

H.B. 18

As Passed by the House

**Topic:** Remove refundable credit for past taxable payments; extend statute of limitations

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, delete "section" and insert 1  
"sections"; after "5747.01" insert "and 5747.10" 2

In line 5, delete "section" and insert "sections"; after 3  
"5747.01" insert "and 5747.10" 4

After line 1075, insert: 5

"**Sec. 5747.10.** (A) As used in this section: 6

(1) "Audited partnership" means a partnership subject to an 7  
examination by the internal revenue service pursuant to subchapter 8  
C, chapter 63, subtitle F of the Internal Revenue Code resulting 9  
in a federal adjustment. 10

(2)(a) "Direct investor" means a partner or other investor 11  
that holds a direct interest in a pass-through entity. 12

(b) "Indirect investor" means a partner or other investor 13  
that holds an interest in a pass-through entity that itself holds 14  
an interest, directly or through another indirect partner or other 15  
investor, in a pass-through entity. 16

(3) "Exempt partner" means a partner that is neither a 17  
pass-through entity nor a person subject to the tax imposed by 18

section 5747.02 of the Revised Code.

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(4) "Federal adjustment" means a change to an item or amount required to be determined under the Internal Revenue Code that directly or indirectly affects a taxpayer's aggregate tax liability under section 5747.02 or Chapter 5748. of the Revised Code and that results from an action or examination by the internal revenue service, or from the filing of an amended federal tax return, a claim for a federal tax refund, or an administrative adjustment request filed by a partnership under section 6227 of the Internal Revenue Code.

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

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

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

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

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

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(a) The day after which the period for appeal of a federal

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assessment has expired;

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

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

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

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

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

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(1) With respect to an action required or permitted to be

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taken by a partnership under this section, and any petition for reassessment or appeal to the board of tax appeals or any court with respect to such an action, the state partnership representative shall have the sole authority to act on behalf of the audited partnership, and the partnership's direct and indirect investors shall be bound by those actions.

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

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

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

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

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

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

adjustments return with the commissioner. 106

(c)(i) Each direct and indirect investor of an audited 107  
partnership that is a pass-through entity and all investors in 108  
such a pass-through entity that are subject to the filing and 109  
payment requirements of Chapters 5733. and 5747. of the Revised 110  
Code are subject to the reporting and payment requirements of 111  
division (C)(2) or, upon a timely election, division (C)(3) of 112  
this section. 113

(ii) Such direct and indirect investors shall make the 114  
required returns and payments within ninety days after the 115  
deadline for filing and furnishing statements under section 116  
6226(b)(4) of the Internal Revenue Code and applicable treasury 117  
regulations. 118

(3) If an audited partnership makes the election under this 119  
division, the audited partnership, through its state partnership 120  
representative, shall do all of the following within ninety days 121  
after all federal adjustments are final: 122

(a) File a federal adjustments return with the tax 123  
commissioner indicating the partnership has made the election 124  
under division (C)(3) of this section; 125

(b) Pay the amount of combined additional tax due under 126  
division (D)(2) of this section, calculated by multiplying the 127  
highest rate of tax set forth in section 5747.02 of the Revised 128  
Code by the sum of the following: 129

(i) The distributive shares of the final federal adjustments 130  
that are allocable or apportionable to this state of each investor 131  
who is a nonresident taxpayer or pass-through entity; 132

(ii) The distributive share of the final federal adjustments 133  
for each investor who is a resident taxpayer. 134

(c) Notify each of its direct investors, on a form prescribed 135  
by the commissioner, of the investor's distributive share of the 136  
final federal adjustments and the amount paid on their behalf 137  
pursuant to division (C)(3)(b) of this section. 138

(4)(a) A direct investor of an audited partnership is not 139  
required to file an amended return or pay tax otherwise due under 140  
section 5747.02 of the Revised Code if the audited partnership 141  
properly reports and pays the tax under division (C)(3) of this 142  
section. 143

(b)(i) Nothing in division (C) of this section precludes a 144  
direct or indirect investor in the audited partnership from filing 145  
a return to report the investor's share of the final federal 146  
adjustments. Such an investor who files a return and reports the 147  
income related to the final federal adjustments is entitled to a 148  
refundable credit for taxes paid by the audited partnership under 149  
division (C)(3)(b) of this section. The credit shall be computed 150  
and claimed in the same manner as the credit allowed under 151  
division (I) of section 5747.08 of the Revised Code. 152

(ii) Notwithstanding division (C)(4)(b)(i) of this section, 153  
an exempt partner, whether a direct or indirect investor, may file 154  
an application for refund of its proportionate share of the 155  
amounts erroneously paid by the audited partnership pursuant to 156  
division (C)(3)(b) of this section on the exempt partner's behalf. 157

