



## Ohio Revised Code

### Section 5747.79 Deduction for capital gains from sale of business.

Effective: September 30, 2021

Legislation: House Bill 110 - 134th General Assembly

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(A) As used in this section and division (A)(34) of section 5747.01 of the Revised Code:

(1) "Qualifying capital gain" means a capital gain from the sale of an interest in an entity reported for the taxable year to the internal revenue service pursuant to the Internal Revenue Code, to the extent that such capital gain is not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, provided that all of the following apply:

(a) The taxpayer that sold the interest either:

(i) Materially participated in the activities of the entity for the five years immediately preceding the time of sale. For the purposes of this division, a taxpayer materially participates in the activities of the entity if the taxpayer meets the requirements of divisions (a)(1), (2), (3), (4), or (7) of 26 C.F.R. 1.469-5T.

(ii) Directly or indirectly made a venture capital investment of at least one million dollars in the entity. As used in this division, "venture capital investment" has the same meaning as in division (d)(3) of 29 C.F.R. 2510.3-101.

(b) The entity is incorporated, registered, or organized in this state during the five years immediately preceding the time of sale.

(c) The entity is headquartered in this state during the five years immediately preceding the time of sale.

(2) A "sale of an interest in an entity" includes the sale, exchange, or other disposition of stock, a membership interest, or any other equity or ownership interest, owned directly or indirectly by the taxpayer, in an entity that conducts a trade or business in this state.



(3) "Qualifying payroll" means the amount of compensation used to determine the withholding obligations in division (A) of section 5747.06 of the Revised Code and paid over one of the following periods by the entity whose sale generated the qualifying capital gain:

(a) The five calendar years immediately preceding the time of sale for a taxpayer described in division (A)(1)(a)(i) of this section;

(b) The investment period, not to exceed the five calendar years, immediately preceding the time of sale for a taxpayer described in division (A)(1)(a)(ii) of this section.

"Qualifying payroll" does not include any amounts paid to the taxpayer, or the taxpayer's spouse, parents, grandparents, children, or grandchildren.

(4) "Deductible payroll" means the qualifying payroll of the entity in which a taxpayer sold an ownership interest multiplied by the percentage of the interest in the entity the taxpayer sold.

(B) In computing Ohio adjusted gross income for taxable years beginning in or after 2026, a deduction from federal adjusted gross income is allowed to a taxpayer that realizes a qualifying capital gain during the taxable year. The deduction shall equal the lesser of the taxpayer's qualifying capital gain or the deductible payroll.

(C) If a taxpayer has multiple capital gains from the sale of interests in different entities during the taxable year, the following apply:

(1) Each capital gain must meet the requirements of divisions (A)(1)(a) to (c) of this section to be classified as a qualifying capital gain.

(2) The deduction shall equal the lesser of the taxpayer's qualifying capital gain from the sale of each entity or the deductible payroll attributable to that entity. The deduction amounts related to each entity shall then be aggregated to determine the total deduction allowed.

(D) On request of the tax commissioner, the taxpayer shall provide any information that, in the commissioner's opinion, is necessary to establish the amount deducted under division (A)(34) of



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section 5747.01 of the Revised Code.