

As Introduced

**134th General Assembly
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H. B. No. 86

**Representative Roemer
Cosponsors: Representatives Riedel, Schmidt**

A BILL

To amend sections 5747.01 and 5747.10 of the 1
Revised Code to temporarily suspend provisions 2
relating to bonus depreciation adjustments for a 3
taxpayer with a federal net operating loss. 4

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

Section 1. That sections 5747.01 and 5747.10 of the 5
Revised Code be amended to read as follows: 6

Sec. 5747.01. Except as otherwise expressly provided or 7
clearly appearing from the context, any term used in this 8
chapter that is not otherwise defined in this section has the 9
same meaning as when used in a comparable context in the laws of 10
the United States relating to federal income taxes or if not 11
used in a comparable context in those laws, has the same meaning 12
as in section 5733.40 of the Revised Code. Any reference in this 13
chapter to the Internal Revenue Code includes other laws of the 14
United States relating to federal income taxes. 15

As used in this chapter: 16

(A) "Adjusted gross income" or "Ohio adjusted gross 17
income" means federal adjusted gross income, as defined and used 18

in the Internal Revenue Code, adjusted as provided in this	19
section:	20
(1) Add interest or dividends on obligations or securities	21
of any state or of any political subdivision or authority of any	22
state, other than this state and its subdivisions and	23
authorities.	24
(2) Add interest or dividends on obligations of any	25
authority, commission, instrumentality, territory, or possession	26
of the United States to the extent that the interest or	27
dividends are exempt from federal income taxes but not from	28
state income taxes.	29
(3) Deduct interest or dividends on obligations of the	30
United States and its territories and possessions or of any	31
authority, commission, or instrumentality of the United States	32
to the extent that the interest or dividends are included in	33
federal adjusted gross income but exempt from state income taxes	34
under the laws of the United States.	35
(4) Deduct disability and survivor's benefits to the	36
extent included in federal adjusted gross income.	37
(5) Deduct benefits under Title II of the Social Security	38
Act and tier 1 railroad retirement benefits to the extent	39
included in federal adjusted gross income under section 86 of	40
the Internal Revenue Code.	41
(6) Deduct the amount of wages and salaries, if any, not	42
otherwise allowable as a deduction but that would have been	43
allowable as a deduction in computing federal adjusted gross	44
income for the taxable year, had the targeted jobs credit	45
allowed and determined under sections 38, 51, and 52 of the	46
Internal Revenue Code not been in effect.	47

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

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

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

(10) (a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division (A) (10) (a) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to, benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division (A) (10) (a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of the plan's cost. The deduction allowed under division (A) (10) (a) of this section shall be the net of any related premium refunds, related premium reimbursements, or related insurance premium

dividends received during the taxable year. 78

(b) Deduct, to the extent not otherwise deducted or 79
excluded in computing federal or Ohio adjusted gross income 80
during the taxable year, the amount the taxpayer paid during the 81
taxable year, not compensated for by any insurance or otherwise, 82
for medical care of the taxpayer, the taxpayer's spouse, and 83
dependents, to the extent the expenses exceed seven and one-half 84
per cent of the taxpayer's federal adjusted gross income. 85

(c) For purposes of division (A)(10) of this section, 86
"medical care" has the meaning given in section 213 of the 87
Internal Revenue Code, subject to the special rules, 88
limitations, and exclusions set forth therein, and "qualified 89
long-term care" has the same meaning given in section 7702B(c) 90
of the Internal Revenue Code. Solely for purposes of division 91
(A)(10)(a) of this section, "dependent" includes a person who 92
otherwise would be a "qualifying relative" and thus a 93
"dependent" under section 152 of the Internal Revenue Code but 94
for the fact that the person fails to meet the income and 95
support limitations under section 152(d)(1)(B) and (C) of the 96
Internal Revenue Code. 97

(11)(a) Deduct any amount included in federal adjusted 98
gross income solely because the amount represents a 99
reimbursement or refund of expenses that in any year the 100
taxpayer had deducted as an itemized deduction pursuant to 101
section 63 of the Internal Revenue Code and applicable United 102
States department of the treasury regulations. The deduction 103
otherwise allowed under division (A)(11)(a) of this section 104
shall be reduced to the extent the reimbursement is attributable 105
to an amount the taxpayer deducted under this section in any 106
taxable year. 107

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

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

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

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

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

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

(b) Add the amounts distributed from a medical savings

account under division (A) (2) of section 3924.68 of the Revised Code during the taxable year.	137 138
(15) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that such amount satisfies either of the following:	139 140 141
(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;	142 143 144 145
(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.	146 147 148
(16) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (A) (16) of this section.	149 150 151 152 153 154 155 156
(17) (a) (i) Subject to divisions (A) (17) (a) (iii), (iv), and (v) of this section, add five-sixths of the amount of depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code, including the taxpayer's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to a pass-through entity in which the taxpayer has a direct or indirect ownership interest.	157 158 159 160 161 162 163 164
(ii) Subject to divisions (A) (17) (a) (iii), (iv), and (v)	165

of this section, add five-sixths of the amount of qualifying 166
section 179 depreciation expense, including the taxpayer's 167
proportionate or distributive share of the amount of qualifying 168
section 179 depreciation expense allowed to any pass-through 169
entity in which the taxpayer has a direct or indirect ownership 170
interest. 171

(iii) Subject to division (A) (17) (a) (v) of this section, 172
for taxable years beginning in 2012 or thereafter, if the 173
increase in income taxes withheld by the taxpayer is equal to or 174
greater than ten per cent of income taxes withheld by the 175
taxpayer during the taxpayer's immediately preceding taxable 176
year, "two-thirds" shall be substituted for "five-sixths" for 177
the purpose of divisions (A) (17) (a) (i) and (ii) of this section. 178

(iv) Subject to division (A) (17) (a) (v) of this section, 179
for taxable years beginning in 2012 or thereafter, a taxpayer is 180
not required to add an amount under division (A) (17) of this 181
section if the increase in income taxes withheld by the taxpayer 182
and by any pass-through entity in which the taxpayer has a 183
direct or indirect ownership interest is equal to or greater 184
than the sum of (I) the amount of qualifying section 179 185
depreciation expense and (II) the amount of depreciation expense 186
allowed to the taxpayer by subsection (k) of section 168 of the 187
Internal Revenue Code, and including the taxpayer's 188
proportionate or distributive shares of such amounts allowed to 189
any such pass-through entities. 190

(v) ~~If Except for a taxable year ending in 2020 or 2021,~~ 191
if a taxpayer directly or indirectly incurs a federal net 192
operating loss for the taxable year ~~for federal income tax~~ 193
~~purposes,~~ to the extent such loss resulted from depreciation 194
expense allowed by subsection (k) of section 168 of the Internal 195

Revenue Code and by qualifying section 179 depreciation expense, 196
"the entire" shall be substituted for "five-sixths of the" for 197
the purpose of divisions (A) (17) (a) (i) and (ii) of this section. 198

The tax commissioner, under procedures established by the 199
commissioner, may waive the add-backs related to a pass-through 200
entity if the taxpayer owns, directly or indirectly, less than 201
five per cent of the pass-through entity. 202

