the sharing 2412
of credits. 2413

(E) For the purposes of this section, "trust" means any 2414
trust described in Subchapter J of Chapter 1 of the Internal 2415
Revenue Code, excluding trusts that are not irrevocable as 2416
defined in division (I)(3)(b) of section 5747.01 of the Revised 2417
Code and that have no modified Ohio taxable income for the 2418
taxable year, charitable remainder trusts, qualified funeral 2419
trusts and preneed funeral contract trusts established pursuant 2420
to sections 4717.31 to 4717.38 of the Revised Code that are not 2421

qualified funeral trusts, endowment and perpetual care trusts, 2422
qualified settlement trusts and funds, designated settlement 2423
trusts and funds, and trusts exempted from taxation under 2424
section 501(a) of the Internal Revenue Code. 2425

Sec. 5747.03. (A) All money ~~collected under this chapter~~ 2426
~~arising from the taxes imposed by section 5747.02 or 5747.41 of~~ 2427
~~the Revised Code~~ taxes imposed by this chapter shall be credited 2428
to the general revenue fund, except that the treasurer of state 2429
shall, at the beginning of each calendar quarter, credit to the 2430
Ohio political party fund, pursuant to section 3517.16 of the 2431
Revised Code, an amount equal to the total dollar value realized 2432
from the taxpayer exercise of the income tax checkoff option on 2433
tax forms processed during the preceding calendar quarter. 2434

(B) (1) Following the crediting of moneys pursuant to 2435
division (A) of this section, the remainder deposited in the 2436
general revenue fund shall be distributed pursuant to division 2437
(F) of section 321.24 and section 323.156 of the Revised Code; 2438
to make subsidy payments to institutions of higher education 2439
from appropriations to the Ohio board of regents; to support 2440
expenditures for programs and services for the mentally ill, 2441
mentally retarded, developmentally disabled, and elderly; for 2442
primary and secondary education; for medical assistance; and for 2443
any other purposes authorized by law, subject to the limitation 2444
that at least fifty per cent of the income tax collected by the 2445
state from the tax imposed by section 5747.02 of the Revised 2446
Code shall be returned pursuant to Section 9 of Article XII, 2447
Ohio Constitution. 2448

(2) To ensure that such constitutional requirement is 2449
satisfied the tax commissioner shall, on or before the thirtieth 2450
day of June of each year, from the best information available to 2451

the tax commissioner, determine and certify for each county to 2452
the director of budget and management the amount of taxes 2453
collected under this chapter from the tax imposed under section 2454
5747.02 of the Revised Code during the preceding calendar year 2455
that are required to be returned to the county by Section 9 of 2456
Article XII, Ohio Constitution. The director shall provide for 2457
payment from the general revenue fund to the county in the 2458
amount, if any, that the sum of the amount so certified for that 2459
county exceeds the sum of the following: 2460

(a) The sum of the payments from the general revenue fund 2461
for the preceding calendar year credited to the county's 2462
undivided income tax fund pursuant to division (F) of section 2463
321.24 and section 323.156 of the Revised Code or made directly 2464
from the general revenue fund to political subdivisions located 2465
in the county; 2466

(b) The sum of the amounts from the general revenue fund 2467
distributed in the county during the preceding calendar year for 2468
subsidy payments to institutions of higher education from 2469
appropriations to the Ohio board of regents; for programs and 2470
services for mentally ill, mentally retarded, developmentally 2471
disabled, and elderly persons; for primary and secondary 2472
education; and for medical assistance. 2473

(c) In the case of payments made by the director under 2474
this division in 2007, the total amount distributed to the 2475
county during the preceding calendar year from the local 2476
government fund and the local government revenue assistance 2477
fund, and, in the case of payments made by the director under 2478
this division in subsequent calendar years, the amount 2479
distributed to the county from the local government fund; 2480

(d) In the case of payments made by the director under 2481

this division, the total amount distributed to the county during 2482
the preceding calendar year from the public library fund. 2483

Payments under this division shall be credited to the 2484
county's undivided income tax fund, except that, notwithstanding 2485
section 5705.14 of the Revised Code, such payments may be 2486
transferred by the board of county commissioners to the county 2487
general fund by resolution adopted with the affirmative vote of 2488
two-thirds of the members thereof. 2489

(C) All payments received in each month from taxes imposed 2490
under Chapter 5748. of the Revised Code and any penalties or 2491
interest thereon shall be paid into the school district income 2492
tax fund, which is hereby created in the state treasury, except 2493
that an amount equal to the following portion of such payments 2494
shall be paid into the general school district income tax 2495
administrative fund, which is hereby created in the state 2496
treasury: 2497

(1) One and three-quarters of one per cent of those 2498
received in fiscal year 1996; 2499

(2) One and one-half per cent of those received in fiscal 2500
year 1997 and thereafter. 2501

Money in the school district income tax administrative 2502
fund shall be used by the tax commissioner to defray costs 2503
incurred in administering the school district's income tax, 2504
including the cost of providing employers with information 2505
regarding the rate of tax imposed by any school district. Any 2506
moneys remaining in the fund after such use shall be deposited 2507
in the school district income tax fund. 2508

All interest earned on moneys in the school district 2509
income tax fund shall be credited to the fund. 2510

(D) (1) (a) Within thirty days of the end of each calendar 2511
quarter ending on the last day of March, June, September, and 2512
December, the director of budget and management shall make a 2513
payment from the school district income tax fund to each school 2514
district for which school district income tax revenue was 2515
received during that quarter. The amount of the payment shall 2516
equal the balance in the school district's account at the end of 2517
that quarter. 2518

(b) After a school district ceases to levy an income tax, 2519
the director of budget and management shall adjust the payments 2520
under division (D) (1) (a) of this section to retain sufficient 2521
money in the school district's account to pay refunds. For the 2522
calendar quarters ending on the last day of March and December 2523
of the calendar year following the last calendar year the tax is 2524
levied, the director shall make the payments in the amount 2525
required under division (D) (1) (a) of this section. For the 2526
calendar quarter ending on the last day of June of the calendar 2527
year following the last calendar year the tax is levied, the 2528
director shall make a payment equal to nine-tenths of the 2529
balance in the account at the end of that quarter. For the 2530
calendar quarter ending on the last day of September of the 2531
calendar year following the last calendar year the tax is 2532
levied, the director shall make no payment. For the second and 2533
succeeding calendar years following the last calendar year the 2534
tax is levied, the director shall make one payment each year, 2535
within thirty days of the last day of June, in an amount equal 2536
to the balance in the district's account on the last day of 2537
June. 2538

(2) Moneys paid to a school district under this division 2539
shall be deposited in its school district income tax fund. All 2540
interest earned on moneys in the school district income tax fund 2541

shall be apportioned by the tax commissioner pro rata among the 2542
school districts in the proportions and at the times the 2543
districts are entitled to receive payments under this division. 2544

Sec. 5747.08. An annual return with respect to the tax 2545
imposed by section 5747.02 of the Revised Code and each tax 2546
imposed under Chapter 5748. of the Revised Code shall be made by 2547
every taxpayer for any taxable year for which the taxpayer is 2548
liable for the tax imposed by that section or under that 2549
chapter, unless the total credits allowed under division (E) of 2550
section 5747.05 and divisions (F) and (G) of section 5747.055 of 2551
the Revised Code for the year are equal to or exceed the tax 2552
imposed by section 5747.02 of the Revised Code, in which case no 2553
return shall be required unless the taxpayer is liable for a tax 2554
imposed pursuant to Chapter 5748. of the Revised Code. 2555

(A) If an individual is deceased, any return or notice 2556
required of that individual under this chapter shall be made and 2557
filed by that decedent's executor, administrator, or other 2558
person charged with the property of that decedent. 2559

(B) If an individual is unable to make a return or notice 2560
required by this chapter, the return or notice required of that 2561
individual shall be made and filed by the individual's duly 2562
authorized agent, guardian, conservator, fiduciary, or other 2563
person charged with the care of the person or property of that 2564
individual. 2565

(C) Returns or notices required of an estate or a trust 2566
shall be made and filed by the fiduciary of the estate or trust. 2567

~~(D) (1) (a) Except as otherwise provided in division (D) (1)~~ 2568
~~(b) of this section, any pass-through entity may file a single~~ 2569
~~return on behalf of one or more of the entity's investors other~~ 2570

than an investor that is a person subject to the tax imposed 2571
under section 5733.06 of the Revised Code. The single return 2572
shall set forth the name, address, and social security number or 2573
other identifying number of each of those pass-through entity 2574
investors and shall indicate the distributive share of each of 2575
those pass-through entity investor's income taxable in this 2576
state in accordance with sections 5747.20 to 5747.231 of the 2577
Revised Code. Such pass-through entity investors for whom the 2578
pass-through entity elects to file a single return are not 2579
entitled to the exemption or credit provided for by sections 2580
5747.02 and 5747.022 of the Revised Code; shall calculate the 2581
tax before business credits at the highest rate of tax set forth 2582
in section 5747.02 of the Revised Code for the taxable year for 2583
which the return is filed; and are entitled to only their 2584
distributive share of the business credits as defined in 2585
division (D) (2) of this section. A single check drawn by the 2586
pass-through entity shall accompany the return in full payment 2587
of the tax due, as shown on the single return, for such 2588
investors, other than investors who are persons subject to the 2589
tax imposed under section 5733.06 of the Revised Code. 2590

(b) (i) A pass-through entity shall not include in such a 2591
single return any investor that is a trust to the extent that 2592
any direct or indirect current, future, or contingent 2593
beneficiary of the trust is a person subject to the tax imposed 2594
under section 5733.06 of the Revised Code. 2595

(ii) A pass-through entity shall not include in such a 2596
single return any investor that is itself a pass-through entity 2597
to the extent that any direct or indirect investor in the second 2598
pass-through entity is a person subject to the tax imposed under 2599
section 5733.06 of the Revised Code. 2600

~~(c) Nothing in division (D) of this section precludes the~~ 2601
~~tax commissioner from requiring such investors to file the~~ 2602
~~return and make the payment of taxes and related interest,~~ 2603
~~penalty, and interest penalty required by this section or~~ 2604
~~section 5747.02, 5747.09, or 5747.15 of the Revised Code.~~ 2605
~~Nothing in division (D) of this section precludes such an~~ 2606
~~investor from filing the annual return under this section,~~ 2607
~~utilizing the refundable credit equal to the investor's~~ 2608
~~proportionate share of the tax paid by the pass-through entity~~ 2609
~~on behalf of the investor under division (I) of this section,~~ 2610
~~and making the payment of taxes imposed under section 5747.02 of~~ 2611
~~the Revised Code. Nothing in division (D) of this section shall~~ 2612
~~be construed to provide to such an investor or pass-through~~ 2613
~~entity any additional deduction or credit, other than the credit~~ 2614
~~provided by division (I) of this section, solely on account of~~ 2615
~~the entity's filing a return in accordance with this section.~~ 2616
~~Such a pass-through entity also shall make the filing and~~ 2617
~~payment of estimated taxes on behalf of the pass-through entity~~ 2618
~~investors other than an investor that is a person subject to the~~ 2619
~~tax imposed under section 5733.06 of the Revised Code.~~ 2620

~~(2) For the purposes of this section, "business credits"~~ 2621
~~means the credits listed in section 5747.98 of the Revised Code~~ 2622
~~excluding the following credits:~~ 2623

~~(a) The retirement income credit under division (B) of~~ 2624
~~section 5747.055 of the Revised Code;~~ 2625

~~(b) The senior citizen credit under division (F) of~~ 2626
~~section 5747.055 of the Revised Code;~~ 2627

~~(c) The lump sum distribution credit under division (G) of~~ 2628
~~section 5747.055 of the Revised Code;~~ 2629

| | |
|---|------|
| (d) The dependent care credit under section 5747.054 of the Revised Code; | 2630 |
| | 2631 |
| (e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code; | 2632 |
| | 2633 |
| (f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code; | 2634 |
| | 2635 |
| (g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code; | 2636 |
| | 2637 |
| (h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code; | 2638 |
| | 2639 |
| (i) The twenty dollar personal exemption credit under section 5747.022 of the Revised Code; | 2640 |
| | 2641 |
| (j) The joint filing credit under division (E) of section 5747.05 of the Revised Code; | 2642 |
| | 2643 |
| (k) The nonresident credit under division (A) of section 5747.05 of the Revised Code; | 2644 |
| | 2645 |
| (l) The credit for a resident's out of state income under division (B) of section 5747.05 of the Revised Code; | 2646 |
| | 2647 |
| (m) The low income credit under section 5747.056 of the Revised Code; | 2648 |
| | 2649 |
| (n) The earned income tax credit under section 5747.71 of the Revised Code. | 2650 |
| | 2651 |
| (3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. | 2652 |
| | 2653 |
| | 2654 |
| | 2655 |
| | 2656 |

~~Nothing in this division shall be construed to provide for any~~ 2657
~~deduction or credit that would not be allowable if a nonresident~~ 2658
~~pass-through entity investor were to file an annual return.~~ 2659

~~(4) If a pass-through entity makes the election provided~~ 2660
~~for under division (D) of this section, the pass-through entity~~ 2661
~~shall be liable for any additional taxes, interest, interest~~ 2662
~~penalty, or penalties imposed by this chapter if the tax~~ 2663
~~commissioner finds that the single return does not reflect the~~ 2664
~~correct tax due by the pass-through entity investors covered by~~ 2665
~~that return. Nothing in this division shall be construed to~~ 2666
~~limit or alter the liability, if any, imposed on pass-through~~ 2667
~~entity investors for unpaid or underpaid taxes, interest,~~ 2668
~~interest penalty, or penalties as a result of the pass-through~~ 2669
~~entity's making the election provided for under division (D) of~~ 2670
~~this section. For the purposes of division (D) of this section,~~ 2671
~~"correct tax due" means the tax that would have been paid by the~~ 2672
~~pass-through entity had the single return been filed in a manner~~ 2673
~~reflecting the commissioner's findings. Nothing in division (D)~~ 2674
~~of this section shall be construed to make or hold a pass-~~ 2675
~~through entity liable for tax attributable to a pass-through~~ 2676
~~entity investor's income from a source other than the pass-~~ 2677
~~through entity electing to file the single return. Returns or~~ 2678
~~notices required of a pass-through entity shall be made and~~ 2679
~~filed pursuant to sections 5747.40 to 5747.44 of the Revised~~ 2680
~~Code.~~ 2681

(E) If a husband and wife file a joint federal income tax 2682
return for a taxable year, they shall file a joint return under 2683
this section for that taxable year, and their liabilities are 2684
joint and several, but, if the federal income tax liability of 2685
either spouse is determined on a separate federal income tax 2686
return, they shall file separate returns under this section. 2687

If either spouse is not required to file a federal income
tax return and either or both are required to file a return
pursuant to this chapter, they may elect to file separate or
joint returns, and, pursuant to that election, their liabilities
are separate or joint and several. If a husband and wife file
separate returns pursuant to this chapter, each must claim the
taxpayer's own exemption, but not both, as authorized under
section 5747.02 of the Revised Code on the taxpayer's own
return.

