

As Passed by the Senate

128th General Assembly
Regular Session
2009-2010

S. B. No. 9

Senator Patton

Cosponsors: Senators Gillmor, Grendell, Gibbs, Wagoner, Coughlin,
Schuring, Carey, Hughes

—

A BILL

To amend section 5747.98 and to enact sections 122.85 1
and 5747.66 of the Revised Code to authorize 2
income tax credits for investments in motion 3
pictures produced in Ohio. 4

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

Section 1. That section 5747.98 be amended and sections 5
122.85 and 5747.66 of the Revised Code be enacted to read as 6
follows: 7

Sec. 122.85. (A) As used in this section and in section 8
5747.66 of the Revised Code: 9

(1) "Allocated share" means the share of a qualifying 10
investor's credit amount allocated as described in division (E) of 11
this section. 12

(2) "Base investment" means the amount of money invested by a 13
qualifying investor in a tax credit-eligible production multiplied 14
by the percentage that anticipated eligible production 15
expenditures are of the total production budget that is expended, 16
as determined under division (H) of this section. If the amount 17
invested is three hundred thousand dollars or less, the base 18

investment equals zero. 19

(3) "Certificate owner" means a qualifying investor to which 20
a tax credit certificate is issued or any other person to which a 21
credit amount is allocated or transferred under this section. 22

(4) "Company" means a corporation, partnership, limited 23
liability company, or other form of business association. 24

(5) "Eligible production expenditures" means expenditures 25
made in or after 2009 for goods or services consumed in this 26
state, by a motion picture production company directly for the 27
production of a tax credit-eligible production. "Eligible 28
production expenditures" includes, but is not limited to, 29
expenditures for resident and nonresident cast and crew wages and 30
fringe benefits, accommodations, travel, costs of set construction 31
and operations, editing and related services, photography, sound 32
synchronization, lighting, wardrobe, makeup and accessories, film 33
processing, transfer, sound mixing, special and visual effects, 34
music, location fees, the purchase or rental of facilities and 35
equipment, and out-of-state goods purchased or leased and 36
ultimately consumed in full or on a pro rata basis in this state. 37

(6) "Qualifying investor" means an individual or a 39
partnership or other pass-through entity, as defined in section 40
5733.04 of the Revised Code, that invests money in a tax 41
credit-eligible production. 42

(7) "Motion picture" means entertainment content created in 43
whole or in part within this state, including feature-length 44
films; documentaries; long-form, specials, miniseries, series, and 45
interstitial television programming; sound recordings, videos, and 46
music videos; interactive television; interactive games; 47
videogames; commercials; infomercials; any format of digital 48
media, including an interactive web site, created for distribution 49

or exhibition to the general public; and any trailer, pilot, video 50
teaser, or demo created primarily to stimulate the sale, 51
marketing, promotion, or exploitation of future investment in 52
either a product or a motion picture by any means and media in any 53
digital media format, film or videotape, provided the motion 54
picture qualifies as a motion picture. "Motion picture" does not 55
include any television program created primarily as news, weather, 56
or financial market reports, a production featuring current events 57
or sporting events, an awards show or other gala event, a 58
production whose sole purpose is fundraising, a long-form 59
production that primarily markets a product or service, a 60
production used for corporate training or in-house corporate 61
advertising or other similar productions, any production for 62
purposes of political advocacy, or any production for which 63
records are required to be maintained under 18 U.S.C. 2257 with 64
respect to sexually explicit content. 65

(8) "Motion picture production company" means a company 66
engaged in the business of producing motion pictures, but does not 67
include any company owned, affiliated, or controlled, in whole or 68
in part, by any company or person that is in default on a loan 69
made by the state or a loan guaranteed by the state. 70

(9) "Tax credit-eligible production" means a motion picture 71
production, investment in which qualifies for tax credits under 72
section 5747.66 of the Revised Code as certified by the director 73
of development under division (B) of this section. 74

(10) "Transfer agent" means a motion picture production 75
company or another person designated by such a company under 76
division (G) of this section. 77

(B) For the purpose of encouraging the development of a 78
strong capital base for motion picture productions in this state, 79
the director of development, on or after January 1, 2009, but 80
before January 1, 2014, may certify a motion picture produced by a 81

motion picture production company as a tax credit-eligible 82
production. In the case of a television series, the director may 83
certify the production of each episode of the series as a separate 84
tax credit-eligible production. If the director determines that 85
the production of two or more commercials or videos are related 86
parts of a distinct advertising, promotional, informational, or 87
entertainment series or undertaking, the director may certify the 88
productions as a single tax credit-eligible production for the 89
purpose of computing the credit amounts under division (D) of this 90
section. 91