(b) Nothing in division (A) (17) of this section shall be 203
construed to adjust or modify the adjusted basis of any asset. 204

(c) To the extent the add-back required under division (A) 205
(17) (a) of this section is attributable to property generating 206
nonbusiness income or loss allocated under section 5747.20 of 207
the Revised Code, the add-back shall be situated to the same 208
location as the nonbusiness income or loss generated by the 209
property for the purpose of determining the credit under 210
division (A) of section 5747.05 of the Revised Code. Otherwise, 211
the add-back shall be apportioned, subject to one or more of the 212
four alternative methods of apportionment enumerated in section 213
5747.21 of the Revised Code. 214

(d) For the purposes of division (A) (17) (a) (v) of this 215
section, net operating loss carryback and carryforward shall not 216
include the allowance of any net operating loss deduction 217
carryback or carryforward to the taxable year to the extent such 218
loss resulted from depreciation allowed by subsection (k) of 219
section ~~168(k)~~ 168 of the Internal Revenue Code and by the 220
qualifying section 179 depreciation expense amount. 221

(e) For the purposes of divisions (A) (17) and (18) of this 222
section: 223

(i) "Income taxes withheld" means the total amount 224

withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year.	225 226
(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year.	227 228 229 230 231
(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to a taxpayer under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.	232 233 234 235 236 237 238
(18) (a) If the taxpayer was required to add an amount under division (A) (17) (a) of this section for a taxable year, deduct one of the following:	239 240 241
(i) One-fifth of the amount so added for each of the five succeeding taxable years if the amount so added was five-sixths of qualifying section 179 depreciation expense or depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code;	242 243 244 245 246
(ii) One-half of the amount so added for each of the two succeeding taxable years if the amount so added was two-thirds of such depreciation expense;	247 248 249
(iii) One-sixth of the amount so added for each of the six succeeding taxable years if the entire amount of such depreciation expense was so added.	250 251 252
(b) If the amount deducted under division (A) (18) (a) of	253

this section is attributable to an add-back allocated under 254
division (A) (17) (c) of this section, the amount deducted shall 255
be situated to the same location. Otherwise, the add-back shall 256
be apportioned using the apportionment factors for the taxable 257
year in which the deduction is taken, subject to one or more of 258
the four alternative methods of apportionment enumerated in 259
section 5747.21 of the Revised Code. 260

(c) ~~No~~ Except for a taxable year that includes a federal 261
net operating loss carryback from a taxable year ending in 2020 262
or 2021, no deduction is available under division (A) (18) (a) of 263
this section with regard to any depreciation allowed by 264
subsection (k) of section ~~168(k)~~ 168 of the Internal Revenue 265
Code and by the qualifying section 179 depreciation expense 266
amount to the extent that such depreciation results in or 267
increases a federal net operating loss carryback or 268
carryforward. If no such deduction is available for a taxable 269
year, the taxpayer may carry forward the amount not deducted in 270
such taxable year to the next taxable year and add that amount 271
to any deduction otherwise available under division (A) (18) (a) 272
of this section for that next taxable year. The carryforward of 273
amounts not so deducted shall continue until the entire addition 274
required by division (A) (17) (a) of this section has been 275
deducted. 276

(19) Deduct, to the extent not otherwise deducted or 277
excluded in computing federal or Ohio adjusted gross income for 278
the taxable year, the amount the taxpayer received during the 279
taxable year as reimbursement for life insurance premiums under 280
section 5919.31 of the Revised Code. 281

(20) Deduct, to the extent not otherwise deducted or 282
excluded in computing federal or Ohio adjusted gross income for 283

the taxable year, the amount the taxpayer received during the 284
taxable year as a death benefit paid by the adjutant general 285
under section 5919.33 of the Revised Code. 286

(21) Deduct, to the extent included in federal adjusted 287
gross income and not otherwise allowable as a deduction or 288
exclusion in computing federal or Ohio adjusted gross income for 289
the taxable year, military pay and allowances received by the 290
taxpayer during the taxable year for active duty service in the 291
United States army, air force, navy, marine corps, or coast 292
guard or reserve components thereof or the national guard. The 293
deduction may not be claimed for military pay and allowances 294
received by the taxpayer while the taxpayer is stationed in this 295
state. 296

(22) Deduct, to the extent not otherwise allowable as a 297
deduction or exclusion in computing federal or Ohio adjusted 298
gross income for the taxable year and not otherwise compensated 299
for by any other source, the amount of qualified organ donation 300
expenses incurred by the taxpayer during the taxable year, not 301
to exceed ten thousand dollars. A taxpayer may deduct qualified 302
organ donation expenses only once for all taxable years 303
beginning with taxable years beginning in 2007. 304

For the purposes of division (A) (22) of this section: 305

(a) "Human organ" means all or any portion of a human 306
liver, pancreas, kidney, intestine, or lung, and any portion of 307
human bone marrow. 308

(b) "Qualified organ donation expenses" means travel 309
expenses, lodging expenses, and wages and salary forgone by a 310
taxpayer in connection with the taxpayer's donation, while 311
living, of one or more of the taxpayer's human organs to another 312

human being. 313

(23) Deduct, to the extent not otherwise deducted or 314
excluded in computing federal or Ohio adjusted gross income for 315
the taxable year, amounts received by the taxpayer as retired 316
personnel pay for service in the uniformed services or reserve 317
components thereof, or the national guard, or received by the 318
surviving spouse or former spouse of such a taxpayer under the 319
survivor benefit plan on account of such a taxpayer's death. If 320
the taxpayer receives income on account of retirement paid under 321
the federal civil service retirement system or federal employees 322
retirement system, or under any successor retirement program 323
enacted by the congress of the United States that is established 324
and maintained for retired employees of the United States 325
government, and such retirement income is based, in whole or in 326
part, on credit for the taxpayer's uniformed service, the 327
deduction allowed under this division shall include only that 328
portion of such retirement income that is attributable to the 329
taxpayer's uniformed service, to the extent that portion of such 330
retirement income is otherwise included in federal adjusted 331
gross income and is not otherwise deducted under this section. 332
Any amount deducted under division (A) (23) of this section is 333
not included in a taxpayer's adjusted gross income for the 334
purposes of section 5747.055 of the Revised Code. No amount may 335
be deducted under division (A) (23) of this section on the basis 336
of which a credit was claimed under section 5747.055 of the 337
Revised Code. 338

(24) Deduct, to the extent not otherwise deducted or 339
excluded in computing federal or Ohio adjusted gross income for 340
the taxable year, the amount the taxpayer received during the 341
taxable year from the military injury relief fund created in 342
section 5902.05 of the Revised Code. 343

(25) Deduct, to the extent not otherwise deducted or 344
excluded in computing federal or Ohio adjusted gross income for 345
the taxable year, the amount the taxpayer received as a veterans 346
bonus during the taxable year from the Ohio department of 347
veterans services as authorized by Section 2r of Article VIII, 348
Ohio Constitution. 349