(F) Each return or notice required to be filed under this
section shall contain the signature of the taxpayer or the
taxpayer's duly authorized agent and of the person who prepared
the return for the taxpayer, and shall include the taxpayer's
social security number. Each return shall be verified by a
declaration under the penalties of perjury. The tax commissioner
shall prescribe the form that the signature and declaration
shall take.

(G) Each return or notice required to be filed under this
section shall be made and filed as required by section 5747.04
of the Revised Code, on or before the fifteenth day of April of
each year, on forms that the tax commissioner shall prescribe,
together with remittance made payable to the treasurer of state
in the combined amount of the state and all school district
income taxes shown to be due on the form.

Upon good cause shown, the commissioner may extend the
period for filing any notice or return required to be filed
under this section and may adopt rules relating to extensions.
If the extension results in an extension of time for the payment
of any state or school district income tax liability with
respect to which the return is filed, the taxpayer shall pay at

the time the tax liability is paid an amount of interest 2718
computed at the rate per annum prescribed by section 5703.47 of 2719
the Revised Code on that liability from the time that payment is 2720
due without extension to the time of actual payment. Except as 2721
provided in section 5747.132 of the Revised Code, in addition to 2722
all other interest charges and penalties, all taxes imposed 2723
under this chapter or Chapter 5748. of the Revised Code and 2724
remaining unpaid after they become due, except combined amounts 2725
due of one dollar or less, bear interest at the rate per annum 2726
prescribed by section 5703.47 of the Revised Code until paid or 2727
until the day an assessment is issued under section 5747.13 of 2728
the Revised Code, whichever occurs first. 2729

If the commissioner considers it necessary in order to 2730
ensure the payment of the tax imposed by section 5747.02 of the 2731
Revised Code or any tax imposed under Chapter 5748. of the 2732
Revised Code, the commissioner may require returns and payments 2733
to be made otherwise than as provided in this section. 2734

To the extent that any provision in this division 2735
conflicts with any provision in section 5747.026 of the Revised 2736
Code, the provision in that section prevails. 2737

(H) The amounts withheld by an employer pursuant to 2738
section 5747.06 of the Revised Code, a casino operator pursuant 2739
to section 5747.063 of the Revised Code, or a lottery sales 2740
agent pursuant to section 5747.064 of the Revised Code shall be 2741
allowed to the recipient of the compensation casino winnings, or 2742
lottery prize award as credits against payment of the 2743
appropriate taxes imposed on the recipient by section 5747.02 2744
and under Chapter 5748. of the Revised Code. 2745

~~(I) If a pass-through entity elects to file a single 2746~~
~~return under division (D) of this section and if any investor is 2747~~

~~required to file the annual return and make the payment of taxes— 2748~~
~~required by this chapter on account of the investor's other 2749~~
~~income that is not included in a single return filed by a pass— 2750~~
~~through entity or any other investor elects to file the annual 2751~~
~~return, the investor is entitled to a refundable credit equal to 2752~~
~~the investor's proportionate share of the tax paid by the pass— 2753~~
~~through entity on behalf of the investor. The investor shall 2754~~
~~claim the credit for the investor's taxable year in which or 2755~~
~~with which ends the taxable year of the pass-through entity.— 2756~~
~~Nothing in this chapter shall be construed to allow any credit— 2757~~
~~provided in this chapter to be claimed more than once. For the 2758~~
~~purpose of computing any interest, penalty, or interest penalty, 2759~~
~~the investor shall be deemed to have paid the refundable credit— 2760~~
~~provided by this division on the day that the pass-through 2761~~
~~entity paid the estimated tax or the tax giving rise to the 2762~~
~~credit.— 2763~~

~~(J)~~ The tax commissioner shall ensure that each return 2764
required to be filed under this section includes a box that the 2765
taxpayer may check to authorize a paid tax preparer who prepared 2766
the return to communicate with the department of taxation about 2767
matters pertaining to the return. The return or instructions 2768
accompanying the return shall indicate that by checking the box 2769
the taxpayer authorizes the department of taxation to contact 2770
the preparer concerning questions that arise during the 2771
processing of the return and authorizes the preparer only to 2772
provide the department with information that is missing from the 2773
return, to contact the department for information about the 2774
processing of the return or the status of the taxpayer's refund 2775
or payments, and to respond to notices about mathematical 2776
errors, offsets, or return preparation that the taxpayer has 2777
received from the department and has shown to the preparer. 2778

~~(K)~~ (J) The tax commissioner shall permit individual 2779
taxpayers to instruct the department of taxation to cause any 2780
refund of overpaid taxes to be deposited directly into a 2781
checking account, savings account, or an individual retirement 2782
account or individual retirement annuity, or preexisting college 2783
savings plan or program account offered by the Ohio tuition 2784
trust authority under Chapter 3334. of the Revised Code, as 2785
designated by the taxpayer, when the taxpayer files the annual 2786
return required by this section electronically. 2787

~~(L)~~ (K) The tax commissioner may adopt rules to administer 2788
this section. 2789

Sec. 5747.082. (A) As used in this section: 2790

(1) "Electronic technology" means electronic technology 2791
acceptable to the tax commissioner under division (B) of this 2792
section. 2793

(2) "Original tax return" means any report, return, or 2794
other tax document required to be filed under this chapter for 2795
the purpose of reporting the taxes due under, and withholdings 2796
required by, this chapter. "Original tax return" does not 2797
include an amended return or any declaration or form required by 2798
or filed in connection with section 5747.09 of the Revised Code. 2799

(3) ~~"Related member" has the same meaning as in section~~ 2800
~~5733.042 of the Revised Code.~~ 2801

~~(4)~~ "Tax return preparer" means any person that operates a 2802
business that prepares, or directly or indirectly employs 2803
another person to prepare, for a taxpayer an original tax return 2804
in exchange for compensation or remuneration from the taxpayer 2805
or the taxpayer's related member. With respect to the 2806
preparation of a return or application for refund under this 2807

chapter, "tax return preparer" does not include an individual 2808
who performs only one or more of the following activities: 2809

(a) Furnishes typing, reproducing, or other mechanical 2810
assistance; 2811

(b) Prepares an application for refund or a return on 2812
behalf of an employer by whom the individual is regularly and 2813
continuously employed, or on behalf of an officer or employee of 2814
that employer; 2815

(c) Prepares as a fiduciary an application for refund or a 2816
return; 2817

(d) Prepares an application for refund or a return for a 2818
taxpayer in response to a notice of deficiency issued to the 2819
taxpayer or the taxpayer's related member, or in response to a 2820
waiver of restriction after the commencement of an audit of the 2821
taxpayer or the taxpayer's related member. 2822

(B) Divisions (C) and (D) of this section apply to the 2823
filing of original tax returns that are due in a calendar year 2824
only if the tax commissioner, by the last day of the calendar 2825
year immediately preceding the calendar year in which such 2826
returns are due, has published on the department of taxation's 2827
official internet web site at least one method of electronic 2828
technology acceptable to the commissioner for filing such 2829
returns. 2830

(C) A tax return preparer that prepares more than seventy- 2831
five original tax returns during any calendar year that ends 2832
before January 1, 2013, or that prepares more than eleven 2833
original tax returns during any calendar year that begins on or 2834
after January 1, 2013, shall use electronic technology to file 2835
with the tax commissioner all original tax returns prepared by 2836

the tax return preparer. This division does not apply to a tax 2837
return preparer in any calendar year that ends before January 1, 2838
2013, if, during the previous calendar year, the tax return 2839
preparer prepared no more than twenty-five original tax returns. 2840
This division does not apply to a tax return preparer in any 2841
calendar year that begins on or after January 1, 2013, if, 2842
during the previous calendar year, the tax return preparer 2843
prepared not more than ten original tax returns. 2844

(D) If a tax return preparer required by this section to 2845
submit original tax returns by electronic technology files an 2846
original tax return by some means other than by electronic 2847
technology, the tax commissioner shall impose a penalty of fifty 2848
dollars for each return, in excess of seventy-five in calendar 2849
year 2010, 2011, or 2012, or in excess of eleven in any calendar 2850
year thereafter, that is not filed by electronic technology. 2851
Upon good cause shown by the tax return preparer, the tax 2852
commissioner may waive all or any portion of the penalty or may 2853
refund all or any portion of the penalty the tax return preparer 2854
has paid. 2855

Sec. 5747.11. (A) The tax commissioner shall refund ~~to~~ 2856
~~employers, qualifying entities, or taxpayers subject to a tax~~ 2857
~~imposed under section 5733.41, 5747.02, or 5747.41, or Chapter~~ 2858
~~5748. of the Revised Code the amount of any overpayment of such~~ 2859
the tax imposed under this chapter or Chapter 5748. of the 2860
Revised Code. 2861

(B) ~~Except as otherwise provided under divisions (D) and~~ 2862
~~(E) of this section, applications~~ Applications for refund shall 2863
be filed with the tax commissioner, on the form prescribed by 2864
the commissioner, within four years from the date of the 2865
illegal, erroneous, or excessive payment of the tax, or within 2866

any additional period allowed by division (B) (3) (b) of section 2867
5747.05, division (B) of section 5747.10, or division (A) of 2868
section 5747.13, ~~or division (C) of section 5747.45~~ of the 2869
Revised Code. 2870

On filing of the refund application, the commissioner 2871
shall determine the amount of refund due and, if that amount 2872
exceeds one dollar, certify such amount to the director of 2873
budget and management and treasurer of state for payment from 2874
the tax refund fund created by section 5703.052 of the Revised 2875
Code. Payment shall be made as provided in division (C) of 2876
section 126.35 of the Revised Code. 2877

(C) ~~(1)~~ Interest shall be allowed and paid at the rate per 2878
annum prescribed by section 5703.47 of the Revised Code on 2879
amounts refunded with respect to the tax imposed under ~~section~~ 2880
~~5747.02 or this chapter or~~ Chapter 5748. of the Revised Code 2881
from the date of the overpayment until the date of the refund of 2882
the overpayment, except that if any overpayment is refunded 2883
within ninety days after the final filing date of the annual 2884
return or ninety days after the return is filed, whichever is 2885
later, no interest shall be allowed on such overpayment. If the 2886
overpayment results from the carryback of a net operating loss 2887
or net capital loss to a previous taxable year, the overpayment 2888
is deemed not to have been made prior to the filing date, 2889
including any extension thereof, for the taxable year in which 2890
the net operating loss or net capital loss arises. For purposes 2891
of the payment of interest on overpayments, no amount of tax, 2892
for any taxable year, shall be treated as having been paid 2893
before the date on which the tax return for that year was due 2894
without regard to any extension of time for filing such return. 2895

~~(2) Interest shall be allowed at the rate per annum~~ 2896

~~prescribed by section 5703.47 of the Revised Code on amounts— 2897~~
~~refunded with respect to the taxes imposed under sections— 2898~~
~~5733.41 and 5747.41 of the Revised Code. The interest shall run— 2899~~
~~from whichever of the following days is the latest until the day— 2900~~
~~the refund is paid: the day the illegal, erroneous, or excessive 2901~~
~~payment was made; the ninetieth day after the final day the— 2902~~
~~annual report was required to be filed under section 5747.42 of— 2903~~
~~the Revised Code; or the ninetieth day after the day that report— 2904~~
~~was filed. 2905~~

~~(D) "Ninety days" shall be substituted for "four years" in— 2906~~
~~division (B) of this section if the taxpayer satisfies both of— 2907~~
~~the following conditions: 2908~~

~~(1) The taxpayer has applied for a refund based in whole— 2909~~
~~or in part upon section 5747.059 of the Revised Code; 2910~~

~~(2) The taxpayer asserts that either the imposition or— 2911~~
~~collection of the tax imposed or charged by this chapter or any— 2912~~
~~portion of such tax violates the Constitution of the United— 2913~~
~~States or the Constitution of Ohio. 2914~~

~~(E) (1) Division (E) (2) of this section applies only if all— 2915~~
~~of the following conditions are satisfied: 2916~~

~~(a) A qualifying entity pays an amount of the tax imposed— 2917~~
~~by section 5733.41 or 5747.41 of the Revised Code; 2918~~

~~(b) The taxpayer is a qualifying investor as to that— 2919~~
~~qualifying entity; 2920~~

~~(c) The taxpayer did not claim the credit provided for in— 2921~~
~~section 5747.059 of the Revised Code as to the tax described in— 2922~~
~~division (E) (1) (a) of this section; 2923~~

~~(d) The four-year period described in division (B) of this— 2924~~

~~section has ended as to the taxable year for which the taxpayer~~ 2925
~~otherwise would have claimed that credit.~~ 2926

~~(2) A taxpayer shall file an application for refund~~ 2927
~~pursuant to division (E) of this section within one year after~~ 2928
~~the date the payment described in division (E) (1) (a) of this~~ 2929
~~section is made. An application filed under division (E) (2) of~~ 2930
~~this section shall claim refund only of overpayments resulting~~ 2931
~~from the taxpayer's failure to claim the credit described in~~ 2932
~~division (E) (1) (c) of this section. Nothing in division (E) of~~ 2933
~~this section shall be construed to relieve a taxpayer from~~ 2934
~~complying with division (A) (16) of section 5747.01 of the~~ 2935
~~Revised Code.~~ 2936

Sec. 5747.13. (A) If any employer collects the tax imposed 2937
by section 5747.02 or under Chapter 5748. of the Revised Code 2938
and fails to remit the tax as required by law, or fails to 2939
collect the tax, the employer is personally liable for any 2940
amount collected that the employer fails to remit, or any amount 2941
that the employer fails to collect. If any taxpayer fails to 2942
file a return or fails to pay the tax imposed by section 5747.02 2943
or under Chapter 5748. of the Revised Code, the taxpayer is 2944
personally liable for the amount of the tax. 2945

