

As Introduced

134th General Assembly
Regular Session
2021-2022

H. B. No. 560

Representatives Hoops, Pavliga

A BILL

To amend sections 5725.98, 5726.98, 5729.98, and 1
5747.98 and to enact section 175.16 of the 2
Revised Code to authorize a nonrefundable tax 3
credit for the construction or rehabilitation of 4
affordable rental housing. 5

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

Section 1. That sections 5725.98, 5726.98, 5729.98, and 6
5747.98 be amended and section 175.16 of the Revised Code be 7
enacted to read as follows: 8

Sec. 175.16. (A) As used in this section: 9

(1) "Federal low-income housing tax credit" and "federal 10
credit" mean the tax credit authorized under section 42 of the 11
Internal Revenue Code. 12

(2) "Credit period," "qualified low-income building," and 13
"qualified basis" have the same meanings as in section 42 of the 14
Internal Revenue Code. 15

(3) "Qualified project" means a qualified low-income 16
building that is located in Ohio, is placed in service on or 17
after January 1, 2022, and for which the director of the Ohio 18

housing finance agency reserves a tax credit under division (B) of this section before January 1, 2028. 19
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(4) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code. 21
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(5) "Owner" means a person or persons holding a fee simple interest or a leasehold interest pursuant to a ground lease in a qualified project. 23
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(6) "Reserved credit amount" means the amount determined by the director and stipulated in the notice sent to each owner of a qualified project under division (B) of this section. 26
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(7) "Annual credit amount" means the amount computed by the director under division (D) of this section prior to issuing an eligibility certificate. 29
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(8) "Eligible investor" means the owner of a qualified project or any other person that owns or owned a direct interest, or an indirect interest through one or more pass-through entities, in the qualified project at any time prior to claiming the tax credit authorized by this section. 32
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(9) "Equity owner" means any person who is a member, partner, or shareholder of an eligible investor that is a pass-through entity, as determined under applicable state law governing such entity. 37
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(10) "Person" has the same meaning as in section 5701.01 of the Revised Code. 41
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(11) "Eligibility certificate" means a certificate issued by the director to each owner of a qualified project under division (D) of this section stating the amount of credit that may be claimed for each year of the credit period. 43
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(12) "Qualified allocation plan" means the plan developed 47
by the Ohio housing finance agency, as required under section 48
175.06 of the Revised Code, for evaluating and selecting 49
projects for the federal low-income housing tax credit pursuant 50
to the mandates and requirements within section 42 of the 51
Internal Revenue Code. 52

(13) "Internal Revenue Code" has the same meaning as in 53
section 5747.01 of the Revised Code. 54

(B) Except as otherwise provided by this division, the 55
director of the Ohio housing finance agency, upon allocating a 56
federal low-income housing tax credit and issuing a binding 57
reservation or letter of eligibility, pursuant to the agency's 58
qualified allocation plan, for a qualified low-income building 59
that is located in this state and placed in service on or after 60
January 1, 2022, may reserve a tax credit under this section for 61
the owners of the qualified low-income building so long as doing 62
so will not result in exceeding the annual credit allotment 63
prescribed by division (C) of this section. The director shall 64
not reserve a tax credit under this section after January 1, 65
2028. 66

The director shall send written notice of the reservation 67
to each owner of the qualified project. The notice shall state 68
the aggregate credit amount reserved for all years of the 69
qualified project's credit period and stipulate that receipt of 70
the credit is contingent upon issuance of an eligibility 71
certificate. 72

The agency shall determine the credit amount reserved for 73
each qualified project. The reserved credit amount shall not 74
exceed the amount necessary, when combined with the federal 75
credit, to ensure the financial feasibility of the qualified 76

project. 77

(C) The amount of credits reserved by the director under 78
division (B) of this section in a fiscal year shall not exceed 79
the sum of (1) five hundred million dollars, (2) the amount, if 80
any, by which the credit allocation prescribed by this division 81
for the preceding fiscal year exceeds the credits reserved by 82
the director in that year, and (3) the amount of tax credits 83
recaptured or otherwise disallowed under division (G) of this 84
section in the preceding fiscal year. 85

For the purpose of computing and determining compliance 86
with the credit allocation prescribed by this division, the 87
credit amount reserved for the owners of a qualified project is 88
the full amount for all years of the qualified project's credit 89
period. 90

(D) Immediately after approving the final cost 91
certification for a qualified project for which a tax credit 92
under this section is reserved, or upon otherwise determining 93
the qualified basis of the qualified project and the date it was 94
placed into service as required by section 42(m) of the Internal 95
Revenue Code, the director shall compute the annual credit 96
amount and issue an eligibility certificate to each owner of the 97
qualified project. 98