(26) Deduct, to the extent not otherwise deducted or 350
excluded in computing federal or Ohio adjusted gross income for 351
the taxable year, any income derived from a transfer agreement 352
or from the enterprise transferred under that agreement under 353
section 4313.02 of the Revised Code. 354

(27) Deduct, to the extent not otherwise deducted or 355
excluded in computing federal or Ohio adjusted gross income for 356
the taxable year, Ohio college opportunity or federal Pell grant 357
amounts received by the taxpayer or the taxpayer's spouse or 358
dependent pursuant to section 3333.122 of the Revised Code or 20 359
U.S.C. 1070a, et seq., and used to pay room or board furnished 360
by the educational institution for which the grant was awarded 361
at the institution's facilities, including meal plans 362
administered by the institution. For the purposes of this 363
division, receipt of a grant includes the distribution of a 364
grant directly to an educational institution and the crediting 365
of the grant to the enrollee's account with the institution. 366

(28) Deduct from the portion of an individual's federal 367
adjusted gross income that is business income, to the extent not 368
otherwise deducted or excluded in computing federal adjusted 369
gross income for the taxable year, one hundred twenty-five 370
thousand dollars for each spouse if spouses file separate 371
returns under section 5747.08 of the Revised Code or two hundred 372
fifty thousand dollars for all other individuals. 373

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

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

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

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

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

(b) All terms used in division (A) (30) of this section have the same meanings as in section 5703.94 of the Revised Code.

(31) For a taxpayer who is a qualifying Ohio educator,

deduct, to the extent not otherwise deducted or excluded in 403
computing federal or Ohio adjusted gross income for the taxable 404
year, the lesser of two hundred fifty dollars or the amount of 405
expenses described in subsections (a) (2) (D) (i) and (ii) of 406
section 62 of the Internal Revenue Code paid or incurred by the 407
taxpayer during the taxpayer's taxable year in excess of the 408
amount the taxpayer is authorized to deduct for that taxable 409
year under subsection (a) (2) (D) of that section. 410

~~(34)~~ (32) Deduct, to the extent not otherwise deducted or 411
excluded in computing federal or Ohio adjusted gross income for 412
the taxable year, amounts received by the taxpayer as a 413
disability severance payment, computed under 10 U.S.C. 1212, 414
following discharge or release under honorable conditions from 415
the armed forces, as defined by 10 U.S.C. 101. 416

(B) "Business income" means income, including gain or 417
loss, arising from transactions, activities, and sources in the 418
regular course of a trade or business and includes income, gain, 419
or loss from real property, tangible property, and intangible 420
property if the acquisition, rental, management, and disposition 421
of the property constitute integral parts of the regular course 422
of a trade or business operation. "Business income" includes 423
income, including gain or loss, from a partial or complete 424
liquidation of a business, including, but not limited to, gain 425
or loss from the sale or other disposition of goodwill. 426

(C) "Nonbusiness income" means all income other than 427
business income and may include, but is not limited to, 428
compensation, rents and royalties from real or tangible personal 429
property, capital gains, interest, dividends and distributions, 430
patent or copyright royalties, or lottery winnings, prizes, and 431
awards. 432

(D) "Compensation" means any form of remuneration paid to an employee for personal services.	433 434
(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.	435 436 437
(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	438 439
(G) "Individual" means any natural person.	440
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	441 442
(I) "Resident" means any of the following:	443
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	444 445
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I) (2) of this section.	446 447 448 449
(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.	450 451 452
For the purposes of division (I) (3) of this section:	453
(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I) (3) (d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:	454 455 456 457 458 459

(i) A person, a court, or a governmental entity or 460
instrumentality on account of the death of a decedent, but only 461
if the trust is described in division (I) (3) (e) (i) or (ii) of 462
this section; 463

(ii) A person who was domiciled in this state for the 464
purposes of this chapter when the person directly or indirectly 465
transferred assets to an irrevocable trust, but only if at least 466
one of the trust's qualifying beneficiaries is domiciled in this 467
state for the purposes of this chapter during all or some 468
portion of the trust's current taxable year; 469

(iii) A person who was domiciled in this state for the 470
purposes of this chapter when the trust document or instrument 471
or part of the trust document or instrument became irrevocable, 472
but only if at least one of the trust's qualifying beneficiaries 473
is a resident domiciled in this state for the purposes of this 474
chapter during all or some portion of the trust's current 475
taxable year. If a trust document or instrument became 476
irrevocable upon the death of a person who at the time of death 477
was domiciled in this state for purposes of this chapter, that 478
person is a person described in division (I) (3) (a) (iii) of this 479
section. 480

(b) A trust is irrevocable to the extent that the 481
transferor is not considered to be the owner of the net assets 482
of the trust under sections 671 to 678 of the Internal Revenue 483
Code. 484

(c) With respect to a trust other than a charitable lead 485
trust, "qualifying beneficiary" has the same meaning as 486
"potential current beneficiary" as defined in section 1361(e) (2) 487
of the Internal Revenue Code, and with respect to a charitable 488
lead trust "qualifying beneficiary" is any current, future, or 489

contingent beneficiary, but with respect to any trust 490
"qualifying beneficiary" excludes a person or a governmental 491
entity or instrumentality to any of which a contribution would 492
qualify for the charitable deduction under section 170 of the 493
Internal Revenue Code. 494

(d) For the purposes of division (I)(3)(a) of this 495
section, the extent to which a trust consists directly or 496
indirectly, in whole or in part, of assets, net of any related 497
liabilities, that were transferred directly or indirectly, in 498
whole or part, to the trust by any of the sources enumerated in 499
that division shall be ascertained by multiplying the fair 500
market value of the trust's assets, net of related liabilities, 501
by the qualifying ratio, which shall be computed as follows: 502

(i) The first time the trust receives assets, the 503
numerator of the qualifying ratio is the fair market value of 504
those assets at that time, net of any related liabilities, from 505
sources enumerated in division (I)(3)(a) of this section. The 506
denominator of the qualifying ratio is the fair market value of 507
all the trust's assets at that time, net of any related 508
liabilities. 509

(ii) Each subsequent time the trust receives assets, a 510
revised qualifying ratio shall be computed. The numerator of the 511
revised qualifying ratio is the sum of (1) the fair market value 512
of the trust's assets immediately prior to the subsequent 513
transfer, net of any related liabilities, multiplied by the 514
qualifying ratio last computed without regard to the subsequent 515
transfer, and (2) the fair market value of the subsequently 516
transferred assets at the time transferred, net of any related 517
liabilities, from sources enumerated in division (I)(3)(a) of 518
this section. The denominator of the revised qualifying ratio is 519

the fair market value of all the trust's assets immediately 520
after the subsequent transfer, net of any related liabilities. 521

(iii) Whether a transfer to the trust is by or from any of 522
the sources enumerated in division (I) (3) (a) of this section 523
shall be ascertained without regard to the domicile of the 524
trust's beneficiaries. 525

(e) For the purposes of division (I) (3) (a) (i) of this 526
section: 527

(i) A trust is described in division (I) (3) (e) (i) of this 528
section if the trust is a testamentary trust and the testator of 529
that testamentary trust was domiciled in this state at the time 530
of the testator's death for purposes of the taxes levied under 531
Chapter 5731. of the Revised Code. 532