~~If any employer, or taxpayer, or qualifying entity~~ 2946
~~required to file a return under this chapter fails to file the~~ 2947
~~return within the time prescribed, files an incorrect return,~~ 2948
~~fails to remit the full amount of the taxes due for the period~~ 2949
~~covered by the return, or fails to remit any additional tax due~~ 2950
~~as a result of a reduction in the amount of the credit allowed~~ 2951
~~under division (B) of section 5747.05 of the Revised Code~~ 2952
~~together with interest on the additional tax within the time~~ 2953
~~prescribed by that division, the tax commissioner may make an~~ 2954

assessment against any person liable for any deficiency for the 2955
period for which the return is or taxes are due, based upon any 2956
information in the commissioner's possession. 2957

An assessment issued against either the employer or the 2958
taxpayer pursuant to this section shall not be considered an 2959
election of remedies or a bar to an assessment against the other 2960
for failure to report or pay the same tax. No assessment shall 2961
be issued against any person if the tax actually has been paid 2962
by another. 2963

No assessment shall be made or issued against an employer, ~~or~~ 2964
~~or taxpayer, or qualifying entity~~ more than four years after the 2965
final date the return subject to assessment was required to be 2966
filed or the date the return was filed, whichever is later. 2967
However, the commissioner may assess any balance due as the 2968
result of a reduction in the credit allowed under section 2969
5747.65 or division (B) of section 5747.05 of the Revised Code, 2970
including applicable penalty and interest, ~~Any such balance~~ 2971
shall be assessed within four years of the date on which the 2972
taxpayer reports a change ~~in either the portion of the~~ 2973
~~taxpayer's adjusted gross income subjected to an income tax or~~ 2974
~~tax measured by income in another state or the District of~~ 2975
~~Columbia, or the amount of liability for an income tax or tax~~ 2976
~~measured by income to another state or the District of Columbia,~~ 2977
affecting the taxpayer's liability as required by division (B) 2978
(3) of section 5747.05 or division (D) (2) of section 5747.65 of 2979
the Revised Code, as applicable. Such time limits may be 2980
extended if both the employer, ~~or taxpayer, or qualifying entity~~ 2981
and the commissioner consent in writing to the extension or if 2982
an agreement waiving or extending the time limits has been 2983
entered into pursuant to section 122.171 of the Revised Code. 2984
Any such extension shall extend the four-year time limit in 2985

division (B) of section 5747.11 of the Revised Code for the same 2986
period of time. There shall be no bar or limit to an assessment 2987
against an employer for taxes withheld from employees and not 2988
remitted to the state, against an employer, or taxpayer, ~~or~~ 2989
~~qualifying entity~~ that fails to file a return subject to 2990
assessment as required by this chapter, or against an employer, ~~or~~ 2991
or taxpayer, ~~or~~ ~~qualifying entity~~ that files a fraudulent 2992
return. 2993

The commissioner shall give the party assessed written 2994
notice of the assessment in the manner provided in section 2995
5703.37 of the Revised Code. With the notice, the commissioner 2996
shall provide instructions on how to petition for reassessment 2997
and request a hearing on the petition. 2998

(B) Unless the party assessed files with the tax 2999
commissioner within sixty days after service of the notice of 3000
assessment, either personally or by certified mail, a written 3001
petition for reassessment, signed by the party assessed or that 3002
party's authorized agent having knowledge of the facts, the 3003
assessment becomes final, and the amount of the assessment is 3004
due and payable from the party assessed to the commissioner with 3005
remittance made payable to the treasurer of state. The petition 3006
shall indicate the objections of the party assessed, but 3007
additional objections may be raised in writing if received by 3008
the commissioner prior to the date shown on the final 3009
determination. If the petition has been properly filed, the 3010
commissioner shall proceed under section 5703.60 of the Revised 3011
Code. 3012

(C) After an assessment becomes final, if any portion of 3013
the assessment remains unpaid, including accrued interest, a 3014
certified copy of the tax commissioner's entry making the 3015

assessment final may be filed in the office of the clerk of the 3016
court of common pleas in the county in which the employer's or 3017
taxpayer's, ~~or qualifying entity's~~ place of business is located 3018
or the county in which the party assessed resides. If the party 3019
assessed is not a resident of this state, the certified copy of 3020
the entry may be filed in the office of the clerk of the court 3021
of common pleas of Franklin county. 3022

Immediately upon the filing of the entry, the clerk shall 3023
enter a judgment against the party assessed in the amount shown 3024
on the entry. The judgment shall be filed by the clerk in ~~one of~~ 3025
~~two loose-leaf books~~ the official records, ~~one entitled under~~ 3026
the title of "special judgments for state and school district 3027
income taxes," and the other entitled "special judgments for 3028
~~qualifying entity taxes."~~ The judgment shall have the same 3029
effect as other judgments. Execution shall issue upon the 3030
judgment upon the request of the tax commissioner, and all laws 3031
applicable to sales on execution shall apply to sales made under 3032
the judgment. 3033

If the assessment is not paid in its entirety within sixty 3034
days after the assessment was issued, the portion of the 3035
assessment consisting of tax due shall bear interest at the rate 3036
per annum prescribed by section 5703.47 of the Revised Code from 3037
the day the tax commissioner issues the assessment until it is 3038
paid or until it is certified to the attorney general for 3039
collection under section 131.02 of the Revised Code, whichever 3040
comes first. If the unpaid portion of the assessment is 3041
certified to the attorney general for collection, the entire 3042
unpaid portion of the assessment shall bear interest at the rate 3043
per annum prescribed by section 5703.47 of the Revised Code from 3044
the date of certification until the date it is paid in its 3045
entirety. Interest shall be paid in the same manner as the tax 3046

and may be collected by the issuance of an assessment under this 3047
section. 3048

(D) All money collected under this section shall be 3049
considered as revenue arising from the taxes imposed by this 3050
chapter or Chapter ~~5733. or~~ 5748. of the Revised Code, as 3051
appropriate. 3052

(E) If the party assessed files a petition for 3053
reassessment under division (B) of this section, the person, on 3054
or before the last day the petition may be filed, shall pay the 3055
assessed amount, including assessed interest and assessed 3056
penalties, if any of the following conditions exists: 3057

(1) The person files a tax return reporting Ohio adjusted 3058
gross income, less the exemptions allowed by section 5747.025 of 3059
the Revised Code, in an amount less than one cent, and the 3060
reported amount is not based on the computations required under 3061
division (A) of section 5747.01 or section 5747.025 of the 3062
Revised Code. 3063

(2) The person files a tax return that the tax 3064
commissioner determines to be incomplete, false, fraudulent, or 3065
frivolous. 3066

(3) The person fails to file a tax return, and the basis 3067
for this failure is not either of the following: 3068

(a) An assertion that the person has no nexus with this 3069
state; 3070

(b) The computations required under division (A) of 3071
section 5747.01 of the Revised Code or the application of 3072
credits allowed under this chapter has the result that the 3073
person's tax liability is less than one dollar and one cent. 3074

(F) Notwithstanding the fact that a petition for 3075
reassessment is pending, the petitioner may pay all or a portion 3076
of the assessment that is the subject of the petition. The 3077
acceptance of a payment by the treasurer of state does not 3078
prejudice any claim for refund upon final determination of the 3079
petition. 3080

If upon final determination of the petition an error in 3081
the assessment is corrected by the tax commissioner, upon 3082
petition so filed or pursuant to a decision of the board of tax 3083
appeals or any court to which the determination or decision has 3084
been appealed, so that the amount due from the party assessed 3085
under the corrected assessment is less than the portion paid, 3086
there shall be issued to the petitioner or to the petitioner's 3087
assigns or legal representative a refund in the amount of the 3088
overpayment as provided by section 5747.11 of the Revised Code, 3089
with interest on that amount as provided by such section, 3090
subject to section 5747.12 of the Revised Code. 3091

Sec. 5747.132. (A) As used in this section: 3092

(1) "Qualifying taxpayer" means a taxpayer, ~~or employer,~~ 3093
~~or qualifying entity.~~ 3094

(2) "Qualifying refundoverpayment" means an amount 3095
received by a qualifying taxpayer in excess of a refund or 3096
request for payment claimed or made by or on behalf of the 3097
qualifying taxpayer on a return, report, or other document filed 3098
with the tax commissioner. 3099

(B) A qualifying taxpayer is not liable for any interest 3100
or penalty with respect to the repayment of a qualifying refund 3101
overpayment if the taxpayer pays the entire amount of the 3102
overpayment to the tax commissioner not later than thirty days 3103

after the taxpayer receives an assessment for it. If the 3104
taxpayer does not pay the entire amount of the overpayment to 3105
the commissioner within the time prescribed by this section, 3106
interest shall accrue on the amount of the deficiency pursuant 3107
to section 5747.13 of the Revised Code from the day the 3108
commissioner issues the assessment until the deficiency is paid. 3109

Sec. 5747.14. If the tax commissioner finds that an 3110
employer, ~~qualifying entity~~, or taxpayer liable for any tax 3111
imposed under ~~section 5733.41~~, this chapter, or Chapter 5748. of 3112
the Revised Code is about to depart from the state, to remove 3113
the employer's, ~~qualifying entity's~~, or taxpayer's property 3114
therefrom, to conceal the employer's, ~~qualifying entity's~~, or 3115
taxpayer's self or the employer's, ~~qualifying entity's~~, or 3116
taxpayer's property, or to do any other act tending to prejudice 3117
or render wholly or partly ineffectual proceedings to collect 3118
such tax, unless such proceedings are brought without delay, or 3119
if the commissioner believes that the collection of the amount 3120
due from any employer, ~~qualifying entity~~, or taxpayer will be 3121
jeopardized by delay, the commissioner shall give notice of such 3122
findings to such employer, ~~qualifying entity~~, or taxpayer 3123
together with the demand for an immediate return and immediate 3124
payment of such tax, with an assessment and penalty, if 3125
applicable as provided in section 5747.13 of the Revised Code, 3126
whereupon such tax shall become immediately due and payable. In 3127
such cases the commissioner may immediately file the 3128
commissioner's entry with the clerk of the court of common pleas 3129
in the same manner and with the same effect as provided in 3130
section 5747.13 of the Revised Code, provided that if such 3131
employer, ~~qualifying entity~~, or taxpayer, within five days from 3132
notice of the assessment, furnishes evidence satisfactory to the 3133
commissioner, under the rules prescribed by the commissioner, 3134

that the employer,~~qualifying entity~~, or taxpayer is not in 3135
default in making returns or paying or collecting any tax 3136
prescribed by this chapter or that the employer,~~qualifying~~ 3137
~~entity~~, or taxpayer will duly return and pay, or post bond 3138
satisfactory to the commissioner conditioned upon payment of the 3139
tax finally determined to be due, such tax shall not be payable 3140
prior to the time and manner otherwise fixed for payment under 3141
section 5747.13 of the Revised Code, and the person assessed 3142
shall be restored to the rights granted the person under such 3143
section. Upon satisfaction of the assessment the commissioner 3144
shall order the bond canceled, securities released, and judgment 3145
vacated. 3146

Sec. 5747.15. (A) In addition to any other penalty imposed 3147
by this chapter or Chapter 5703. of the Revised Code, the 3148
following penalties shall apply: 3149

(1) If a taxpayer,~~qualifying entity~~, or employer required 3150
to file any report or return, including an informational notice, 3151
report, or return, under this chapter fails to make and file the 3152
report or return within the time prescribed, including any 3153
extensions of time granted by the tax commissioner, a penalty 3154
may be imposed not exceeding the greater of fifty dollars per 3155
month or fraction of a month, not to exceed five hundred 3156
dollars, or five per cent per month or fraction of a month, not 3157
to exceed fifty per cent, of the sum of the taxes required to be 3158
shown on the report or return, for each month or fraction of a 3159
month elapsing between the due date, including extensions of the 3160
due date, and the date on which filed. 3161

(2) If a taxpayer fails to pay any amount of tax required 3162
to be paid under ~~section 5733.41 or Chapters 5747. or this~~ 3163
chapter or Chapter 5748. of the Revised Code, except estimated 3164

tax under section 5747.09 ~~or 5747.43~~ of the Revised Code, by the 3165
dates prescribed for payment, a penalty may be imposed not 3166
exceeding twice the applicable interest charged under division 3167
(G) of section 5747.08 of the Revised Code for the delinquent 3168
payment. 3169

(3) ~~(a)~~ If an employer fails to pay any amount of tax 3170
imposed by section 5747.02 of the Revised Code and required to 3171
be paid under this chapter by the dates prescribed for payment, 3172
a penalty may be imposed not exceeding the sum of ten per cent 3173
of the delinquent payment plus twice the interest charged under 3174
division (F) (5) of section 5747.07 of the Revised Code for the 3175
delinquent payment. 3176

~~(b) If a qualifying entity fails to pay any amount of tax~~ 3177
~~imposed by section 5733.41 or 5747.41 of the Revised Code and~~ 3178
~~required to be paid under this chapter by the dates prescribed~~ 3179
~~for payment, a penalty may be imposed not exceeding the sum of~~ 3180
~~ten per cent of the delinquent payment plus twice the applicable~~ 3181
~~interest charged under division (G) of section 5747.08 of the~~ 3182
~~Revised Code for the delinquent payment.~~ 3183

(4) ~~(a)~~ If an employer withholds from employees the tax 3184
imposed by section 5747.02 of the Revised Code and fails to 3185
remit the tax withheld to the state as required by this chapter 3186
on or before the dates prescribed for payment, a penalty may be 3187
imposed not exceeding fifty per cent of the delinquent payment. 3188

~~(b) If a qualifying entity withholds any amount of tax~~ 3189
~~imposed under section 5747.41 of the Revised Code from an~~ 3190
~~individual's qualifying amount and fails to remit that amount to~~ 3191
~~the state as required by sections 5747.42 to 5747.453 of the~~ 3192
~~Revised Code on or before the dates prescribed for payment, a~~ 3193
~~penalty may be imposed not exceeding fifty per cent of the~~ 3194

~~delinquent payment.~~ 3195

(5) If a taxpayer, ~~qualifying entity,~~ or employer files 3196
what purports to be a return required by this chapter that does 3197
not contain information upon which the substantial correctness 3198
of the return may be judged or contains information that on its 3199
face indicates that the return is substantially incorrect, and 3200
the filing of the return in that manner is due to a position 3201
that is frivolous or a desire that is apparent from the return 3202
to delay or impede the administration of the tax levied by 3203
~~section 5733.41, 5747.02, or 5747.41,~~ this chapter or Chapter 3204
5748. of the Revised Code, a penalty of up to five hundred 3205
dollars may be imposed. 3206

