



Ohio Revised Code

Section 5747.012 Tax treatment of qualifying investment income from pass-through entity.

Effective: March 30, 2006

Legislation: House Bill 530 - 126th General Assembly

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

(A) As used in this section:

(1)(a) Except as set forth in division (A)(1)(b) of this section, "qualifying investment income" means the portion of a qualifying investment 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 income; interest income; net capital gains from the sale or exchange or other disposition of intangible property; and all types and classifications of income attributable to distributive shares of income from other pass-through entities.

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

(ii) Notwithstanding division (A)(1)(a) of this section, "qualifying investment income" does not include any part of the qualifying investment pass-through entity's net income attributable to the portion of a distributive share of income directly or indirectly from another pass-through entity to the extent such portion constitutes the other pass-through entity's net capital gain which, after the application of section 5747.231 of the Revised Code with respect to a trust, would also constitute a qualifying trust amount.

(2) "Qualifying investment pass-through entity" means an investment pass-through entity, as defined in section 5733.401 of the Revised Code, subject to the following qualifications:



(a) "Forty per cent" shall be substituted for "ninety per cent" wherever "ninety per cent" appears in section 5733.401 of the Revised Code.

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

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

(d) During the investment pass-through entity's calendar or fiscal year ending within or with the last day of the qualifying section 5747.012 trust's taxable year, the qualifying section 5747.012 trust or related persons of or to the qualifying section 5747.012 trust must, on each day of the investment pass-through entity's year, own directly, or own through equity investments in other pass-through entities, more than sixty per cent of the equity of the investment pass-through entity.

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

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

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

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



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

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

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