(ii) A trust is described in division (I) (3) (e) (ii) of 533
this section if the transfer is a qualifying transfer described 534
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 535
trust is an irrevocable inter vivos trust, and at least one of 536
the trust's qualifying beneficiaries is domiciled in this state 537
for purposes of this chapter during all or some portion of the 538
trust's current taxable year. 539

(f) For the purposes of division (I) (3) (e) (ii) of this 540
section, a "qualifying transfer" is a transfer of assets, net of 541
any related liabilities, directly or indirectly to a trust, if 542
the transfer is described in any of the following: 543

(i) The transfer is made to a trust, created by the 544
decedent before the decedent's death and while the decedent was 545
domiciled in this state for the purposes of this chapter, and, 546
prior to the death of the decedent, the trust became irrevocable 547
while the decedent was domiciled in this state for the purposes 548

of this chapter.	549
(ii) The transfer is made to a trust to which the decedent, prior to the decedent's death, had directly or indirectly transferred assets, net of any related liabilities, while the decedent was domiciled in this state for the purposes of this chapter, and prior to the death of the decedent the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.	550 551 552 553 554 555 556
(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the transferor and either the decedent or the estate of the decedent at any time prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code.	557 558 559 560 561 562 563
(iv) The transfer is made to a trust on account of a contractual relationship existing directly or indirectly between the transferor and another person who at the time of the decedent's death was domiciled in this state for purposes of this chapter.	564 565 566 567 568
(v) The transfer is made to a trust on account of the will of a testator who was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.	569 570 571 572
(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an individual who, for purposes of the taxes levied under Chapter 5731. of the Revised Code, was domiciled in this	573 574 575 576 577

state at the time of the individual's death.	578
(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state.	579 580
(J) "Nonresident" means an individual or estate that is not a resident. An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year.	581 582 583 584
(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.	585 586
(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required.	587 588 589 590
(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter.	591 592 593 594
(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code.	595 596 597 598
(O) "Dependents" means one of the following:	599
(1) For taxable years beginning on or after January 1, 2018, and before January 1, 2026, dependents as defined in the Internal Revenue Code;	600 601 602
(2) For all other taxable years, dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the	603 604 605

taxpayer would have been permitted to claim had the taxpayer 606
filed a federal income tax return. 607

(P) "Principal county of employment" means, in the case of 608
a nonresident, the county within the state in which a taxpayer 609
performs services for an employer or, if those services are 610
performed in more than one county, the county in which the major 611
portion of the services are performed. 612

(Q) As used in sections 5747.50 to 5747.55 of the Revised 613
Code: 614

(1) "Subdivision" means any county, municipal corporation, 615
park district, or township. 616

(2) "Essential local government purposes" includes all 617
functions that any subdivision is required by general law to 618
exercise, including like functions that are exercised under a 619
charter adopted pursuant to the Ohio Constitution. 620

(R) "Overpayment" means any amount already paid that 621
exceeds the figure determined to be the correct amount of the 622
tax. 623

(S) "Taxable income" or "Ohio taxable income" applies only 624
to estates and trusts, and means federal taxable income, as 625
defined and used in the Internal Revenue Code, adjusted as 626
follows: 627

(1) Add interest or dividends, net of ordinary, necessary, 628
and reasonable expenses not deducted in computing federal 629
taxable income, on obligations or securities of any state or of 630
any political subdivision or authority of any state, other than 631
this state and its subdivisions and authorities, but only to the 632
extent that such net amount is not otherwise includible in Ohio 633
taxable income and is described in either division (S) (1) (a) or 634

(b) of this section: 635

(a) The net amount is not attributable to the S portion of 636
an electing small business trust and has not been distributed to 637
beneficiaries for the taxable year; 638

(b) The net amount is attributable to the S portion of an 639
electing small business trust for the taxable year. 640

(2) Add interest or dividends, net of ordinary, necessary, 641
and reasonable expenses not deducted in computing federal 642
taxable income, on obligations of any authority, commission, 643
instrumentality, territory, or possession of the United States 644
to the extent that the interest or dividends are exempt from 645
federal income taxes but not from state income taxes, but only 646
to the extent that such net amount is not otherwise includible 647
in Ohio taxable income and is described in either division (S) 648
(1) (a) or (b) of this section; 649

(3) Add the amount of personal exemption allowed to the 650
estate pursuant to section 642(b) of the Internal Revenue Code; 651

(4) Deduct interest or dividends, net of related expenses 652
deducted in computing federal taxable income, on obligations of 653
the United States and its territories and possessions or of any 654
authority, commission, or instrumentality of the United States 655
to the extent that the interest or dividends are exempt from 656
state taxes under the laws of the United States, but only to the 657
extent that such amount is included in federal taxable income 658
and is described in either division (S) (1) (a) or (b) of this 659
section; 660

(5) Deduct the amount of wages and salaries, if any, not 661
otherwise allowable as a deduction but that would have been 662
allowable as a deduction in computing federal taxable income for 663

the taxable year, had the targeted jobs credit allowed under 664
sections 38, 51, and 52 of the Internal Revenue Code not been in 665
effect, but only to the extent such amount relates either to 666
income included in federal taxable income for the taxable year 667
or to income of the S portion of an electing small business 668
trust for the taxable year; 669

(6) Deduct any interest or interest equivalent, net of 670
related expenses deducted in computing federal taxable income, 671
on public obligations and purchase obligations, but only to the 672
extent that such net amount relates either to income included in 673
federal taxable income for the taxable year or to income of the 674
S portion of an electing small business trust for the taxable 675
year; 676

(7) Add any loss or deduct any gain resulting from sale, 677
exchange, or other disposition of public obligations to the 678
extent that such loss has been deducted or such gain has been 679
included in computing either federal taxable income or income of 680
the S portion of an electing small business trust for the 681
taxable year; 682

(8) Except in the case of the final return of an estate, 683
add any amount deducted by the taxpayer on both its Ohio estate 684
tax return pursuant to section 5731.14 of the Revised Code, and 685
on its federal income tax return in determining federal taxable 686
income; 687

(9) (a) Deduct any amount included in federal taxable 688
income solely because the amount represents a reimbursement or 689
refund of expenses that in a previous year the decedent had 690
deducted as an itemized deduction pursuant to section 63 of the 691
Internal Revenue Code and applicable treasury regulations. The 692
deduction otherwise allowed under division (S) (9) (a) of this 693

section shall be reduced to the extent the reimbursement is 694
attributable to an amount the taxpayer or decedent deducted 695
under this section in any taxable year. 696

(b) Add any amount not otherwise included in Ohio taxable 697
income for any taxable year to the extent that the amount is 698
attributable to the recovery during the taxable year of any 699
amount deducted or excluded in computing federal or Ohio taxable 700
income in any taxable year, but only to the extent such amount 701
has not been distributed to beneficiaries for the taxable year. 702

(10) Deduct any portion of the deduction described in 703
section 1341(a)(2) of the Internal Revenue Code, for repaying 704
previously reported income received under a claim of right, that 705
meets both of the following requirements: 706