The director of development shall not certify a motion 92
picture production as a tax credit-eligible production unless the 93
motion picture production company and a financially responsible 94
affiliate of the company formally agree to reimburse this state 95
for the amount of tax credits allowed and claimed under section 96
5747.66 of the Revised Code on the basis of expenditures that are 97
certified under division (H) of this section but thereafter are 98
determined not to qualify as eligible production expenditures. The 99
reimbursement shall be in a form and amount acceptable to the 100
director of development. For the purposes of this division, a 101
financially responsible affiliate of a motion picture production 102
company is a person related to the motion picture production 103
company by direct or indirect ownership or control of a majority 104
of the capital stock or other equity interests and that the 105
director of development determines to be financially capable of 106
reimbursing this state as required by this division. 107

(C) A motion picture production company shall apply for 108
certification of a motion picture as a tax credit-eligible 109
production on a form and in the manner prescribed by the director. 110
Every application shall include, at a minimum, all of the 111
following information: 112

(1) The name, address, and telephone number of the motion 113

<u>picture production company;</u>	114
<u>(2) The name and telephone number of the company's contact person;</u>	115
<u>(3) A list of the scheduled first preproduction date through the scheduled last production date in Ohio;</u>	116
<u>(4) The total production budget of the motion picture;</u>	118
<u>(5) The amount expended in this state by the company directly for the production and the percentage that amount is of the total production budget of the motion picture;</u>	119
<u>(6) The total percentage of principal photography of the motion picture being shot in Ohio;</u>	120
<u>(7) The level of employment of cast and crew who reside in Ohio;</u>	121
<u>(8) A synopsis of the script;</u>	122
<u>(9) A creative elements list that includes the names of the principal cast and crew, and the producer and director.</u>	123
<u>(D) Upon application by a qualifying investor, the director of development shall determine the qualifying investor's base investment, and shall issue a tax credit certificate to the qualifying investor. The director shall prescribe the form and manner of the application; the information or documentation required to be submitted with the application; and the form and manner of issuing the certificate. The director shall assign a unique identifying number to each tax credit certificate and shall record the certificate in a register devised and maintained by the director for that purpose. The certificate shall state the amount of the qualifying investor's base investment and the total amount of the credit allowed, which shall equal twenty-five per cent of the qualifying investor's base investment. Not more than one hundred million dollars in tax credit certificates may be issued</u>	124
	125
	126
	127
	128
	129
	130
	131
	132
	133
	134
	135
	136
	137
	138
	139
	140
	141
	142
	143

per year, and not more than twenty-five million dollars in tax 144
credit certificates may be issued per tax credit-eligible 145
production. 146

The credit amount shall be determined under this division on 147
the basis of the base investment and on the basis of the eligible 148
production expenditures as finally determined under division (H) 149
of this section. Once the eligible production expenditures are 150
finally determined under that division, the credit amount is not 151
subject to adjustment unless the base investment amount is 152
adjusted or unless an error was committed in the computation of 153
the credit amount. 154

(E) If a qualifying investor is a pass-through entity as 155
defined in section 5733.04 of the Revised Code, the pass-through 156
entity may allocate the credit amount among persons with an equity 157
interest in the entity in any proportion or manner provided in the 158
partnership agreement or other governing instrument of the entity, 159
notwithstanding any application of the principles of section 704 160
of the Internal Revenue Code. Upon allocation, the persons to 161
which the credit is allocated become the certificate owners of 162
their respective allocated shares of the credit. The pass-through 163
entity shall certify to the transfer agent the allocated share 164
allocated to each such person and provide such information as is 165
necessary to allow the transfer agent to provide the statements 166
and certifications required under division (G) of this section. 167

(F) Any certificate owner may transfer to any other person 168
all or a portion of the credit amount owned by the certificate 169
owner. Upon transfer, the transferee becomes the certificate owner 170
of the credit amount transferred. The transferor shall notify the 171
transfer agent of each transfer made by the transferor in 172
accordance with rules prescribed by the director of development. 173
The rules shall require the transferor to provide to the transfer 174
agent the identity of the transferee and the unique identifying 175

number assigned to the tax credit certificate that corresponds 176
with the credit amount transferred. 177