(5) Upon request by an audited partnership, the tax 158  
commissioner may agree, in writing, to allow an alternative method 159  
of reporting and payment than required by ~~divisions~~ division 160  
(C)(2) or (3) of this section. The request must be submitted to 161  
the commissioner in writing before the applicable deadline for 162  
filing a return under division (C)(2)(a) or (3) of this section. 163  
The commissioner's decision on whether to enter into an agreement 164

under this division is not subject to further administrative 165  
review or appeal. 166

(6) Nothing in division (C) of this section precludes either 167  
of the following: 168

(a) A resident taxpayer from filing a return to claim the 169  
credit under division (B) of section 5747.05 or division (D)(2) of 170  
section 5747.02 of the Revised Code based upon any amounts paid by 171  
the audited partnership on such investor's behalf to another 172  
state. 173

(b) The tax commissioner from issuing an assessment under 174  
this chapter against any direct or indirect investor for taxes due 175  
from the investor if an audited partnership, or direct and 176  
indirect investor of an audited partnership that is a pass-through 177  
entity, fails to timely file any return or remit any payment 178  
required by this section or underreports income or underpays tax 179  
on behalf of an indirect investor who is a resident taxpayer. 180

(D) In the case of an underpayment, and unless otherwise 181  
agreed to in writing by the tax commissioner: 182

(1) The taxpayer's amended return shall be accompanied by 183  
payment of any combined additional tax due together with interest 184  
thereon. An amended return required by this section is a return 185  
subject to assessment under section 5747.13 of the Revised Code 186  
for the purpose of assessing any additional tax due under this 187  
section, together with any applicable penalty and interest. It 188  
shall not reopen those facts, figures, computations, or 189  
attachments from a previously filed return no longer subject to 190  
assessment that are not affected, either directly or indirectly, 191  
by the final federal adjustment to the taxpayer's federal income 192  
tax return. 193

(2) The audited partnership's federal adjustments return 194

shall be accompanied by payment of any combined additional tax due  
together with interest thereon. The federal adjustments return  
required by this section is a return subject to assessment under  
section 5747.13 of the Revised Code for the purpose of assessing  
any additional tax due under this section, together with any  
applicable penalty and interest. It shall not reopen those facts,  
figures, computations, or attachments from a previously filed  
return no longer subject to assessment that are not affected,  
either directly or indirectly, by the final federal adjustment.

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

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

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



(2)(a) Except as otherwise provided in division (E)(2)(b) of 225  
this section, an audited partnership may file an application for a 226  
refund under this division within the ninety-day period prescribed 227  
for filing the federal adjustments return, even if it is filed 228  
beyond the period prescribed by section 5747.11 of the Revised 229  
Code, if it otherwise conforms to the requirements of that 230  
section. An application filed under this division may claim a 231  
refund of overpayments resulting only from final federal 232  
adjustments unless it is also filed within the time prescribed by 233  
section 5747.11 of the Revised Code. It shall not reopen those 234  
facts, figures, computations, or attachments that are not 235  
affected, either directly or indirectly, by the federal 236  
adjustment. 237

(b) An audited partnership may not file an application for 238  
refund under division (E) of this section based on final federal 239  
adjustments described in section 6225(a)(2) of the Internal 240  
Revenue Code. 241

(3) Any refund granted to a pass-through entity filing an 242  
application for refund under division (E) of this section shall be 243  
reduced by amounts previously claimed as a credit under section 244  
5747.059 or division (I) of section 5747.08 of the Revised Code by 245  
the pass-through entity's direct or indirect investors. 246

(F) Excluding the deadline in division (C)(2)(c)(ii) of this 247  
section, an audited partnership, or a direct or indirect investor 248  
of an audited partnership that is a pass-through entity, may 249  
automatically extend the deadline for reporting, payments, and 250  
refunds under this section by sixty days if the entity has ten 251  
thousand or more direct investors and notifies the commissioner of 252  
such extension, in writing, before the unextended deadline." 253

In line 1076, delete "section" and insert "sections"; after 254

"5747.01" insert "and 5747.10" 255

In line 1077, delete "is" and insert "are" 256

In line 1078, delete "section" and insert "sections"; after 257  
"5747.01" insert "and 5747.10" 258

In line 1079, delete "ending" and insert "beginning"; delete 259  
the second "the" 260

In line 1080, delete "effective date of this section" and 261  
insert "January 1, 2019"; after "." insert: 262

"Notwithstanding the time limit prescribed in section 5747.11 263  
of the Revised Code, any taxpayer whose federal income tax return 264  
or liability was altered for a taxable year beginning before 265  
January 1, 2019, because the taxpayer paid federal income tax on 266  
an amount described in division (A)(34) of section 5747.01 of the 267  
Revised Code may file a refund application with the Tax 268  
Commissioner, pursuant to section 5747.11 of the Revised Code, on 269  
or before December 31, 2020. The application for refund shall not 270  
reopen those facts, figures, computations, or attachments that are 271  
not affected, either directly or indirectly, by the adjustment to 272  
the taxpayer's federal income tax return or liability." 273

Delete lines 1081 through 1111 274

The motion was \_\_\_\_\_ agreed to.