(6) If a taxpayer ~~or qualifying entity~~ makes a fraudulent 3207
attempt to evade the reporting or payment of the tax required to 3208
be shown on any return required under this chapter, a penalty 3209
may be imposed not exceeding the greater of one thousand dollars 3210
or one hundred per cent of the tax required to be shown on the 3211
return. 3212

(7) If any person makes a false or fraudulent claim for a 3213
refund under this chapter, a penalty may be imposed not 3214
exceeding the greater of one thousand dollars or one hundred per 3215
cent of the claim. The penalty imposed under division (A) (7) of 3216
this section, any refund issued on the claim, and interest on 3217
any refund from the date of the refund, may be assessed under 3218
section 5747.13 of the Revised Code as tax, penalty, or interest 3219
imposed under ~~section 5733.41, 5747.02, or 5747.41 of the~~ 3220
~~Revised Code, without regard to whether the person making the~~ 3221
~~claim is otherwise subject to the provisions of this chapter or~~ 3222
~~Chapter 5733. of the Revised Code, and this chapter without~~ 3223
regard to any time limitation for the assessment imposed by 3224

division (A) of section 5747.13 of the Revised Code. 3225

(B) For purposes of this section, the taxes required to be 3226
shown on the return shall be reduced by the amount of any part 3227
of the taxes paid on or before the date, including any 3228
extensions of the date, prescribed for filing the return. 3229

(C) Any penalty imposed under this section shall be in 3230
addition to all other penalties imposed under this section. All 3231
or part of any penalty imposed under this section may be abated 3232
by the commissioner. All or part of any penalty imposed under 3233
this section may be abated by the commissioner if the taxpayer, ~~qualifying entity,~~ 3234
or employer shows that the failure to comply 3235
with the provisions of this chapter is due to reasonable cause 3236
and not willful neglect. 3237

Sec. 5747.20. This section applies solely for the purposes 3238
of computing the credit allowed under division (A) of section 3239
5747.05 of the Revised Code and computing income taxable in this 3240
state under ~~division (D) of section 5747.08~~ 5747.40 of the 3241
Revised Code. 3242

All items of nonbusiness income or deduction shall be 3243
allocated in this state as follows: 3244

(A) All items of nonbusiness income or deduction taken 3245
into account in the computation of adjusted gross income for the 3246
taxable year by a resident shall be allocated to this state. 3247

(B) All items of nonbusiness income or deduction taken 3248
into account in the computation of adjusted gross income for the 3249
taxable year by a nonresident shall be allocated to this state 3250
as follows: 3251

(1) All items of compensation paid to an individual for 3252
personal services performed in this state who was a nonresident 3253

at the time of payment and all items of deduction directly 3254
allocated thereto shall be allocated to this state. 3255

(2) All gains or losses from the sale of real property, 3256
tangible personal property, or intangible property shall be 3257
allocated as follows: 3258

(a) Capital gains or losses from the sale or other 3259
transfer of real property are allocable to this state if the 3260
property is located physically in this state. 3261

(b) Capital gains or losses from the sale or other 3262
transfer of tangible personal property are allocable to this 3263
state if, at the time of such sale or other transfer, the 3264
property had its physical location in this state. 3265

(c) Capital gains or losses from the sale or other 3266
transfer of intangible personal property are allocable to this 3267
state if the taxpayer's domicile was in this state at the time 3268
of such sale or other transfer. 3269

(3) All rents and royalties of real or tangible personal 3270
property shall be allocated to this state as follows: 3271

(a) Rents and royalties derived from real property are 3272
allocable to this state if the property is physically located in 3273
this state. 3274

(b) Rents and royalties derived from tangible personal 3275
property are allocable to this state to the extent that such 3276
property is utilized in this state. 3277

The extent of utilization of tangible personal property in 3278
a state is determined by multiplying the rents or royalties 3279
derived from such property by a fraction, the numerator of which 3280
is the number of days of physical location of the property in 3281

this state during the rental or royalty period in the taxable 3282
year and the denominator of which is the number of days of 3283
physical location of the property everywhere during all rental 3284
or royalty periods in the taxable year. If the physical location 3285
of the property during the rental or royalty period is unknown 3286
or unascertainable by the nonresident, tangible personal 3287
property is utilized in the state in which the property was 3288
located at the time the rental or royalty payor obtained 3289
possession. 3290

(4) All patent and copyright royalties shall be allocated 3291
to this state to the extent the patent or copyright was utilized 3292
by the payor in this state. 3293

A patent is utilized in a state to the extent that it is 3294
employed in production, fabrication, manufacturing, or other 3295
processing in the state, or to the extent that a patented 3296
product is produced in the state. If the basis of receipts from 3297
patent royalties does not permit allocation to states or if the 3298
accounting procedures do not reflect states of utilization, the 3299
patent is utilized in this state if the taxpayer's domicile was 3300
in this state at the time such royalties were paid or accrued. 3301

A copyright is utilized in a state to the extent that 3302
printing or other publication originates in the state. If the 3303
basis of receipts from copyright royalties does not permit 3304
allocation to states or if the accounting procedures do not 3305
reflect states of utilization, the copyright is utilized in this 3306
state if the taxpayer's domicile was in this state at the time 3307
such royalties were paid or accrued. 3308

(5) (a) All lottery prize awards paid by the state lottery 3309
commission pursuant to Chapter 3770. of the Revised Code shall 3310
be allocated to this state. 3311

(b) All earnings, profit, income, and gain from the sale, 3312
exchange, or other disposition of lottery prize awards paid or 3313
to be paid to any person by the state lottery commission 3314
pursuant to Chapter 3770. of the Revised Code shall be allocated 3315
to this state. 3316

(c) All earnings, profit, income, and gain from the direct 3317
or indirect ownership of lottery prize awards paid or to be paid 3318
to any person by the state lottery commission pursuant to 3319
Chapter 3770. of the Revised Code shall be allocated to this 3320
state. 3321

(d) All earnings, profit, income, and gain from the direct 3322
or indirect interest in any right in or to any lottery prize 3323
awards paid or to be paid to any person by the state lottery 3324
commission pursuant to Chapter 3770. of the Revised Code shall 3325
be allocated to this state. 3326

(6) Any item of income or deduction which has been taken 3327
into account in the computation of adjusted gross income for the 3328
taxable year by a nonresident and which is not otherwise 3329
specifically allocated or apportioned pursuant to sections 3330
5747.20 to 5747.23 of the Revised Code, including, without 3331
limitation, interest, dividends and distributions, items of 3332
income taken into account under the provisions of sections 401 3333
to 425 of the Internal Revenue Code, and benefit payments 3334
received by a beneficiary of a supplemental unemployment trust 3335
which is referred to in section 501(c)(17) of the Internal 3336
Revenue Code, shall not be allocated to this state unless the 3337
taxpayer's domicile was in this state at the time such income 3338
was paid or accrued. 3339

(7) All casino gaming winnings paid by any person licensed 3340
by the Ohio casino control commission shall be allocated to the 3341

state. 3342

(C) If an individual is a resident for part of the taxable 3343
year and a nonresident for the remainder of the taxable year, 3344
all items of nonbusiness income or deduction shall be allocated 3345
under division (A) of this section for the part of the taxable 3346
year that the individual is a resident and under division (B) of 3347
this section for the part of the taxable year that the 3348
individual is a nonresident. 3349

Sec. 5747.21. (A) This section applies solely for the 3350
purposes of computing the credit allowed under division (A) of 3351
section 5747.05 of the Revised Code and computing income taxable 3352
in this state under ~~division (D) of section 5747.08~~ 5747.40 of 3353
the Revised Code. For the purposes of this section, "business 3354
income" includes all amounts described in division (A) (30) of 3355
section 5747.01 and divisions (A) (2) (a), (b), and (c) of section 3356
5747.40 of the Revised Code. 3357

(B) Except as otherwise provided under section 5747.212 of 3358
the Revised Code, all items of business income and business 3359
deduction shall be apportioned to this state by multiplying 3360
business income by ~~the a fraction calculated under division (B)~~ 3361
~~(2) of section 5733.05 and section 5733.057 of the Revised Code~~ 3362
~~as if the taxpayer's business were a corporation subject to the~~ 3363
~~tax imposed by section 5733.06 of the Revised Code.~~ The 3364
numerator of the fraction is the sum of the following products: 3365
the property factor multiplied by twenty, the payroll factor 3366
multiplied by twenty, and the sales factor multiplied by sixty. 3367
The denominator of the fraction is one hundred, provided that 3368
the denominator shall be reduced by twenty if the property 3369
factor has a denominator of zero, by twenty if the payroll 3370
factor has a denominator of zero, and by sixty if the sales 3371

factor has a denominator of zero.

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The property, payroll, and sales factors of a person shall
be determined as provided in divisions (B)(1), (2), and (3) of
this section, but the numerator and the denominator of the
factors shall not include the portion of any property, payroll,
and sales otherwise includible in the factors to the extent that
the portion relates to, or is used in connection with, the
production of nonbusiness income allocated under section 5747.20
of the Revised Code:

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(1) The property factor is a fraction computed as follows:

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The numerator of the fraction is the average value of the
person's real and tangible personal property owned or rented,
and used in the trade or business in this state during the
taxable year, and the denominator of the fraction is the average
value of all the person's real and tangible personal property
owned or rented, and used in the trade or business everywhere
during such year. Real and tangible personal property used in
the trade or business includes, but is not limited to, real and
tangible personal property that the person rents, subrents,
leases, or subleases to others if the income or loss from such
rentals, subrentals, leases, or subleases is business income,
and also includes those amounts required to be added back as an
expense paid to a related member pursuant to division (A)(2)(a)
of section 5747.40 of the Revised Code. There shall be excluded
from the numerator and denominator of the fraction the original
cost of all of the following property within Ohio: property with
respect to which a pollution control facility certificate has
been issued pursuant to section 5709.21 of the Revised Code;
property with respect to which an industrial water pollution
control certificate has been issued pursuant to that section or

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former section 6111.31 of the Revised Code; and property used 3402
exclusively during the taxable year for qualified research. 3403

(a) Property owned by the person is valued at its original 3404
cost. Property rented by the person is valued at eight times the 3405
net annual rental rate. "Net annual rental rate" means the 3406
annual rental rate paid by the person less any annual rental 3407
rate received by the person from subrentals. 3408

(b) The average value of property shall be determined by 3409
averaging the values at the beginning and the end of the taxable 3410
year, but the tax commissioner may require the averaging of 3411
monthly values during the taxable year, if reasonably required 3412
to reflect properly the average value of the person's property. 3413

(2) The payroll factor is a fraction computed as follows: 3414

The numerator of the fraction is the total amount paid in 3415
this state during the taxable year by the person for 3416
compensation, and the denominator of the fraction is the total 3417
compensation paid everywhere by the person during such year. 3418
There shall be excluded from the numerator and the denominator 3419
of the payroll factor the total compensation paid in this state 3420
to employees who are primarily engaged in qualified research. 3421

(a) Compensation means any form of remuneration paid to an 3422
employee for personal services, and includes those amounts 3423
required to be added back as an expense paid to a related member 3424
pursuant to division (A)(2)(a) of section 5747.40 of the Revised 3425
Code, but does not include those amounts reclassified as a 3426
distributive share of income pursuant to division (A)(2)(b) of 3427
that section. 3428

(b) Compensation is paid in this state if: (i) the 3429
recipient's service is performed entirely within this state, 3430

(ii) the recipient's service is performed both within and 3431
without this state, but the service performed without this state 3432
is incidental to the recipient's service within this state, 3433
(iii) some of the service is performed within this state and 3434
either the base of operations or, if there is no base of 3435
operations, the place from which the service is directed or 3436
controlled is within this state, or the base of operations or 3437
the place from which the service is directed or controlled is 3438
not in any state in which some part of the service is performed, 3439
but the recipient's residence is in this state. 3440

(c) Compensation is paid in this state to any employee of 3441
a common or contract motor carrier if the employee performs the 3442
employee's regularly assigned duties on a motor vehicle in more 3443
than one state, in the same ratio by which the mileage traveled 3444
by such employee within the state bears to the total mileage 3445
traveled by such employee everywhere during the taxable year. 3446

(3) The sales factor is a fraction computed as follows: 3447

Except as provided in this section, the numerator of the 3448
fraction is the total sales in this state by the person during 3449
the taxable year or part thereof, and the denominator of the 3450
fraction is the total sales by the person everywhere during such 3451
year or part thereof. In computing the numerator and denominator 3452
of the fraction, the following shall be eliminated from the 3453
fraction: receipts and any related gains or losses from the sale 3454
or other disposal of excluded assets; dividends or 3455
distributions; and interest or other similar amounts received 3456
for the use of, or for the forbearance of the use of, money. In 3457
computing the numerator and denominator of the sales factor, if 3458
a person owns at least eighty per cent of the issued and 3459
outstanding common stock of one or more insurance companies or 3460

public utilities, except an electric company or a telephone 3461
company, or owns at least twenty-five per cent of the issued and 3462
outstanding common stock of one or more financial institutions, 3463
receipts received by the person from such utilities, insurance 3464
companies, and financial institutions shall be eliminated. As 3465
used in this division, "excluded assets" means property that is 3466
either: intangible property, other than trademarks, trade names, 3467
patents, copyrights, and similar intellectual property; or 3468
tangible personal property or real property where that property 3469
is a capital asset or an asset described in section 1231 of the 3470
Internal Revenue Code, without regard to the holding period 3471
specified therein. 3472

(a) For the purpose of this section, receipts not 3473
eliminated or excluded from the fraction shall be situated as 3474
follows: 3475

(i) Receipts from rents and royalties from real property 3476
located in this state shall be situated to this state. 3477

(ii) Receipts from rents and royalties of tangible 3478
personal property, to the extent the tangible personal property 3479
is used in this state, shall be situated to this state. 3480

(iii) Receipts from the sale of electricity and of 3481
electric transmission and distribution services shall be situated 3482
to this state in the manner provided under division (B) (4) of 3483
this section. 3484

(iv) Receipts from the sale of real property located in 3485
this state shall be situated to this state. 3486