(G) Each motion picture production company that has a motion 178
picture production certified as a tax credit-eligible production 179
shall designate itself or another person as the transfer agent for 180
the purpose of providing the statements and certifications 181
required under this division. Upon making the designation, the 182
motion picture production company shall provide notice of the 183
designation to each certificate owner of a certificate issued with 184
respect to investments made in the company's motion picture 185
production. Before claiming a credit under section 5747.66 of the 186
Revised Code, a certificate owner shall request from the transfer 187
agent a statement certifying the certificate owner's share of the 188
credit amount, and the transfer agent shall provide the statement 189
to the certificate owner. The statement shall be in a form 190
prescribed by the director of development. The transfer agent also 191
shall provide a statement to the tax commissioner showing the 192
identity of the certificate owner and the certificate owner's 193
share of the credit amount. The statement shall be in a form 194
prescribed by the tax commissioner. A tax credit may not be 195
claimed by a certificate owner unless the transfer agent issues 196
the statement to the certificate owner. 197

(H) Each motion picture production company that has a motion 198
picture production certified as a tax credit-eligible production 199
shall engage, at the company's expense, an independent certified 200
public accountant to examine the company's production expenditures 201
to identify the expenditures that qualify as eligible production 202
expenditures. The certified public accountant shall issue a report 203
to the company and to the director of development certifying the 204
company's eligible production expenditures and any other 205
information required by the director. Upon receiving and examining 206
the report, the director may disallow any expenditure the director 207

determines is not an eligible production expense. If the director 208
disallows an expenditure, the director, not later than thirty days 209
after receiving the report, shall issue a written notice to the 210
motion picture production company stating that the expenditure is 211
disallowed, the reason for the disallowance, and the manner in 212
which an appeal of the disallowance may be made. If the director 213
does not issue the notice within the prescribed time, the eligible 214
production expenditures certified by the certified public 215
accountant's report are conclusively determined to be the eligible 216
production expenditures on the basis of which base investments are 217
determined and the credit is allowed under section 5747.66 of the 218
Revised Code. 219

The company, not later than thirty days after issuance of the 220
notice, may appeal the disallowance by filing a notice of appeal 221
with the director. If a notice of appeal is properly and timely 222
filed, the director shall schedule a hearing on the appeal. The 223
company shall be given the opportunity to present evidence and 224
testimony at the hearing regarding the disallowed expenditures. 225
The hearing may be continued from time to time as necessary. On 226
the basis of evidence or testimony presented by the company, the 227
director, within thirty days after the conclusion of the hearing, 228
may revise or affirm the initial notice of disallowance of 229
expenditures and issue a final notice to the company stating the 230
revision or affirmation. The director's final notice is not 231
appealable. 232

(I)(1) No credit shall be allowed under section 5747.66 of 233
the Revised Code on the basis of any expenditure unless the 234
expenditure has been certified by a certified public accountant 235
under division (H) of this section and has not been disallowed by 236
the director of development under that division. 237

(2) A credit shall not be disallowed under section 5747.66 of 238
the Revised Code if, after the director of development issues the 239

final notice under division (H) of this section, it is discovered 240
that the credit is claimed on the basis of expenditures that do 241
not qualify as eligible production expenditures but that were 242
certified as eligible production expenditures by the certified 243
public accountant and not disallowed by the director. 244

(J) This state reserves the right to refuse the use of this 245
state's name in the credits of any tax credit-eligible motion 246
picture production. 247

(K) The director of development shall adopt rules for the 248
administration of this section, including rules governing the 249
criteria for determining whether a motion picture production is a 250
tax credit eligible production, which criteria shall be developed 251
by the director in consultation with the tax commissioner; 252
expenditures that qualify as eligible production expenditures; the 253
form and manner of certifications by transfer agents; 254
reimbursement requirements under division (B) of this section; and 255
the appeal procedure under division (H) of this section. The rules 256
shall be adopted under Chapter 119. of the Revised Code. 257

Sec. 5747.66. Any term used in this section has the same 258
meaning as in section 122.85 of the Revised Code. 259

A nonrefundable credit is allowed against the tax imposed by 260
section 5747.02 of the Revised Code for any individual who, on the 261
last day of the individual's taxable year, is the certificate 262
owner of a tax credit certificate issued under section 122.85 of 263
the Revised Code. If the individual is the qualifying investor, 264
the credit shall be claimed for the individual's taxable year that 265
includes the day the base investment was made. If the individual 266
is not the qualifying investor, the credit shall be claimed for 267
the individual's taxable year that includes the last day of the 268
qualifying investor's taxable year in which the qualifying 269
investor's base investment was made. The amount of the credit 270

shall equal the credit amount certified by the transfer agent 271
under division (G) of section 122.85 of the Revised Code. The 272
credit shall be claimed in the order required under section 273
5747.98 of the Revised Code. If the credit amount exceeds the tax 274
otherwise due under section 5747.02 of the Revised Code after 275
deducting all other credits in that order, the excess may be 276
carried forward for not more than ten taxable years following the 277
taxable year in which the credit is first claimed, and the amount 278
claimed in any year shall be deducted from the balance carried 279
forward to an ensuing year. 280