(a) It is allowable for repayment of an item that was 707
included in the taxpayer's taxable income or the decedent's 708
adjusted gross income for a prior taxable year and did not 709
qualify for a credit under division (A) or (B) of section 710
5747.05 of the Revised Code for that year. 711

(b) It does not otherwise reduce the taxpayer's taxable 712
income or the decedent's adjusted gross income for the current 713
or any other taxable year. 714

(11) Add any amount claimed as a credit under section 715
5747.059 of the Revised Code to the extent that the amount 716
satisfies either of the following: 717

(a) The amount was deducted or excluded from the 718
computation of the taxpayer's federal taxable income as required 719
to be reported for the taxpayer's taxable year under the 720
Internal Revenue Code; 721

(b) The amount resulted in a reduction in the taxpayer's 722

federal taxable income as required to be reported for any of the 723
taxpayer's taxable years under the Internal Revenue Code. 724

(12) Deduct any amount, net of related expenses deducted 725
in computing federal taxable income, that a trust is required to 726
report as farm income on its federal income tax return, but only 727
if the assets of the trust include at least ten acres of land 728
satisfying the definition of "land devoted exclusively to 729
agricultural use" under section 5713.30 of the Revised Code, 730
regardless of whether the land is valued for tax purposes as 731
such land under sections 5713.30 to 5713.38 of the Revised Code. 732
If the trust is a pass-through entity investor, section 5747.231 733
of the Revised Code applies in ascertaining if the trust is 734
eligible to claim the deduction provided by division (S)(12) of 735
this section in connection with the pass-through entity's farm 736
income. 737

Except for farm income attributable to the S portion of an 738
electing small business trust, the deduction provided by 739
division (S)(12) of this section is allowed only to the extent 740
that the trust has not distributed such farm income. 741

(13) Add the net amount of income described in section 742
641(c) of the Internal Revenue Code to the extent that amount is 743
not included in federal taxable income. 744

(14) Add or deduct the amount the taxpayer would be 745
required to add or deduct under division (A)(17) or (18) of this 746
section if the taxpayer's Ohio taxable income were computed in 747
the same manner as an individual's Ohio adjusted gross income is 748
computed under this section. 749

(T) "School district income" and "school district income 750
tax" have the same meanings as in section 5748.01 of the Revised 751

Code.	752
(U) As used in divisions (A) (7), (A) (8), (S) (6), and (S) (7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.	753 754 755 756
(V) "Limited liability company" means any limited liability company formed under Chapter 1705. or 1706. of the Revised Code or under the laws of any other state.	757 758 759
(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity.	760 761 762 763
(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.	764 765
(Y) "Month" means a calendar month.	766
(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year.	767 768 769
(AA) (1) "Modified business income" means the business income included in a trust's Ohio taxable income after such taxable income is first reduced by the qualifying trust amount, if any.	770 771 772 773
(2) "Qualifying trust amount" of a trust means capital gains and losses from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, a qualifying investee to the extent included in the trust's Ohio taxable income, but only if the following requirements are satisfied:	774 775 776 777 778 779

(a) The book value of the qualifying investee's physical 780
assets in this state and everywhere, as of the last day of the 781
qualifying investee's fiscal or calendar year ending immediately 782
prior to the date on which the trust recognizes the gain or 783
loss, is available to the trust. 784

(b) The requirements of section 5747.011 of the Revised 785
Code are satisfied for the trust's taxable year in which the 786
trust recognizes the gain or loss. 787

Any gain or loss that is not a qualifying trust amount is 788
modified business income, qualifying investment income, or 789
modified nonbusiness income, as the case may be. 790

(3) "Modified nonbusiness income" means a trust's Ohio 791
taxable income other than modified business income, other than 792
the qualifying trust amount, and other than qualifying 793
investment income, as defined in section 5747.012 of the Revised 794
Code, to the extent such qualifying investment income is not 795
otherwise part of modified business income. 796

(4) "Modified Ohio taxable income" applies only to trusts, 797
and means the sum of the amounts described in divisions (AA) (4) 798
(a) to (c) of this section: 799

(a) The fraction, calculated under section 5747.013, and 800
applying section 5747.231 of the Revised Code, multiplied by the 801
sum of the following amounts: 802

(i) The trust's modified business income; 803

(ii) The trust's qualifying investment income, as defined 804
in section 5747.012 of the Revised Code, but only to the extent 805
the qualifying investment income does not otherwise constitute 806
modified business income and does not otherwise constitute a 807
qualifying trust amount. 808

(b) The qualifying trust amount multiplied by a fraction, 809
the numerator of which is the sum of the book value of the 810
qualifying investee's physical assets in this state on the last 811
day of the qualifying investee's fiscal or calendar year ending 812
immediately prior to the day on which the trust recognizes the 813
qualifying trust amount, and the denominator of which is the sum 814
of the book value of the qualifying investee's total physical 815
assets everywhere on the last day of the qualifying investee's 816
fiscal or calendar year ending immediately prior to the day on 817
which the trust recognizes the qualifying trust amount. If, for 818
a taxable year, the trust recognizes a qualifying trust amount 819
with respect to more than one qualifying investee, the amount 820
described in division (AA) (4) (b) of this section shall equal the 821
sum of the products so computed for each such qualifying 822
investee. 823

(c) (i) With respect to a trust or portion of a trust that 824
is a resident as ascertained in accordance with division (I) (3) 825
(d) of this section, its modified nonbusiness income. 826

(ii) With respect to a trust or portion of a trust that is 827
not a resident as ascertained in accordance with division (I) (3) 828
(d) of this section, the amount of its modified nonbusiness 829
income satisfying the descriptions in divisions (B) (2) to (5) of 830
section 5747.20 of the Revised Code, except as otherwise 831
provided in division (AA) (4) (c) (ii) of this section. With 832
respect to a trust or portion of a trust that is not a resident 833
as ascertained in accordance with division (I) (3) (d) of this 834
section, the trust's portion of modified nonbusiness income 835
recognized from the sale, exchange, or other disposition of a 836
debt interest in or equity interest in a section 5747.212 837
entity, as defined in section 5747.212 of the Revised Code, 838
without regard to division (A) of that section, shall not be 839

allocated to this state in accordance with section 5747.20 of 840
the Revised Code but shall be apportioned to this state in 841
accordance with division (B) of section 5747.212 of the Revised 842
Code without regard to division (A) of that section. 843

If the allocation and apportionment of a trust's income 844
under divisions (AA) (4) (a) and (c) of this section do not fairly 845
represent the modified Ohio taxable income of the trust in this 846
state, the alternative methods described in division (C) of 847
section 5747.21 of the Revised Code may be applied in the manner 848
and to the same extent provided in that section. 849

(5) (a) Except as set forth in division (AA) (5) (b) of this 850
section, "qualifying investee" means a person in which a trust 851
has an equity or ownership interest, or a person or unit of 852
government the debt obligations of either of which are owned by 853
a trust. For the purposes of division (AA) (2) (a) of this section 854
and for the purpose of computing the fraction described in 855
division (AA) (4) (b) of this section, all of the following apply: 856