(v) Receipts from the sale of tangible personal property 3487
shall be situated to this state if such property is received in 3488
this state by the purchaser. In the case of delivery of tangible 3489

personal property by common carrier or by other means of 3490
transportation, the place at which such property is ultimately 3491
received after all transportation has been completed shall be 3492
considered as the place at which such property is received by 3493
the purchaser. Direct delivery in this state, other than for 3494
purposes of transportation, to a person or firm designated by a 3495
purchaser constitutes delivery to the purchaser in this state, 3496
and direct delivery outside this state to a person or firm 3497
designated by a purchaser does not constitute delivery to the 3498
purchaser in this state, regardless of where title passes or 3499
other conditions of sale. 3500

(vi) Receipts from the sale, exchange, disposition, or 3501
other grant of the right to use trademarks, trade names, 3502
patents, copyrights, and similar intellectual property shall be 3503
sitused to this state to the extent that the receipts are based 3504
on the amount of use of that property in this state. If the 3505
receipts are not based on the amount of use of that property, 3506
but rather on the right to use the property and the payor has 3507
the right to use the property in this state, then the receipts 3508
from the sale, exchange, disposition, or other grant of the 3509
right to use such property shall be sitused to this state to the 3510
extent the receipts are based on the right to use the property 3511
in this state. 3512

(vii) Receipts from the sale of services, and receipts 3513
from any other sales not eliminated or excluded from the sales 3514
factor and not otherwise sitused under division (B) (3) of this 3515
section, shall be sitused to this state in the proportion to the 3516
purchaser's benefit, with respect to the sale, in this state to 3517
the purchaser's benefit, with respect to the sale, everywhere. 3518
The physical location where the purchaser ultimately uses or 3519
receives the benefit of what was purchased shall be paramount in 3520

determining the proportion of the benefit in this state to the 3521
benefit everywhere. 3522

(b) Income from receipts eliminated or excluded from the 3523
sales factor under division (B) (3) of this section shall not be 3524
presumed to be nonbusiness income. 3525

(4) (a) As provided in division (B) (3) (a) (iii) of this 3526
section, for a person whose primary receipts are from the sale 3527
of electricity and of electric transmission and distribution 3528
services, receipts shall be sitused to this state as follows: 3529

(i) Sales of the transmission of electricity are in this 3530
state in proportion to the ratio of the wire mileage of the 3531
person's transmission lines located in this state divided by the 3532
wire mileage of the person's transmission lines located 3533
everywhere. Transmission wire mileage shall be weighted for the 3534
voltage capacity of each line. 3535

(ii) Sales of the distribution of electricity are in this 3536
state in proportion to the ratio of the wire mileage of the 3537
person's distribution lines located in this state divided by the 3538
wire mileage of the person's distribution lines located 3539
everywhere. Distribution wire mileage shall not be weighted for 3540
the voltage capacity of each line. 3541

(b) Division (B) (4) (b) of this section applies only to a 3542
person that has transmission or distribution lines in this 3543
state. If a contract for the sale of electricity includes the 3544
seller's or the seller's related member's obligation to transmit 3545
or distribute the electricity and if the sales contract 3546
separately identifies the price charged for the transmission or 3547
distribution of electricity, the price charged for the 3548
transmission and distribution of electricity shall be 3549

apportioned to this state in accordance with division (B) (4) (a) 3550
of this section. Any remaining portion of the sales price of the 3551
electricity shall be sitused to this state in accordance with 3552
division (B) (4) (c) of this section. 3553

If the sales contract does not separately identify the 3554
price charged for the transmission or distribution of 3555
electricity, the sales price of the electricity shall be sitused 3556
to this state in accordance with division (B) (4) (c) of this 3557
section. 3558

(c) Any person who makes a sale of electricity shall situs 3559
the following to this state: 3560

(i) A sale of electricity directly or indirectly to a 3561
customer to the extent the customer consumes the electricity in 3562
this state; 3563

(ii) A sale of electricity directly or indirectly to a 3564
related member where the related member directly or indirectly 3565
sells electricity to a customer to the extent the customer 3566
consumes the electricity in this state; 3567

(iii) A sale of electricity if the seller or the seller's 3568
related member directly or indirectly delivers the electricity 3569
to a location in this state or directly or indirectly delivers 3570
the electricity exactly to the border of this state and another 3571
state; 3572

(iv) A sale of electricity if the seller or the seller's 3573
related member directly or indirectly directs the delivery of 3574
the electricity to a location in this state or directly or 3575
indirectly directs the delivery of the electricity exactly to 3576
the border of this state and another state. 3577

For the purposes of division (B) (4) (c) of this section, 3578

"customer" means a person who purchases electricity for 3579
consumption either by that person or by the person's related 3580
member and the electricity is not for resale directly or 3581
indirectly to any person other than a related member. 3582

(d) Notwithstanding section 5703.56 of the Revised Code, 3583
for the purposes of division (B) (4) of this section a person 3584
situsing a sale outside this state has the burden to establish 3585
by a preponderance of the evidence that the doctrines enumerated 3586
in that section do not apply. 3587

(5) As used in division (B) of this section, "qualified 3588
research" means laboratory research, experimental research, and 3589
other similar types of research; research in developing or 3590
improving a product; or research in developing or improving the 3591
means of producing a product. It does not include market 3592
research, consumer surveys, efficiency surveys, management 3593
studies, ordinary testing or inspection of materials or products 3594
for quality control, historical research, or literary research. 3595
"Product," as used in this division, does not include services 3596
or intangible property. 3597

(C) If the allocation and apportionment provisions of 3598
sections 5747.20 to 5747.23 of the Revised Code or of any rule 3599
adopted by the tax commissioner, do not fairly represent the 3600
extent of business activity in this state of a taxpayer or pass- 3601
through entity, the taxpayer or pass-through entity may request, 3602
which request must be in writing accompanying a timely filed 3603
return or timely filed amended return, or the tax commissioner 3604
may require, in respect of all or any part of the business 3605
activity, if reasonable, any one or more of the following: 3606

(1) Separate accounting; 3607

(2) The exclusion of one or more factors; 3608

(3) The inclusion of one or more additional factors which 3609
will fairly represent the business activity in this state; 3610

(4) The employment of any other method to effectuate an 3611
equitable allocation and apportionment of such business in this 3612
state. An alternative method will be effective only with 3613
approval of the tax commissioner. 3614

(D) The tax commissioner may adopt rules in the manner 3615
provided by sections 5703.14 and 5747.18 of the Revised Code 3616
providing for alternative methods of calculating business income 3617
and nonbusiness income or situsing of sales applicable to all 3618
taxpayers and pass-through entities, to classes of taxpayers and 3619
pass-through entities, or only to taxpayers and pass-through 3620
entities within a certain industry. 3621

Sec. 5747.212. (A) This section applies solely for the 3622
purpose of computing the credit allowed under division (A) of 3623
section 5747.05 of the Revised Code and computing income taxable 3624
in this state under ~~division (D) of section 5747.08~~ 5747.40 of 3625
the Revised Code. 3626

(B) A taxpayer, directly or indirectly, owning at any time 3627
during the three-year period ending on the last day of the 3628
taxpayer's taxable year at least twenty per cent of the equity 3629
voting rights of a section 5747.212 entity shall apportion any 3630
income, including gain or loss, realized from each sale, 3631
exchange, or other disposition of a debt or equity interest in 3632
that entity as prescribed in this section. For such purposes, in 3633
lieu of using the method prescribed by sections 5747.20 and 3634
5747.21 of the Revised Code, the investor shall apportion the 3635
income using the average of the section 5747.212 entity's 3636

apportionment fractions otherwise applicable under section 3637
~~5733.05, 5733.056, or~~ 5747.21 of the Revised Code for the 3638
current and two preceding taxable years. If the section 5747.212 3639
entity was not in business for one or more of those years, each 3640
year that the entity was not in business shall be excluded in 3641
determining the average. 3642

(C) For the purposes of this section: 3643

(1) A "section 5747.212 entity" is any qualifying person 3644
if, on at least one day of the three-year period ending on the 3645
last day of the taxpayer's taxable year, any of the following 3646
apply: 3647

(a) The qualifying person is a pass-through entity; 3648

(b) Five or fewer persons directly or indirectly own all 3649
the equity interests, with voting rights, of the qualifying 3650
person; 3651

(c) One person directly or indirectly owns at least fifty 3652
per cent of the qualifying person's equity interests with voting 3653
rights. 3654

(2) A "qualifying person" is any person other than an 3655
individual, estate, or trust. 3656

(3) "Estate" and "trust" do not include any person 3657
classified for federal income tax purposes as an association 3658
taxable as a corporation. 3659

Sec. 5747.22. (A) This section applies solely for the 3660
purposes of computing the credit allowed under division (A) of 3661
section 5747.05 of the Revised Code and computing income taxable 3662
in this state under ~~division (D) of section 5747.08~~ 5747.40 of 3663
the Revised Code. 3664

(B) With respect to a pass-through entity, one or more of the pass-through entity investors of which are liable for the tax imposed by section 5747.02 of the Revised Code, the business income and deductions of the pass-through entity shall be apportioned to this state in the hands of the pass-through entity investors pursuant to section 5747.21 of the Revised Code. The business income and deductions as thus apportioned to this state then shall be allocated to the pass-through entity investors in proportion to their right to share in that business income.

(C) With respect to a pass-through entity described in division (B) of this section, the nonbusiness income and deductions of the pass-through entity shall be allocated to the pass-through entity investors in proportion to their right to share in the nonbusiness income, and then the pass-through entity shares shall be allocated to this state in the hands of each pass-through entity investor pursuant to section 5747.20 of the Revised Code.

Sec. 5747.221. (A) Divisions (D) and (E) of this section apply solely for the purposes of computing the credit allowed under division (A) of section 5747.05 of the Revised Code and computing income taxable in this state under section 5747.40 of the Revised Code.

(B) As used in this section, "investment pass-through entity" has the same meaning as in section 5733.401 of the Revised Code:

(1) "Investment income" means the portion of a pass-through entity's net income attributable to transaction fees in connection with the acquisition, ownership, or disposition of intangible property; loan fees; financing fees; consent fees;

waiver fees; application fees; net management fees; dividend 3695
income; interest income; net capital gains from the sale, 3696
exchange, or other disposition of intangible property; and 3697
distributive shares of income from pass-through entities. 3698

(2) "Net management fees" means management fees that a 3699
pass-through entity earns or receives from all sources, reduced 3700
by management fees that the pass-through entity incurs or pays 3701
to any person. 3702

(3) "Investment pass-through entity" means a pass-through 3703
entity that meets both of the following criteria: 3704

(a) At least ninety per cent of the pass-through entity's 3705
gross income constitutes investment income. 3706

(b) At least ninety per cent of the net book value of the 3707
pass-through entity's assets are intangible assets. 3708

Such percentages shall be the quarterly average of those 3709
percentages as calculated during the pass-through entity's 3710
taxable year. 3711

(C) For the purposes of this section only, investment in a 3712
pass-through entity shall be deemed to be an investment in an 3713
intangible asset, and section 5747.231 of the Revised Code shall 3714
not apply for the purpose of making the determination required 3715
by division (B) (3) of this section or for the purposes of 3716
division (D) of this section. 3717

~~(B) (D) (1) Except as provided in division (C) divisions~~ 3718
~~(D) (2) and (E) of this section, for the purposes of sections~~ 3719
~~5747.20, 5747.21, and 5747.22 of the Revised Code, no item of~~ 3720
~~income or deduction shall be allocated or apportioned to this~~ 3721
~~state to the extent that such item represents the portion of an~~ 3722
~~adjusted qualifying amount for which the withholding tax is not~~ 3723

~~imposed under section 5747.41 of the Revised Code by reason of~~ 3724
~~division (C) of section 5733.401 of the Revised Code. This~~ 3725
~~section shall be applied without regard to division (I) of~~ 3726
~~section 5733.40 of the Revised Code~~ investment income of an 3727
investment pass-through entity. Nothing in this division shall 3728
be construed to provide for an exclusion of any item of income 3729
more than once. 3730

(2) The portion of an investment pass-through entity's net 3731
income attributable to net management fees shall be subject to 3732
the allocation and apportionment provisions of sections 5747.20, 3733
5747.21, and 5747.22 of the Revised Code if such net management 3734
fees exceed five per cent of the entity's net income calculated 3735
in accordance with generally accepted accounting principles. 3736

~~(C)–(E)~~ (E) If a taxpayer has a direct or indirect investment 3737
in an investment pass-through entity that has a direct or 3738
indirect investment in any other pass-through entity, division 3739
~~(B)–(D)~~ (D) of this section does not apply to any item of income, 3740
gain, deduction, or loss where, under section 5747.231 of the 3741
Revised Code, the item is directly or indirectly attributable to 3742
either of the following: 3743

(1) A distributive share of income or gain from a pass- 3744
through entity that does not qualify as an investment pass- 3745
through entity; 3746

(2) A pass-through entity's income or gain ~~to which~~ 3747
~~division (C) of section 5733.401 of the Revised Code does not~~ 3748
~~apply~~ that does not constitute investment income. 3749

An indirect investment includes any interest that a person 3750
constructively owns on account of the attribution rules set 3751
forth in section 267, 318, or 1563 of the Internal Revenue Code. 3752

Sec. 5747.231. ~~As used in this section, "adjusted-~~ 3753
~~qualifying amount" has the same meaning as in section 5733.40 of~~ 3754
~~the Revised Code.~~ 3755

This section does not apply to division (BB) (5) (a) (ii) of 3756
section 5747.01 of the Revised Code. 3757

~~Except as set forth in this section and except as~~ 3758
~~otherwise provided in divisions (A) and (B) of section 5733.401-~~ 3759
~~of the Revised Code, in~~ In making all apportionment, allocation, 3760
income, gain, loss, deduction, tax, and credit computations 3761
under this chapter, each person shall include in that person's 3762
items of business income, nonbusiness income, ~~adjusted-~~ 3763
~~qualifying amounts,~~ allocable income or loss, apportionable 3764
income or loss, property, compensation, and sales, the person's 3765
entire distributive share or proportionate share of the items of 3766
business income, nonbusiness income, ~~adjusted qualifying-~~ 3767
~~amounts,~~ allocable income or loss, apportionable income or loss, 3768
property, compensation, and sales of any pass-through entity in 3769
which the person has a direct or indirect ownership interest at 3770
any time during the person's taxable year. A pass-through 3771
entity's direct or indirect distributive share or proportionate 3772
share of any other pass-through entity's items of business 3773
income, nonbusiness income, ~~adjusted qualifying amounts,~~ 3774
allocable income or loss, apportionable income or loss, 3775
property, compensation, and sales shall be included for the 3776
purposes of computing the person's distributive share or 3777
proportionate share of the pass-through entity's items of 3778
business income, nonbusiness income, ~~adjusted qualifying-~~ 3779
~~amounts,~~ allocable income or loss, apportionable income or loss, 3780
property, compensation, and sales under this section. Those 3781
items shall ~~be in the same form~~ retain the same character as 3782
that which was originally recognized by the pass-through entity. 3783

Sec. 5747.28. (A) As used in this section:

~~(1) "Qualifying, "qualifying property"~~ means any property, plant, or equipment used to produce grapes in this state, and includes but is not limited to land and improvements to land, grape seeds and vines, stakes, wiring, tractors, and other machinery used in the growth, harvesting, or producing of grapes.