Sec. 5747.98. (A) To provide a uniform procedure for 281
calculating the amount of tax due under section 5747.02 of the 282
Revised Code, a taxpayer shall claim any credits to which the 283
taxpayer is entitled in the following order: 284

(1) The retirement income credit under division (B) of 285
section 5747.055 of the Revised Code; 286

(2) The senior citizen credit under division (C) of section 287
5747.05 of the Revised Code; 288

(3) The lump sum distribution credit under division (D) of 289
section 5747.05 of the Revised Code; 290

(4) The dependent care credit under section 5747.054 of the 291
Revised Code; 292

(5) The lump sum retirement income credit under division (C) 293
of section 5747.055 of the Revised Code; 294

(6) The lump sum retirement income credit under division (D) 295
of section 5747.055 of the Revised Code; 296

(7) The lump sum retirement income credit under division (E) 297
of section 5747.055 of the Revised Code; 298

(8) The low-income credit under section 5747.056 of the 299
Revised Code; 300

(9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	301 302
(10) The campaign contribution credit under section 5747.29 of the Revised Code;	303 304
(11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	305 306
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	307 308
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	309 310
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	311 312
(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	313 314
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	315 316
(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	317 318
(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	319 320
(19) The job retention credit under division (B) of section 5747.058 of the Revised Code;	321 322
(20) The credit for selling alternative fuel under section 5747.77 of the Revised Code;	323 324
(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;	325 326 327
(22) The job training credit under section 5747.39 of the Revised Code;	328 329

(23) The enterprise zone credit under section 5709.66 of the Revised Code;	330 331
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	332 333
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	334 335
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	336 337
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	338 339
(28) The export sales credit under section 5747.057 of the Revised Code;	340 341
(29) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	342 343
(30) The enterprise zone credits under section 5709.65 of the Revised Code;	344 345
(31) <u>The credit for investment in a motion picture production under section 5747.66 of the Revised Code;</u>	346 347
<u>(32)</u> The research and development credit under section 5747.331 of the Revised Code;	348 349
(32) <u>(33)</u> The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	350 351
(33) <u>(34)</u> The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	352 353
(34) <u>(35)</u> The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;	354 355
(35) <u>(36)</u> The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	356 357
(36) <u>(37)</u> The refundable credits for taxes paid by a	358

qualifying pass-through entity granted under division (J) of 359
section 5747.08 of the Revised Code; 360

~~(37)~~(38) The refundable credit for tax withheld under 361
division (B)(1) of section 5747.062 of the Revised Code; 362

~~(38)~~(39) The refundable credit under section 5747.80 of the 363
Revised Code for losses on loans made to the Ohio venture capital 364
program under sections 150.01 to 150.10 of the Revised Code. 365

(B) For any credit, except the refundable credits enumerated 366
in ~~divisions (A)(33) to (38)~~ of this section and the credit 367
granted under division (I) of section 5747.08 of the Revised Code, 368
the amount of the credit for a taxable year shall not exceed the 369
tax due after allowing for any other credit that precedes it in 370
the order required under this section. Any excess amount of a 371
particular credit may be carried forward if authorized under the 372
section creating that credit. Nothing in this chapter shall be 373
construed to allow a taxpayer to claim, directly or indirectly, a 374
credit more than once for a taxable year. 375

376

Section 2. That existing section 5747.98 of the Revised Code 377
is hereby repealed. 378

Section 3. (A) In adopting the rules required under division 379
(K) of section 122.85 of the Revised Code, as enacted by this act, 380
the Director of Development shall file the notice and text of the 381
proposed rules as required by division (B) of section 119.03 of 382
the Revised Code not later than two hundred five days after the 383
effective date of this act. 384

(B) Not later than eighty days after the effective date of 385
this act, the Director of Development shall adopt initial rules to 386
effect the same purposes of the rules required under division (K) 387
of section 122.85 of the Revised Code, as enacted by this act. The 388

initial rules shall be adopted pursuant to section 111.15 of the 389
Revised Code, but division (D) of that section does not apply to 390
the adoption of the initial rules. The initial rules shall be 391
effective until the final rules adopted pursuant to division (A) 392
of this section and Chapter 119. of the Revised Code take effect. 393