(i) If the qualifying investee is a member of a qualifying 857
controlled group on the last day of the qualifying investee's 858
fiscal or calendar year ending immediately prior to the date on 859
which the trust recognizes the gain or loss, then "qualifying 860
investee" includes all persons in the qualifying controlled 861
group on such last day. 862

(ii) If the qualifying investee, or if the qualifying 863
investee and any members of the qualifying controlled group of 864
which the qualifying investee is a member on the last day of the 865
qualifying investee's fiscal or calendar year ending immediately 866
prior to the date on which the trust recognizes the gain or 867
loss, separately or cumulatively own, directly or indirectly, on 868
the last day of the qualifying investee's fiscal or calendar 869

year ending immediately prior to the date on which the trust 870
recognizes the qualifying trust amount, more than fifty per cent 871
of the equity of a pass-through entity, then the qualifying 872
investee and the other members are deemed to own the 873
proportionate share of the pass-through entity's physical assets 874
which the pass-through entity directly or indirectly owns on the 875
last day of the pass-through entity's calendar or fiscal year 876
ending within or with the last day of the qualifying investee's 877
fiscal or calendar year ending immediately prior to the date on 878
which the trust recognizes the qualifying trust amount. 879

(iii) For the purposes of division (AA) (5) (a) (iii) of this 880
section, "upper level pass-through entity" means a pass-through 881
entity directly or indirectly owning any equity of another pass- 882
through entity, and "lower level pass-through entity" means that 883
other pass-through entity. 884

An upper level pass-through entity, whether or not it is 885
also a qualifying investee, is deemed to own, on the last day of 886
the upper level pass-through entity's calendar or fiscal year, 887
the proportionate share of the lower level pass-through entity's 888
physical assets that the lower level pass-through entity 889
directly or indirectly owns on the last day of the lower level 890
pass-through entity's calendar or fiscal year ending within or 891
with the last day of the upper level pass-through entity's 892
fiscal or calendar year. If the upper level pass-through entity 893
directly and indirectly owns less than fifty per cent of the 894
equity of the lower level pass-through entity on each day of the 895
upper level pass-through entity's calendar or fiscal year in 896
which or with which ends the calendar or fiscal year of the 897
lower level pass-through entity and if, based upon clear and 898
convincing evidence, complete information about the location and 899
cost of the physical assets of the lower pass-through entity is 900

not available to the upper level pass-through entity, then 901
solely for purposes of ascertaining if a gain or loss 902
constitutes a qualifying trust amount, the upper level pass- 903
through entity shall be deemed as owning no equity of the lower 904
level pass-through entity for each day during the upper level 905
pass-through entity's calendar or fiscal year in which or with 906
which ends the lower level pass-through entity's calendar or 907
fiscal year. Nothing in division (AA) (5) (a) (iii) of this section 908
shall be construed to provide for any deduction or exclusion in 909
computing any trust's Ohio taxable income. 910

(b) With respect to a trust that is not a resident for the 911
taxable year and with respect to a part of a trust that is not a 912
resident for the taxable year, "qualifying investee" for that 913
taxable year does not include a C corporation if both of the 914
following apply: 915

(i) During the taxable year the trust or part of the trust 916
recognizes a gain or loss from the sale, exchange, or other 917
disposition of equity or ownership interests in, or debt 918
obligations of, the C corporation. 919

(ii) Such gain or loss constitutes nonbusiness income. 920

(6) "Available" means information is such that a person is 921
able to learn of the information by the due date plus 922
extensions, if any, for filing the return for the taxable year 923
in which the trust recognizes the gain or loss. 924

(BB) "Qualifying controlled group" has the same meaning as 925
in section 5733.04 of the Revised Code. 926

(CC) "Related member" has the same meaning as in section 927
5733.042 of the Revised Code. 928

(DD) (1) For the purposes of division (DD) of this section: 929

(a) "Qualifying person" means any person other than a qualifying corporation.	930 931
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	932 933 934
(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;	935 936 937 938
(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.	939 940 941 942 943
(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.	944 945 946
(EE) For purposes of this chapter and Chapter 5751. of the Revised Code:	947 948
(1) "Trust" does not include a qualified pre-income tax trust.	949 950
(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election as described in division (EE) (3) of this section.	951 952 953
(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or	954 955 956 957

controls, directly, indirectly, or constructively through 958
related interests, five per cent or more of the ownership or 959
equity interests. The trustee shall notify the tax commissioner 960
in writing of the election on or before April 15, 2006. The 961
election, if timely made, shall be effective on and after 962
January 1, 2006, and shall apply for all tax periods and tax 963
years until revoked by the trustee of the trust. 964

(4) A "pre-income tax trust" is a trust that satisfies all 965
of the following requirements: 966

(a) The document or instrument creating the trust was 967
executed by the grantor before January 1, 1972; 968

(b) The trust became irrevocable upon the creation of the 969
trust; and 970

(c) The grantor was domiciled in this state at the time 971
the trust was created. 972

(FF) "Uniformed services" has the same meaning as in 10 973
U.S.C. 101. 974

(GG) "Taxable business income" means the amount by which 975
an individual's business income that is included in federal 976
adjusted gross income exceeds the amount of business income the 977
individual is authorized to deduct under division ~~(A) (31)~~ (A) 978
(28) of this section for the taxable year. 979

(HH) "Employer" does not include a franchisor with respect 980
to the franchisor's relationship with a franchisee or an 981
employee of a franchisee, unless the franchisor agrees to assume 982
that role in writing or a court of competent jurisdiction 983
determines that the franchisor exercises a type or degree of 984
control over the franchisee or the franchisee's employees that 985
is not customarily exercised by a franchisor for the purpose of 986

protecting the franchisor's trademark, brand, or both. For 987
purposes of this division, "franchisor" and "franchisee" have 988
the same meanings as in 16 C.F.R. 436.1. 989

(II) "Modified adjusted gross income" means Ohio adjusted 990
gross income plus any amount deducted under division (A) (28) of 991
this section for the taxable year. 992

(JJ) "Qualifying Ohio educator" means an individual who, 993
for a taxable year, qualifies as an eligible educator, as that 994
term is defined in section 62 of the Internal Revenue Code, and 995
who holds a certificate, license, or permit described in Chapter 996
3319. or section 3301.071 of the Revised Code. 997

Sec. 5747.10. (A) As used in this section: 998

(1) "Audited partnership" means a partnership subject to 999
an examination by the internal revenue service pursuant to 1000
subchapter C, chapter 63, subtitle F of the Internal Revenue 1001
Code resulting in a federal adjustment. 1002

(2) (a) "Direct investor" means a partner or other investor 1003
that holds a direct interest in a pass-through entity. 1004

(b) "Indirect investor" means a partner or other investor 1005
that holds an interest in a pass-through entity that itself 1006
holds an interest, directly or through another indirect partner 1007
or other investor, in a pass-through entity. 1008

(3) "Exempt partner" means a partner that is neither a 1009
pass-through entity nor a person subject to the tax imposed by 1010
section 5747.02 of the Revised Code. 1011