~~(2) "Related member" has the same meaning as in division (A) (6) of section 5733.042 of the Revised Code, without regard to division (B) of that section.~~

(B) A nonrefundable credit is allowed against a taxpayer's aggregate tax liability under section 5747.02 of the Revised Code for a taxpayer engaged in the business of producing grapes who purchases qualifying property on or after January 1, 1994. The amount of the credit equals ten per cent of the cost of purchasing and installing or constructing the qualifying property. The taxpayer shall claim the credit in the taxable year in which the qualifying property is placed in operation. The taxpayer shall claim the credit in the order required under section 5747.98 of the Revised Code. The taxpayer may carry forward for the ensuing seven taxable years any credit amount in excess of its aggregate tax due under section 5747.02 of the Revised Code in the taxable year in which the qualifying property is placed in operation after allowing for any other credits that precede the credit under this section in that order, and shall deduct the amount of the excess credit allowed in any such year from the balance carried forward to the next year. However, if the taxpayer is subject to a recapture tax under division (C) (1) of this section because the taxpayer disposes of the qualifying property or ceases to use it as

qualifying property during the seven-year recapture period 3814
prescribed under that division, the taxpayer may claim no credit 3815
in connection with that property in the taxable year of disposal 3816
or cessation or any ensuing taxable year. 3817

(C) (1) If, within the seven-year period after qualifying 3818
property is placed in operation, the taxpayer disposes of the 3819
property or ceases to use it as qualifying property, the amount 3820
of tax otherwise imposed on the taxpayer by section 5747.02 of 3821
the Revised Code shall be increased in the taxable year in which 3822
the property is disposed of or ceases to be used as qualifying 3823
property. The amount of the increase shall equal the recapture 3824
percentage multiplied by the aggregate credit the taxpayer has 3825
been allowed under this section in all prior taxable years in 3826
connection with that property. The recapture percentage shall be 3827
determined in accordance with the following table: 3828

| | | |
|-------------------------------------|----------------|------|
| If the property is disposed of | | 3829 |
| or ceases to be used as qualifying | | 3830 |
| property within this amount of time | The recapture | 3831 |
| after being placed in operation: | percentage is: | 3832 |
| One year | 100% | 3833 |
| Two years | 86% | 3834 |
| Three years | 72% | 3835 |
| Four years | 58% | 3836 |
| Five years | 44% | 3837 |
| Six years | 30% | 3838 |
| Seven years | 15% | 3839 |

(2) Division (C) (1) of this section does not apply in any 3840
of the following circumstances: 3841

(a) The qualifying property is transferred to a related 3842
member and the related member continues to use the property to 3843

produce grapes in this state; 3844

(b) The qualifying property is transferred to a family 3845
member and the family member continues to use the property to 3846
produce grapes in this state; 3847

(c) There is an involuntary disposition of the qualifying 3848
property. The involuntary disposition may be due to, without 3849
limitation, a bankruptcy, a receivership, or destruction by 3850
natural forces. 3851

(D) The tax commissioner, by rule, may prescribe 3852
guidelines for taxpayers to use in determining if their property 3853
is qualifying property for the purposes of this section. 3854

Sec. 5747.30. (A) As used in this section: 3855

(1) ~~"Commercial printer," "commercial printing," "contract~~ 3856
~~for printing," "intangible property located at the premises of a~~ 3857
~~commercial printer," and "printed material" have the same~~ 3858
~~meanings as in division (D) of section 5733.09 of the Revised~~ 3859
~~Code means a person primarily engaged in the business of~~ 3860
commercial printing, but does not include a person primarily 3861
engaged in the business of providing duplicating services using 3862
photocopy machines or other xerographic processes. 3863

(2) ~~"Related member" has the same meaning as in division~~ 3864
~~(A) (6) of section 5733.042 of the Revised Code without regard to~~ 3865
~~division (B) of that section. "Commercial printing" means~~ 3866
printing by one or more common processes such as letterpress, 3867
lithography, gravure, screen, or digital imaging, and includes 3868
related activities such as binding, platemaking, prepress 3869
operation, cartographic composition, and typesetting. 3870

(3) "Contract for printing" means an oral or written 3871
agreement for the purchase of printed materials produced by a 3872

commercial printer. 3873

(4) "Intangible property located at the premises of a 3874
commercial printer" means intangible property of any kind owned 3875
or licensed by a customer of the commercial printer and 3876
furnished to the commercial printer for use in commercial 3877
printing. 3878

(5) "Printed material" means any tangible personal 3879
property produced or processed by a commercial printer pursuant 3880
to a contract for printing. 3881

(B) Except as provided in divisions (C) and (D) of this 3882
section, a nonresident not otherwise subject to the tax imposed 3883
by section 5747.02 of the Revised Code for a taxable year does 3884
not become subject to that tax for the taxable year solely by 3885
reason of any one or more of the following occurring in this 3886
state during all or any portion of the taxable year: 3887

(1) Ownership by the nonresident, a pass-through entity in 3888
which the nonresident has directly or indirectly invested, or a 3889
related member of the nonresident, of tangible personal property 3890
or intangible property located during all or any portion of the 3891
taxable year at the premises of a commercial printer with which 3892
the nonresident, pass-through entity, or nonresident's related 3893
member has a contract for printing with respect to such property 3894
or the premises of a commercial printer's related member with 3895
which the nonresident, pass-through entity, or nonresident's 3896
related member has a contract for printing with respect to such 3897
property; 3898

(2) Sales by the nonresident, a pass-through entity in 3899
which the nonresident has directly or indirectly invested, or a 3900
related member of the nonresident, of property produced at and 3901

shipped or distributed from the premises of a commercial printer 3902
with which the nonresident, pass-through entity, or 3903
nonresident's related member has a contract for printing with 3904
respect to such property or the premises of a commercial 3905
printer's related member with which the nonresident, pass- 3906
through entity, or nonresident's related member has a contract 3907
for printing with respect to such property; 3908

(3) Activities of employees, officers, agents, or 3909
contractors of the nonresident, a pass-through entity in which 3910
the nonresident has directly or indirectly invested, or a 3911
related member of the nonresident, on the premises of a 3912
commercial printer with which the nonresident, pass-through 3913
entity, or nonresident's related member has a contract for 3914
printing or the premises of a commercial printer's related 3915
member with which the nonresident, pass-through entity, or 3916
nonresident's related member has a contract for printing, where 3917
such activities are directly and solely related to quality 3918
control, distribution, or printing services, or any combination 3919
thereof, performed by or at the direction of the commercial 3920
printer or the commercial printer's related member. 3921

(C) The exemption under this section does not apply to a 3922
taxable year during any portion of which the individual or 3923
estate directly or indirectly owned or invested in a pass- 3924
through entity which during any portion of the taxable year of 3925
the individual or estate owned or used all or a portion of its 3926
property or capital in this state or earned or received income 3927
in this state or was doing business in this state. The exemption 3928
under this section also does not apply to any individual or 3929
estate for a taxable year during any portion of which the 3930
individual or estate directly or indirectly owned or invested in 3931
a pass-through entity which during any portion of such taxable 3932

year was a related member to any entity which during any portion 3933
of such taxable year owned or used all or a portion of its 3934
property or capital in this state or earned or received income 3935
in this state or was doing business in this state. 3936

(D) With respect to allowing the exemption under this 3937
section, the tax commissioner shall be guided by the doctrines 3938
of "economic reality," "sham transaction," "step transaction," 3939
and "substance over form." A nonresident shall bear the burden 3940
of establishing by a preponderance of the evidence that any 3941
transaction giving rise to an exemption claimed under this 3942
section did not have as a principal purpose the avoidance of any 3943
portion of the tax imposed by section 5747.02 of the Revised 3944
Code. 3945

Application of the doctrines listed in this division is 3946
not limited to this section. 3947

Sec. 5747.331. (A) As used in this section: 3948

(1) "Borrower" means any person that receives a loan from 3949
the director of development under section 166.21 of the Revised 3950
Code, regardless of whether the borrower is subject to the tax 3951
imposed by section 5747.02 of the Revised Code. 3952

(2) ~~"Related member" has the same meaning as in section~~ 3953
~~5733.042 of the Revised Code.~~ 3954

~~(3)~~ "Qualified research and development loan payments" has 3955
the same meaning as in section 166.21 of the Revised Code. 3956

(B) Beginning with taxable years beginning in 2003, a 3957
nonrefundable credit is allowed against a taxpayer's aggregate 3958
tax liability under section 5747.02 of the Revised Code equal to 3959
a borrower's qualified research and development loan payments 3960
made during the calendar year that includes the last day of the 3961

taxable year for which the credit is claimed. The amount of the 3962
credit for a taxable year shall not exceed one hundred fifty 3963
thousand dollars. No taxpayer is entitled to claim a credit 3964
under this section unless it has obtained a certificate issued 3965
by the director of development under division (D) of section 3966
166.21 of the Revised Code and submits a copy of the certificate 3967
with its report for the taxable year. Failure to submit a copy 3968
of the certificate with the report does not invalidate a claim 3969
for a credit if the taxpayer submits a copy of the certificate 3970
within sixty days after the tax commissioner requests it. The 3971
credit shall be claimed in the order required under section 3972
5747.98 of the Revised Code. No credit shall be allowed under 3973
this section if the credit was available against the tax imposed 3974
by Chapter 5751. of the Revised Code except to the extent the 3975
credit was not applied against that tax. The credit, to the 3976
extent it exceeds the taxpayer's aggregate tax liability for the 3977
taxable year after allowance for any other credits that precede 3978
the credit under this section in that order, shall be carried 3979
forward to the next succeeding taxable year or years until fully 3980
used. 3981

(C) A borrower entitled to a credit under this section may 3982
assign the credit, or a portion thereof, to any of the 3983
following: 3984

(1) A related member of that borrower; 3985

(2) The owner or lessee of the eligible research and 3986
development project; 3987

(3) A related member of the owner or lessee of the 3988
eligible research and development project. 3989

A borrower making an assignment under this division shall 3990

provide written notice of the assignment to the tax commissioner 3991
and the director of development, in such form as the tax 3992
commissioner prescribes, before the credit that was assigned is 3993
used. The assignor may not claim the credit to the extent it was 3994
assigned to an assignee. The assignee may claim the credit only 3995
to the extent the assignor has not claimed it. 3996

(D) If any taxpayer is a shareholder in an S corporation, 3997
a partner in a partnership, or a member in a limited liability 3998
company treated as a partnership for federal income tax 3999
purposes, the taxpayer shall be allowed the taxpayer's 4000
distributive or proportionate share of the credit available 4001
through the S corporation, partnership, or limited liability 4002
company. 4003

(E) The aggregate credit against the taxes imposed by 4004
section 5747.02 and Chapter 5751. of the Revised Code that may 4005
be claimed under this section and section 5751.52 of the Revised 4006
Code by a borrower as a result of qualified research and 4007
development loan payments attributable during a calendar year to 4008
any one loan shall not exceed one hundred fifty thousand 4009
dollars. 4010

Sec. 5747.40. (A) For the purpose of complementing and 4011
reinforcing the tax levied under section 5747.02 of the Revised 4012
Code, there is hereby levied a tax on every pass-through entity 4013
having nexus with this state, except as provided in division (E) 4014
of this section. Each such pass-through entity shall compute the 4015
tax due, before applying any business credits, as follows: 4016

(1) Aggregating the distributive shares of each of the 4017
pass-through entity's direct investors that are pass-through 4018
entities, estates, trusts, or nonresident individuals. A 4019
resident individual investor may elect to include the investor's 4020

distributive share in the amount aggregated under this division. 4021

(2) Adjusting the aggregate amount calculated under 4022
division (A) (1) of this section as follows: 4023

(a) Add all expenses, other than amounts described in 4024
division (A) (2) (b) of this section and amounts with respect to 4025
which a related member is otherwise subject to the tax imposed 4026
by section 5747.02 of the Revised Code, that the pass-through 4027
entity paid to or incurred with respect to direct or indirect 4028
transactions with one or more related members, excluding the 4029
cost of goods sold calculated in accordance with section 263A of 4030
the Internal Revenue Code and United States department of 4031
treasury regulations issued thereunder. 4032

(b) Add all guaranteed payments or compensation paid to 4033
investors by the pass-through entity if such payments or such 4034
compensation are paid to an investor who, at any time during the 4035
pass-through entity's taxable year, holds at least a twenty per 4036
cent direct or indirect interest in the profits or capital of 4037
the entity. Such amounts shall be considered a distributive 4038
share of income from the entity for the purposes of this 4039
chapter. 4040

(c) Add all recognized losses, other than losses from 4041
sales of inventory the cost of which is calculated in accordance 4042
with section 263A of the Internal Revenue Code and United States 4043
department of treasury regulations issued thereunder, with 4044
respect to all direct or indirect transactions with one or more 4045
related members. Losses from the sales of inventory shall be 4046
allowed only to the extent calculated in accordance with section 4047
482 of the Internal Revenue Code and United States department of 4048
treasury regulations issued thereunder. 4049

(d) Add interest or dividends on obligations or securities 4050
of any state or of any political subdivision or authority of any 4051
state, other than this state and its subdivisions and 4052
authorities; 4053

(e) Add interest or dividends on obligations of any 4054
authority, commission, instrumentality, territory, or possession 4055
of the United States to the extent that the interest or 4056
dividends are exempt from federal income taxes but not from 4057
state income taxes; 4058

(f) Add or deduct the amount the taxpayer would be 4059
required to add or deduct under divisions (A) (18) and (19) of 4060
section 5747.01 of the Revised Code if the taxpayer's income 4061
were computed in the same manner as an individual's Ohio 4062
adjusted gross income is computed under that section; 4063

(g) Add any loss or deduct any gain, in the same manner as 4064
an individual would in computing the individual's Ohio adjusted 4065
gross income, resulting from the sale, exchange, or other 4066
disposition of public obligations; 4067

(h) Deduct interest or dividends on obligations of the 4068
United States and its territories and possessions or of any 4069
authority, commission, or instrumentality of the United States 4070
to the extent that the interest or dividends are included in 4071
federal adjusted gross income but exempt from state income taxes 4072
under the laws of the United States; 4073

(i) Deduct any wage or salary expense, in the same manner 4074
as an individual would in computing the individual's Ohio 4075
adjusted gross income, that is not otherwise allowable as a 4076
deduction but that would have been allowable as a deduction in 4077
computing federal taxable income for the taxable year had the 4078

targeted jobs credit allowed under sections 38, 51, and 52 of 4079
the Internal Revenue Code not been in effect; 4080

(j) Deduct any interest or interest equivalent, in the 4081
same manner as an individual would in computing the individual's 4082
Ohio adjusted gross income, on public obligations and purchase 4083
obligations. 4084

(3) Allocating and apportioning to this state the adjusted 4085
amount obtained under division (A) (2) of this section in 4086
accordance with sections 5747.20 to 5747.231 of the Revised 4087
Code; 4088

(4) Multiplying the result obtained in division (A) (3) of 4089
this section by the rate specified in division (A) (4) (b) of 4090
section 5747.02 of the Revised Code. 4091

(B) A pass-through entity's method of accounting shall be 4092
the same as its method of accounting for federal income tax 4093
purposes. If a pass-through entity's method of accounting is 4094
changed for federal income tax purposes, its method of 4095
accounting for purposes of this chapter shall be changed 4096
accordingly. In the absence of any method of accounting for 4097
federal income tax purposes, income shall be computed under such 4098
method that the tax commissioner deems reasonably reflects 4099
income. 4100

(C) (1) Notwithstanding division (A) of this section, if, 4101
before the due date of the return, a pass-through entity 4102
receives from a direct or indirect investor documentation 4103
showing the investor is neither subject to the tax imposed under 4104
section 5747.02 of the Revised Code for the entity's entire 4105
taxable year nor is a pass-through entity, the entity required 4106
to file a return under this section is not required to include, 4107

in the calculation under division (A)(1) of this section, the 4108
distributive share of income of the investor not subject to the 4109
tax. 4110

(2) A pass-through entity shall not be subject to any 4111
interest or interest penalties for failure to include such 4112
amounts in its calculation of taxes, including estimated taxes, 4113
if the tax commissioner, upon request, receives the 4114
documentation described in division (C)(1) of this section. 4115

(D) Investors included on a return filed pursuant to 4116
section 5747.41 of the Revised Code are not entitled to the 4117
exemption allowed under section 5747.025 of the Revised Code, 4118
and are entitled only to their distributive share of business 4119
credits. 4120

(E)(1) A pass-through entity having nexus with this state 4121
is not subject to the complementary tax imposed by this section 4122
if any of the following conditions apply: 4123

(a) All of the entity's investors are resident 4124
individuals; 4125

(b) None of the entity's investors is either (i) a pass- 4126
through entity or (ii) a person subject to the tax imposed under 4127
section 5747.02 of the Revised Code. 4128

(2) Nothing in division (E) of this section shall 4129
eliminate the imposition of the tax imposed on an individual 4130
under section 5747.02 of the Revised Code. 4131

(3) Nothing in division (E) of this section shall affect 4132
the computation of the tax that is levied on an individual under 4133
section 5747.02 of the Revised Code. 4134

(F)(1) For the purposes of sections 5747.40 to 5747.44 of 4135

the Revised Code, "business credits" means the following 4136
credits: 4137

(a) The campaign contribution credit under section 5747.29 4138
of the Revised Code; 4139

(b) The nonrefundable job retention credit under division 4140
(B) of section 5747.058 of the Revised Code; 4141

(c) The enterprise zone credit under section 5709.66 of 4142
the Revised Code; 4143

(d) The credit for purchases of qualifying grape 4144
production property under section 5747.28 of the Revised Code; 4145

(e) The small business investment credit under section 4146
5747.81 of the Revised Code; 4147

(f) The enterprise zone credits under section 5709.65 of 4148
the Revised Code; 4149

(g) The research and development credit under section 4150
5747.331 of the Revised Code; 4151

(h) The credit for rehabilitating an historic building 4152
under section 5747.76 of the Revised Code; 4153

(i) The nonrefundable credit for financial institution 4154
taxes paid by a pass-through entity granted under section 4155
5747.65 of the Revised Code; 4156

(j) The refundable credit for rehabilitating an historic 4157
building under section 5747.76 of the Revised Code; 4158

(k) The refundable jobs creation credit or job retention 4159
credit under division (A) of section 5747.058 of the Revised 4160
Code; 4161

(l) The refundable credit under section 5747.80 of the 4162

Revised Code for losses on loans made to the Ohio venture 4163
capital program under sections 150.01 to 150.10 of the Revised 4164
Code; 4165

(m) The refundable motion picture production credit under 4166
section 5747.66 of the Revised Code; 4167

(n) The refundable credits for taxes paid by a pass- 4168
through entity under division (C) of section 5747.42 of the 4169
Revised Code. 4170

(2) Nothing in this chapter allows any credit to be 4171
claimed more than once or provides for any deduction or credit 4172
that would not be allowable if an investor were to file an 4173
annual return. 4174

(3) Nothing in this section changes the order in which a 4175
pass-through entity claims business credits from the order 4176
prescribed in section 5747.98 of the Revised Code. 4177

Sec. 5747.41. (A) (1) Each pass-through entity subject to 4178
the tax imposed by section 5747.40 of the Revised Code shall 4179
file a single composite tax return on behalf of the entity's 4180
investors. 4181

(2) Each pass-through entity having nexus with this state 4182
shall file an informational return on behalf of the entity's 4183
investors unless any of the following conditions apply: 4184

(a) The entity is required to file a composite return 4185
under division (A) (1) of this section. 4186

(b) None of the investors is a person subject to the tax 4187
imposed under section 5747.02 of the Revised Code. 4188

(c) All of the investors are resident individuals and the 4189
entity did not claim any of the business credits listed in 4190

divisions (F) (1) (a) to (m) of section 5747.40 of the Revised 4191
Code. 4192

(B) Each of the returns required by division (A) of this 4193
section shall contain the following information for each of the 4194
pass-through entity's investors: 4195

(1) Investor name and type; 4196

(2) Investor social security number, federal employer 4197
identification number, or any other identifying number requested 4198
by the tax commissioner; 4199

(3) Investor ownership percentage and, if different, 4200
investor distribution percentage; 4201

(4) Whether or not the investor is exempt from the 4202
calculation required under division (A) (1) of section 5747.40 of 4203
the Revised Code; 4204

(5) The allocation percentage for any business credit 4205
earned by the pass-through entity; 4206

(6) Any other information prescribed by the commissioner. 4207

(C) Notwithstanding divisions (A) (1) and (2) and (B) of 4208
this section: 4209

(1) A publicly traded partnership, as defined by section 4210
7704(b) of the Internal Revenue Code, that has nexus with this 4211
state and that is treated as a partnership for the purposes of 4212
the Internal Revenue Code shall be required to file only an 4213
informational return and shall be required to provide the 4214
information required by division (B) of this section only with 4215
respect to investors with Ohio-sourced income in excess of five 4216
hundred dollars, except as otherwise provided by division (C) (2) 4217
of this section. 4218

(2) A limited liability company or limited partnership at 4219
least fifty per cent of the ownership interests of which are 4220
owned, directly or indirectly, by a publicly traded partnership 4221
described in division (C) (1) of this section shall be required 4222
to file only an informational return and shall be required to 4223
provide the information required by division (B) of this section 4224
only with respect to investors with Ohio-sourced income in 4225
excess of five hundred dollars. 4226

(D) (1) Any nonresident individual investor directly or 4227
indirectly included on a return required to be filed under 4228
division (A) (1) of this section may elect to file an annual 4229
return under section 5747.08 of the Revised Code and to pay the 4230
tax imposed under section 5747.02 of the Revised Code. 4231

(2) Nothing in this section exempts a resident individual 4232
investor, directly or indirectly included on a return filed 4233
under division (A) of this section, from the individual filing 4234
requirement of section 5747.08 of the Revised Code. 4235

(3) Nothing in sections 5747.40 to 5747.44 of the Revised 4236
Code shall preclude the tax commissioner from requiring that 4237
investors included on a return under division (A) of this 4238
section file any return or make any payment of tax or related 4239
interest, penalty, or interest penalty required by this chapter. 4240

(E) A pass-through entity filing a composite return 4241
required under division (A) (1) of this section shall be liable 4242
for any additional taxes, interest, interest penalty, or 4243
penalties imposed by this chapter if the tax commissioner finds 4244
that the composite return does not reflect the correct tax due 4245
by the pass-through entity investors covered by that return. 4246
Nothing in this division limits or alters the liability, if any, 4247
imposed on pass-through entity investors for unpaid or underpaid 4248

taxes, interest, interest penalty, or penalties as a result of 4249
the pass-through entity's filing under this section. For the 4250
purposes of this division, "correct tax due" means the tax that 4251
would have been paid by the pass-through entity had the 4252
composite return been filed in a manner reflecting the 4253
commissioner's findings. Nothing in this section shall be 4254
construed to make or hold a pass-through entity liable for tax 4255
attributable to a pass-through entity investor's income from a 4256
source other than the pass-through entity electing to file the 4257
composite return. 4258

Sec. 5747.42. (A) (1) Except as provided in division (A) (2) 4259
of this section, each return required to be filed under division 4260
(A) (1) of section 5747.41 of the Revised Code shall be 4261
accompanied by a single check drawn by the pass-through entity, 4262
or by an electronic submission required under section 5747.44 of 4263
the Revised Code, for the full amount shown to be due on the 4264
return. 4265

(2) If the amount calculated under division (A) (1) of 4266
section 5747.40 of the Revised Code, less the business credits 4267
enumerated in divisions (F) (1) (a) to (i) of that section, is 4268
less than two hundred fifty dollars, no payment need accompany 4269
the return. 4270

(B) Each pass-through entity required to file a return 4271
under division (A) (1) of section 5747.41 of the Revised Code 4272
shall also file and pay estimated taxes, in accordance with 4273
section 5747.09 of the Revised Code, on behalf of the pass- 4274
through entity's investors with regard to the income included on 4275
that return. 4276

(C) (1) Except as provided in division (C) (2) of this 4277
section, a direct or indirect investor that either is required 4278

to file an annual return under division (A) (1) of section 4279
5747.41 of the Revised Code, or that elects to file an annual 4280
return under division (D) of that section, may claim a 4281
refundable credit equal to the investor's proportionate share of 4282
the tax actually paid by the pass-through entity on behalf of 4283
the investor. 4284

(2) An indirect investor shall not claim a credit for tax 4285
paid by a pass-through entity on behalf of the investor if an 4286
intermediate investor claims a credit that includes that amount. 4287
As used in this division, "intermediate investor" means an 4288
investor that has a direct or indirect investment interest in an 4289
entity, and in which one or more persons holds an investment 4290
interest. 4291

(D) The investor shall claim the credit for the investor's 4292
taxable year which ends in the taxable year of the pass-through 4293
entity. 4294

(E) For the purpose of computing any interest, penalty, or 4295
interest penalty, the investor shall be deemed to have paid tax 4296
in an amount equal to the refundable credit allowed by this 4297
section on the day that the pass-through entity paid the tax or 4298
estimated tax giving rise to the credit. 4299

(F) Nothing in sections 5747.40 to 5747.44 of the Revised 4300
Code prohibits an indirect investor who is not subject to the 4301
tax imposed under section 5747.02 of the Revised Code, but for 4302
whom taxes were paid on the investor's behalf under section 4303
5747.40 of the Revised Code, from filing a refund claim pursuant 4304
to section 5747.11 of the Revised Code. 4305

(G) Nothing in sections 5747.40 to 5747.44 of the Revised 4306
Code allows an investor or pass-through entity any additional 4307

deduction or credit, other than the credit provided by division 4308
(C) of this section, solely on account of the entity's filing a 4309
return in accordance with section 5747.41 of the Revised Code. 4310

Sec. 5747.43. (A) The retirement from business or 4311
voluntary dissolution of a pass-through entity does not exempt 4312
the entity from the requirements of sections 5747.40 to 5747.44 4313
of the Revised Code or from liability for the tax imposed under 4314
this chapter. 4315

(B) Notwithstanding any other provisions of this chapter, 4316
if any pass-through entity subject to the tax imposed under 4317
section 5747.40 of the Revised Code sells its business or stock 4318
of merchandise, or quits its business, the taxes required to be 4319
paid before that time, together with any interest or penalty 4320
thereon, become due and payable immediately. The entity shall 4321
make a final return within thirty days after the filing due date 4322
of the entity's final federal tax return. 4323

Sec. 5747.44. (A) If a ~~qualifying~~ entity's total liability 4324
for taxes imposed under sections 5733.41 and 5747.41 ~~pass-~~ 4325
through entity required to file a return under division (A) (1) 4326
of section 5747.41 of the Revised Code ~~exceeds~~ reports tax due 4327
~~exceeding~~ one hundred eighty thousand dollars for ~~the second~~ 4328
~~preceding~~ ~~qualifying~~ ~~two~~ consecutive taxable ~~year~~ years, 4329
the ~~qualifying~~ entity shall make all payments required under 4330
sections 5747.09 and 5747.42 ~~and 5747.43~~ of the Revised Code in 4331
subsequent taxable years by ~~electronic funds transfer as~~ 4332
~~prescribed by this section and rules adopted by the treasurer of~~ 4333
~~state under section 113.061 of the Revised Code~~ means as 4334
prescribed or as otherwise permitted by the tax commissioner. 4335

The ~~tax~~-commissioner shall notify each ~~qualifying~~ entity 4336
required to remit taxes by electronic ~~funds transfer~~ means of 4337

the entity's obligation to do so, and shall maintain an updated 4338
list of those entities, and shall provide the list and any 4339
additions thereto or deletions therefrom to the treasurer of 4340
state. Failure by the tax commissioner to notify a qualifying an 4341
entity subject to this section to remit taxes by electronic 4342
funds transfer means does not relieve the qualifying entity of 4343
its obligation to remit taxes by electronic funds transfer 4344
obligations under this section. 4345