(4) "Federal adjustment" means a change to an item or 1012
amount required to be determined under the Internal Revenue Code 1013
that directly or indirectly affects a taxpayer's aggregate tax 1014

liability under section 5747.02 or Chapter 5748. of the Revised 1015
Code and that results from an action or examination by the 1016
internal revenue service, or from the filing of an amended 1017
federal tax return, a claim for a federal tax refund, or an 1018
administrative adjustment request filed by a partnership under 1019
section 6227 of the Internal Revenue Code. 1020

(5) "Federal adjustments return" means the form or other 1021
document prescribed by the tax commissioner for use by a 1022
taxpayer in reporting final federal adjustments. 1023

(6) "State partnership representative" means either of the 1024
following: 1025

(a) The person who served as the partnership's 1026
representative for federal income tax purposes, pursuant to 1027
section 6223(a) of the Internal Revenue Code, during the 1028
corresponding federal partnership audit; 1029

(b) The person designated, on a form prescribed by the tax 1030
commissioner, to serve as the partnership's representative 1031
during the state partnership audit. The commissioner may 1032
establish reasonable qualifications and procedures for a person 1033
to be designated as a state partnership representative under 1034
this division. 1035

(7) A federal adjustment is "final" or "agreed to or 1036
finally determined for federal income tax purposes" on any of 1037
the following: 1038

(a) The day after which the period for appeal of a federal 1039
assessment has expired; 1040

(b) The date on a refund check issued by the internal 1041
revenue service; or 1042

(c) For agreements required to be signed by the internal 1043
revenue service and the taxpayer or audited partnership, the 1044
date on which the last party signed the agreement. 1045

(B) (1) If any of the facts, figures, computations, or 1046
attachments required in a taxpayer's annual return to determine 1047
the tax charged by this chapter or Chapter 5748. of the Revised 1048
Code must be altered as the result of a final federal 1049
adjustment, and the federal adjustment is not required to be 1050
reported under division (C) of this section, the taxpayer shall 1051
file an amended return with the tax commissioner in such form as 1052
the commissioner requires. The amended return shall be filed not 1053
later than ninety days after the federal adjustment has been 1054
agreed to or finally determined for federal income tax purposes. 1055

(2) "One hundred eighty" shall be substituted for "ninety" 1056
in divisions (B) (1) and (E) (1) of this section if, for any 1057
taxable year, the final federal adjustment results from taxes 1058
paid by the taxpayer on an amount described in division ~~(A) (34)~~ 1059
(A) (32) of section 5747.01 of the Revised Code. 1060

(C) Except for adjustments required to be reported for 1061
federal purposes pursuant to section 6225(a) (2) of the Internal 1062
Revenue Code and adjustments that are taken into account on a 1063
federal amended return or similar report filed pursuant to 1064
section 6225(c) (2) of the Internal Revenue Code, partnerships 1065
and partners shall report final federal adjustments and make 1066
payments as required under division (C) of this section. 1067

(1) With respect to an action required or permitted to be 1068
taken by a partnership under this section, and any petition for 1069
reassessment or appeal to the board of tax appeals or any court 1070
with respect to such an action, the state partnership 1071
representative shall have the sole authority to act on behalf of 1072

the audited partnership, and the partnership's direct and 1073
indirect investors shall be bound by those actions. 1074

(2) Unless an audited partnership makes the election under 1075
division (C) (3) of this section: 1076

(a) The audited partnership, through its state partnership 1077
representative, shall do all of the following within ninety days 1078
after the federal adjustment is final: 1079

(i) File a federal adjustments return with the tax 1080
commissioner, including a copy of the notifications provided 1081
under division (C) (2) (a) (ii) of this section; 1082

(ii) Notify each of its direct investors, on a form 1083
prescribed by the commissioner, of the investor's distributive 1084
share of the final federal adjustments; 1085

(iii) File an amended tax return on behalf of its 1086
nonresident direct investors and pay any additional tax that 1087
would have been due under sections 5733.41 and 5747.41, or 1088
division (D) of section 5747.08, of the Revised Code with 1089
respect to those direct investors had the final federal 1090
adjustments been reported properly on the original filing. 1091

(b) Each direct investor that is subject to the tax 1092
imposed by section 5747.02 of the Revised Code shall file an 1093
original or amended tax return to include the investor's 1094
distributive share of the adjustments reported to the direct 1095
investor under division (C) (2) (a) of this section, and pay any 1096
additional tax due, within ninety days after the audited 1097
partnership files its federal adjustments return with the 1098
commissioner. 1099

(c) (i) Each direct and indirect investor of an audited 1100
partnership that is a pass-through entity and all investors in 1101

such a pass-through entity that are subject to the filing and 1102
payment requirements of Chapters 5733. and 5747. of the Revised 1103
Code are subject to the reporting and payment requirements of 1104
division (C) (2) or, upon a timely election, division (C) (3) of 1105
this section. 1106

(ii) Such direct and indirect investors shall make the 1107
required returns and payments within ninety days after the 1108
deadline for filing and furnishing statements under section 1109
6226(b) (4) of the Internal Revenue Code and applicable treasury 1110
regulations. 1111

(3) If an audited partnership makes the election under 1112
this division, the audited partnership, through its state 1113
partnership representative, shall do all of the following within 1114
ninety days after all federal adjustments are final: 1115

(a) File a federal adjustments return with the tax 1116
commissioner indicating the partnership has made the election 1117
under division (C) (3) of this section; 1118

(b) Pay the amount of combined additional tax due under 1119
division (D) (2) of this section, calculated by multiplying the 1120
highest rate of tax set forth in section 5747.02 of the Revised 1121
Code by the sum of the following: 1122

(i) The distributive shares of the final federal 1123
adjustments that are allocable or apportionable to this state of 1124
each investor who is a nonresident taxpayer or pass-through 1125
entity; 1126

(ii) The distributive share of the final federal 1127
adjustments for each investor who is a resident taxpayer. 1128

(c) Notify each of its direct investors, on a form 1129
prescribed by the commissioner, of the investor's distributive 1130

share of the final federal adjustments and the amount paid on 1131
their behalf pursuant to division (C) (3) (b) of this section. 1132

(4) (a) A direct investor of an audited partnership is not 1133
required to file an amended return or pay tax otherwise due 1134
under section 5747.02 of the Revised Code if the audited 1135
partnership properly reports and pays the tax under division (C) 1136
(3) of this section. 1137

(b) (i) Nothing in division (C) of this section precludes a 1138
direct or indirect investor in the audited partnership from 1139
filing a return to report the investor's share of the final 1140
federal adjustments. Such an investor who files a return and 1141
reports the income related to the final federal adjustments is 1142
entitled to a refundable credit for taxes paid by the audited 1143
partnership under division (C) (3) (b) of this section. The credit 1144
shall be computed and claimed in the same manner as the credit 1145
allowed under division (I) of section 5747.08 of the Revised 1146
Code. 1147

(ii) Notwithstanding division (C) (4) (b) (i) of this 1148
section, an exempt partner, whether a direct or indirect 1149
investor, may file an application for refund of its 1150
proportionate share of the amounts erroneously paid by the 1151
audited partnership pursuant to division (C) (3) (b) of this 1152
section on the exempt partner's behalf. 1153