(B) Except as otherwise provided in this division, the 4346
payment of taxes by electronic funds transfer means does not 4347
affect a qualifying an entity's obligation to file the returns 4348
return required under sections 5747.42 and 5747.43 section 4349
5747.41 of the Revised Code. The treasurer of state, in 4350
consultation with the tax commissioner, may adopt rules in 4351
addition to the rules adopted under section 113.061 of the 4352
Revised Code governing the format for filing returns by 4353
qualifying entities that remit taxes by electronic funds 4354
transfer means. The rules may provide for the filing of returns 4355
at less frequent intervals than otherwise required if the 4356
treasurer of state and the tax commissioner determine that 4357
remittance by electronic funds transfer warrants less frequent 4358
filing of returns. 4359

(C) A qualifying An entity required by this section to 4360
remit taxes by electronic funds transfer means may apply to the 4361
treasurer of state tax commissioner in the manner prescribed or 4362
otherwise permitted by the treasurer of state commissioner to be 4363
excused from that requirement. The treasurer of state 4364
commissioner may excuse the qualifying entity from remittance by 4365
electronic funds transfer means for good cause shown for the 4366
period of time requested by the qualifying entity or for a 4367
portion of that period. The treasurer of state shall notify the 4368

~~tax commissioner and the qualifying entity of the treasurer of~~ 4369
~~state's decision as soon as is practicable.~~ 4370

(D) If ~~a qualifying an~~ entity required by this section to 4371
remit taxes by electronic ~~funds transfer means~~ remits those 4372
taxes by some means other than ~~by electronic funds transfer as~~ 4373
~~those prescribed or otherwise permitted by this section and the~~ 4374
~~rules adopted by the treasurer of state, the tax commissioner,~~ 4375
and the ~~treasurer of state commissioner~~ determines that such 4376
failure was not due to reasonable cause or was due to willful 4377
neglect, the ~~treasurer of state shall notify the tax~~ 4378
~~commissioner of the failure to remit by electronic funds~~ 4379
~~transfer and shall provide the commissioner with any information~~ 4380
~~used in making that determination. The tax commissioner may~~ 4381
collect an additional charge by assessment in the manner 4382
prescribed by section 5747.13 of the Revised Code. The 4383
additional charge shall equal five per cent of the amount of the 4384
taxes required to be paid by electronic ~~funds transfer means,~~ 4385
but shall not exceed five thousand dollars. Any additional 4386
charge assessed under this section is in addition to any other 4387
penalty or charge imposed under this chapter ~~or Chapter 5733. of~~ 4388
~~the Revised Code, and shall be considered as revenue arising~~ 4389
~~from the taxes imposed under sections 5733.41 and 5747.41 of the~~ 4390
~~Revised Code.~~ The tax commissioner may remit all or a portion of 4391
such a charge and may adopt rules governing such remission. 4392

No additional charge shall be assessed under this division 4393
against ~~a qualifying an~~ entity that has been notified of its 4394
obligation to remit taxes under this section and that remits its 4395
first two tax payments after such notification by some means 4396
other than ~~electronic funds transfer~~ those prescribed or 4397
otherwise permitted by the commissioner. The additional charge 4398
may be assessed upon the remittance of any subsequent tax 4399

payment that the ~~qualifying~~ entity remits by some other means 4400
~~other than electronic funds transfer.~~ 4401

(E) The tax commissioner may promulgate rules as necessary 4402
to implement this section. 4403

Sec. 5747.65. (A) There is hereby allowed a ~~refundable~~ 4404
nonrefundable credit against a taxpayer's aggregate tax 4405
liability under section 5747.02 of the Revised Code. The amount 4406
of the credit shall equal the taxpayer's proportionate share of 4407
the lesser of either the tax due or the tax paid for the tax 4408
imposed by section 5726.02 of the Revised Code by a pass-through 4409
entity for the pass-through entity's taxable year ending in the 4410
taxpayer's taxable year. 4411

(B) The taxpayer shall claim the credit for the taxpayer's 4412
taxable year that includes the last day of the pass-through 4413
entity's taxable year. For purposes of making tax payments under 4414
this chapter, taxes equal to the amount of the credit shall be 4415
considered to be paid by the taxpayer on the day the pass- 4416
through entity pays to the treasurer of state the amount due for 4417
the tax imposed by section 5726.02 of the Revised Code. The 4418
credit shall be claimed in the order required under section 4419
5747.98 of the Revised Code. 4420

(C) In claiming the credit and determining the taxpayer's 4421
proportionate share of the tax due and the tax paid by a pass- 4422
through entity, the taxpayer shall follow the concepts set forth 4423
in subchapters J and K of the Internal Revenue Code. 4424

~~The credit shall be claimed in the order required under~~ 4425
~~section 5747.98 of the Revised Code. If the amount of the credit~~ 4426
~~exceeds the aggregate amount of tax otherwise due under section~~ 4427
~~5747.02 of the Revised Code after deduction of all other credits~~ 4428

~~in that order, the taxpayer is entitled to a refund of the~~ 4429
~~excess.~~ 4430

(D) (1) If a credit authorized by this section is affected 4431
by a change in the pass-through entity's tax liability under 4432
section 5726.02 of the Revised Code, the taxpayer shall report 4433
the change within sixty days of the date the change becomes 4434
final. If the amount is not reported within sixty days of that 4435
date, the tax commissioner may assess the taxpayer in accordance 4436
with section 5747.13 of the Revised Code. 4437

(2) The adjustment of a credit authorized by this section 4438
shall not reopen the computation of the taxpayer's tax liability 4439
under this chapter from a previously filed return no longer 4440
subject to assessment except to the extent that such liability 4441
is affected by the adjustment to the credit. 4442

Sec. 5747.98. (A) To provide a uniform procedure for 4443
calculating a taxpayer's aggregate tax liability under section 4444
5747.02 of the Revised Code, a taxpayer shall claim any credits 4445
to which the taxpayer is entitled in the following order: 4446

(1) Either the retirement income credit under division (B) 4447
of section 5747.055 of the Revised Code or the lump sum 4448
retirement income credits under divisions (C), (D), and (E) of 4449
that section; 4450

(2) Either the senior citizen credit under division (F) of 4451
section 5747.055 of the Revised Code or the lump sum 4452
distribution credit under division (G) of that section; 4453

(3) The dependent care credit under section 5747.054 of 4454
the Revised Code; 4455

(4) The low-income credit under section 5747.056 of the 4456
Revised Code; 4457

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|---|----------------------|
| (5) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code; | 4458 4459 |
| (6) The campaign contribution credit under section 5747.29 of the Revised Code; | 4460 4461 |
| (7) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code; | 4462 4463 |
| (8) The joint filing credit under division (G) of section 5747.05 of the Revised Code; | 4464 4465 |
| (9) The earned income credit under section 5747.71 of the Revised Code; | 4466 4467 |
| (10) The credit for adoption of a minor child under section 5747.37 of the Revised Code; | 4468 4469 |
| (11) The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code; | 4470 4471 |
| (12) The enterprise zone credit under section 5709.66 of the Revised Code; | 4472 4473 |
| (13) The ethanol plant investment credit under section 5747.75 of the Revised Code; | 4474 4475 |
| (14) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code; | 4476 4477 |
| (15) <u>(14)</u> The small business investment credit under section 5747.81 of the Revised Code; | 4478 4479 |
| <u>(15) The credit for financial institution taxes paid by a pass-through entity granted under section 5747.65 of the Revised Code;</u> | 4480 4481 4482 |
| (16) The enterprise zone credits under section 5709.65 of the Revised Code; | 4483 4484 |

| | |
|--|------------------------------|
| (17) The research and development credit under section 5747.331 of the Revised Code; | 4485 4486 |
| (18) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code; | 4487 4488 |
| (19) The nonresident credit under division (A) of section 5747.05 of the Revised Code; | 4489 4490 |
| (20) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code; | 4491 4492 |
| (21) The refundable motion picture production credit under section 5747.66 of the Revised Code; | 4493 4494 |
| (22) The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code; | 4495 4496 4497 |
| (23) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code; | 4498 4499 |
| (24) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) (C) of section 5747.08 5747.42 of the Revised Code; | 4500 4501 4502 |
| (25) (24) The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code; | 4503 4504 4505 4506 |
| (26) (25) The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code; | 4507 4508 |
| (27) The refundable credit for financial institution taxes paid by a pass-through entity granted under section 5747.65 of the Revised Code. | 4509 4510 4511 |

(B) For any credit, except the refundable credits 4512
enumerated in this section and the credit granted under division 4513
(H) of section 5747.08 of the Revised Code, the amount of the 4514
credit for a taxable year shall not exceed the taxpayer's 4515
aggregate amount of tax due under section 5747.02 of the Revised 4516
Code, after allowing for any other credit that precedes it in 4517
the order required under this section. Any excess amount of a 4518
particular credit may be carried forward if authorized under the 4519
section creating that credit. Nothing in this chapter shall be 4520
construed to allow a taxpayer to claim, directly or indirectly, 4521
a credit more than once for a taxable year. 4522

Sec. 5748.01. As used in this chapter: 4523

(A) "School district income tax" means an income tax 4524
adopted under one of the following: 4525

(1) Former section 5748.03 of the Revised Code as it 4526
existed prior to its repeal by Amended Substitute House Bill No. 4527
291 of the 115th general assembly; 4528

(2) Section 5748.03 of the Revised Code as enacted in 4529
Substitute Senate Bill No. 28 of the 118th general assembly; 4530

(3) Section 5748.08 of the Revised Code as enacted in 4531
Amended Substitute Senate Bill No. 17 of the 122nd general 4532
assembly; 4533

(4) Section 5748.021 of the Revised Code; 4534

(5) Section 5748.081 of the Revised Code; 4535

(6) Section 5748.09 of the Revised Code. 4536

(B) "Individual" means an individual subject to the tax 4537
levied by section 5747.02 of the Revised Code. 4538

(C) "Estate" means an estate subject to the tax levied by 4539
section 5747.02 of the Revised Code. 4540

(D) "Taxable year" means a taxable year as defined in 4541
division (M) of section 5747.01 of the Revised Code. 4542

(E) "Taxable income" means: 4543

(1) In the case of an individual, one of the following, as 4544
specified in the resolution imposing the tax: 4545

(a) Ohio adjusted gross income for the taxable year as 4546
defined in division (A) of section 5747.01 of the Revised Code, 4547
less the exemptions provided by section 5747.02 of the Revised 4548
Code, plus any amount deducted under division (A) ~~(31)~~ (29) of 4549
section 5747.01 of the Revised Code for the taxable year; 4550

(b) Wages, salaries, tips, and other employee compensation 4551
to the extent included in Ohio adjusted gross income as defined 4552
in section 5747.01 of the Revised Code, and net earnings from 4553
self-employment, as defined in section 1402(a) of the Internal 4554
Revenue Code, to the extent included in Ohio adjusted gross 4555
income. 4556

(2) In the case of an estate, taxable income for the 4557
taxable year as defined in division (S) of section 5747.01 of 4558
the Revised Code. 4559

(F) "Resident" of the school district means: 4560

(1) An individual who is a resident of this state as 4561
defined in division (I) of section 5747.01 of the Revised Code 4562
during all or a portion of the taxable year and who, during all 4563
or a portion of such period of state residency, is domiciled in 4564
the school district or lives in and maintains a permanent place 4565
of abode in the school district; 4566

(2) An estate of a decedent who, at the time of death, was 4567
domiciled in the school district. 4568

(G) "School district income" means: 4569

(1) With respect to an individual, the portion of the 4570
taxable income of an individual that is received by the 4571
individual during the portion of the taxable year that the 4572
individual is a resident of the school district and the school 4573
district income tax is in effect in that school district. An 4574
individual may have school district income with respect to more 4575
than one school district. 4576

(2) With respect to an estate, the taxable income of the 4577
estate for the portion of the taxable year that the school 4578
district income tax is in effect in that school district. 4579

(H) "Taxpayer" means an individual or estate having school 4580
district income upon which a school district income tax is 4581
imposed. 4582

(I) "School district purposes" means any of the purposes 4583
for which a tax may be levied pursuant to division (A) of 4584
section 5705.21 of the Revised Code, including the combined 4585
purposes authorized by section 5705.217 of the Revised Code. 4586

Section 2. That existing sections 901.13, 5733.01, 4587
5733.04, 5733.057, 5733.09, 5733.12, 5733.98, 5747.01, 5747.012, 4588
5747.02, 5747.03, 5747.08, 5747.082, 5747.11, 5747.13, 5747.132, 4589
5747.14, 5747.15, 5747.20, 5747.21, 5747.212, 5747.22, 5747.221, 4590
5747.231, 5747.28, 5747.30, 5747.331, 5747.44, 5747.65, 5747.98, 4591
and 5748.01 and sections 5733.0611, 5733.40, 5733.401, 5733.402, 4592
5733.41, 5747.059, 5747.40, 5747.401, 5747.41, 5747.42, 5747.43, 4593
5747.45, 5747.451, 5747.453, and 5747.75 of the Revised Code are 4594
hereby repealed. 4595

Section 3. The amendment by this act of existing division 4596
(A) (21) (d) of section 5747.01 of the Revised Code is intended to 4597
clarify and be declaratory of the law as it existed before the 4598
amendment. 4599

Section 4. The amendment, enactment, or repeal by this act 4600
of sections 901.13, 5733.01, 5733.04, 5733.057, 5733.0611, 4601
5733.09, 5733.12, 5733.40, 5733.401, 5733.402, 5733.41, 5733.98, 4602
5747.01, 5747.012, 5747.02, 5747.03, 5747.059, 5747.08, 4603
5747.082, 5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 5747.20, 4604
5747.21, 5747.212, 5747.22, 5747.221, 5747.231, 5747.28, 4605
5747.30, 5747.331, 5747.40, 5747.401, 5747.41, 5747.42, 5747.43, 4606
5747.44, 5747.45, 5747.451, 5747.453, 5747.65, 5747.75, 5747.98, 4607
and 5748.01 of the Revised Code shall apply to taxable years 4608
ending on or after January 1, 2017. Those sections as they 4609
existed before the effective date of this act continue to apply 4610
to taxable years ending before January 1, 2017. 4611