(5) Upon request by an audited partnership, the tax 1154
commissioner may agree, in writing, to allow an alternative 1155
method of reporting and payment than required by ~~divisions~~ 1156
division (C) (2) or (3) of this section. The request must be 1157
submitted to the commissioner in writing before the applicable 1158
deadline for filing a return under division (C) (2) (a) or (3) of 1159
this section. The commissioner's decision on whether to enter 1160

into an agreement under this division is not subject to further 1161
administrative review or appeal. 1162

(6) Nothing in division (C) of this section precludes 1163
either of the following: 1164

(a) A resident taxpayer from filing a return to claim the 1165
credit under division (B) of section 5747.05 or division (D) (2) 1166
of section 5747.02 of the Revised Code based upon any amounts 1167
paid by the audited partnership on such investor's behalf to 1168
another state. 1169

(b) The tax commissioner from issuing an assessment under 1170
this chapter against any direct or indirect investor for taxes 1171
due from the investor if an audited partnership, or direct and 1172
indirect investor of an audited partnership that is a pass- 1173
through entity, fails to timely file any return or remit any 1174
payment required by this section or underreports income or 1175
underpays tax on behalf of an indirect investor who is a 1176
resident taxpayer. 1177

(D) In the case of an underpayment, and unless otherwise 1178
agreed to in writing by the tax commissioner: 1179

(1) The taxpayer's amended return shall be accompanied by 1180
payment of any combined additional tax due together with 1181
interest thereon. An amended return required by this section is 1182
a return subject to assessment under section 5747.13 of the 1183
Revised Code for the purpose of assessing any additional tax due 1184
under this section, together with any applicable penalty and 1185
interest. It shall not reopen those facts, figures, 1186
computations, or attachments from a previously filed return no 1187
longer subject to assessment that are not affected, either 1188
directly or indirectly, by the final federal adjustment to the 1189

taxpayer's federal income tax return. 1190

(2) The audited partnership's federal adjustments return 1191
shall be accompanied by payment of any combined additional tax 1192
due together with interest thereon. The federal adjustments 1193
return required by this section is a return subject to 1194
assessment under section 5747.13 of the Revised Code for the 1195
purpose of assessing any additional tax due under this section, 1196
together with any applicable penalty and interest. It shall not 1197
reopen those facts, figures, computations, or attachments from a 1198
previously filed return no longer subject to assessment that are 1199
not affected, either directly or indirectly, by the final 1200
federal adjustment. 1201

(3) The tax commissioner may accept estimated payments of 1202
the tax arising from pending federal adjustments before the date 1203
for filing a federal adjustments return. The commissioner may 1204
adopt rules for the payment of such estimated taxes. 1205

(E) In the case of an overpayment, and unless otherwise 1206
agreed to in writing by the tax commissioner: 1207

(1) A taxpayer may file an application for refund under 1208
this division within the ninety-day period prescribed for filing 1209
the amended return even if it is filed beyond the period 1210
prescribed in section 5747.11 of the Revised Code if it 1211
otherwise conforms to the requirements of such section. An 1212
application filed under this division shall claim refund of 1213
overpayments resulting from alterations to only those facts, 1214
figures, computations, or attachments required in the taxpayer's 1215
annual return that are affected, either directly or indirectly, 1216
by the final federal adjustment to the taxpayer's federal income 1217
tax return unless it is also filed within the time prescribed in 1218
section 5747.11 of the Revised Code. It shall not reopen those 1219

facts, figures, computations, or attachments that are not 1220
affected, either directly or indirectly, by the adjustment to 1221
the taxpayer's federal income tax return. 1222

(2) (a) Except as otherwise provided in division (E) (2) (b) 1223
of this section, an audited partnership may file an application 1224
for a refund under this division within the ninety-day period 1225
prescribed for filing the federal adjustments return, even if it 1226
is filed beyond the period prescribed by section 5747.11 of the 1227
Revised Code, if it otherwise conforms to the requirements of 1228
that section. An application filed under this division may claim 1229
a refund of overpayments resulting only from final federal 1230
adjustments unless it is also filed within the time prescribed 1231
by section 5747.11 of the Revised Code. It shall not reopen 1232
those facts, figures, computations, or attachments that are not 1233
affected, either directly or indirectly, by the federal 1234
adjustment. 1235

(b) An audited partnership may not file an application for 1236
refund under division (E) of this section based on final federal 1237
adjustments described in section 6225(a) (2) of the Internal 1238
Revenue Code. 1239

(3) Any refund granted to a pass-through entity filing an 1240
application for refund under division (E) of this section shall 1241
be reduced by amounts previously claimed as a credit under 1242
section 5747.059 or division (I) of section 5747.08 of the 1243
Revised Code by the pass-through entity's direct or indirect 1244
investors. 1245

(F) Excluding the deadline in division (C) (2) (c) (ii) of 1246
this section, an audited partnership, or a direct or indirect 1247
investor of an audited partnership that is a pass-through 1248
entity, may automatically extend the deadline for reporting, 1249

payments, and refunds under this section by sixty days if the 1250
entity has ten thousand or more direct investors and notifies 1251
the commissioner of such extension, in writing, before the 1252
unextended deadline. 1253

Section 2. That existing sections 5747.01 and 5747.10 of 1254
the Revised Code are hereby repealed. 1255

Section 3. It is the intent of the General Assembly that 1256
any taxpayer with a federal net operating loss in a taxable year 1257
ending in 2020 or 2021 and subject to division (A) (17) (a) (v) of 1258
section 5747.01 of the Revised Code, as amended by this act, 1259
shall add back, for that taxable year, depreciation expense 1260
allowed by subsection (k) of section 168 of the Internal Revenue 1261
Code and qualifying section 179 depreciation expense, as defined 1262
in that division, pursuant to divisions (A) (17) (a) (i) to (iv) of 1263
that section, as applicable. 1264

Section 4. Pursuant to division (G) of section 5703.95 of 1265
the Revised Code, which states that any bill introduced in the 1266
House of Representatives or the Senate that proposes to enact or 1267
modify one or more tax expenditures should include a statement 1268
explaining the objectives of the tax expenditure or its 1269
modification and the sponsor's intent in proposing the tax 1270
expenditure or its modification: 1271

The objective of this act is to allow Ohio businesses with 1272
net operating losses to retain more funds, and to mitigate the 1273
adverse financial impacts of the COVID-19 pandemic and 1274
subsequent federal legislation such as the CARES Act. The act is 1275
revenue neutral to the state of Ohio over a six year period. 1276

Section 5. Section 5747.01 of the Revised Code is 1277
presented in this act as a composite of the section as amended 1278

by H.B. 18, H.B. 197, S.B. 26, and S.B. 276 all of the 133rd 1279
General Assembly. The General Assembly, applying the principle 1280
stated in division (B) of section 1.52 of the Revised Code that 1281
amendments are to be harmonized if reasonably capable of 1282
simultaneous operation, finds that the composite is the 1283
resulting version of the section in effect prior to the 1284
effective date of the section as presented in this act. 1285