The annual credit amount shall equal the lesser of the 99
following: 100

(1) The amount of the federal credit that would be awarded 101
to the owners of the qualified project for the first year of the 102
credit period if not for the adjustment required under section 103
42(f) (2) of the Internal Revenue Code; 104

(2) One-tenth of the reserved credit amount stated in the 105

notice issued under division (B) of this section. 106

(E) Each eligibility certificate shall state the annual 107
credit amount, the years that comprise the credit period, each 108
owner of the qualified project, the date the certificate is 109
issued, a unique identifying number, and any additional 110
information prescribed by a rule adopted under division (H) of 111
this section. The director shall send a copy of each eligibility 112
certificate to the tax commissioner and the superintendent of 113
insurance. 114

(F)(1) For each year of a qualified project's credit 115
period, an eligible investor of the qualified project or an 116
equity owner of such an eligible investor that is a pass-through 117
entity may claim a nonrefundable credit against the tax imposed 118
by section 5725.18, 5726.02, 5729.03, 5729.06, or 5747.02 of the 119
Revised Code equal to all or a portion of the annual credit 120
amount stated on the eligibility certificate. The credit shall 121
be claimed for a calendar year, tax year, taxable year, or tax 122
period that includes all or part of the year of the credit 123
period to which the annual credit amount is attributed, or any 124
of the five years following that year of the credit period. The 125
credit shall be claimed in the order required under section 126
5725.98, 5726.98, 5729.98, or 5747.98 of the Revised Code, as 127
applicable. 128

(2) The annual credit amount for any year of a qualified 129
project's credit period may be allocated by the owners among 130
multiple other eligible investors or equity owners, and may be 131
applied by those eligible investors or equity owners against 132
more than one tax over more than one calendar year, tax year, 133
taxable year, or tax period, but the total credits claimed in 134
connection with that year of the qualified project's credit 135

period by all eligible investors and equity owners against all 136
taxes over all calendar years, tax years, taxable years, and tax 137
periods, shall not exceed the annual credit amount stated on the 138
eligibility certificate. 139

(3) An eligible investor of a qualified project or the 140
equity owner of such an eligible investor that is a pass-through 141
entity may claim the credit authorized by this section for a 142
calendar year, tax year, taxable year, or tax period that ends 143
after the date the qualified project is placed into service but 144
before the date the director issues each owner of the qualified 145
project an eligibility certificate under division (D) of this 146
section. The credit shall be treated the same, in all respects, 147
as a credit claimed under division (F) (1) of this section, 148
except that one-tenth of the reserved credit amount shall be 149
substituted for the annual credit amount. After the eligibility 150
certificate is issued, if the annual credit amount is different 151
than one-tenth of the reserved credit amount, any eligible 152
investor or equity owner that claimed a tax credit under 153
division (F) (3) of this section shall reconcile that difference 154
through filing an amended tax return or report under Chapter 155
5725., 5726., 5729., or 5747. of the Revised Code, as 156
applicable. 157

(4) An eligible investor or equity owner that claims a tax 158
credit under division (F) (1) of this section shall submit a copy 159
of the eligibility certificate along with the eligible 160
investor's or equity owner's tax return or report and shall 161
indicate the year or years of the credit period to which the 162
credit is attributed and how much of the credit is attributed to 163
each such year. An eligible investor or equity owner that claims 164
a credit under division (F) (3) of this section shall submit a 165
copy of the notice stating the reserved credit amount, issued 166

under division (B) of this section, along with the eligible 167
investor's or equity owner's tax return. Upon request of the tax 168
commissioner or the superintendent of insurance, any eligible 169
investor or equity owner claiming a tax credit under this 170
section shall provide the commissioner or superintendent other 171
documentation that may be necessary to verify that the eligible 172
investor or equity owner is entitled to the credit. 173

(5) An eligible investor that is a pass-through entity may 174
allocate the credit authorized by this section to its equity 175
owners in any manner agreed to by such persons regardless of 176
whether such equity owners are eligible for an allocation of the 177
federal credit, whether the allocation of the credit under the 178
terms of the agreement has substantial economic effect within 179
the meaning of section 704(b) of the Internal Revenue Code, and 180
whether any such person is deemed a partner for federal income 181
tax purposes as long as the equity owner would be considered an 182
equity owner under applicable state law governing such entity 183
and acquired its ownership interest prior to claiming the 184
credit. The allocation shall be allowed without regard to any 185
provision of the Internal Revenue Code, or regulation 186
promulgated pursuant to it, that may be interpreted as contrary 187
to the allocation, including, without limitation, the treatment 188
of the allocation as a disguised sale. Such equity owner may 189
assign all or any part of its interest, including its interest 190
in the credits, to one or more eligible investors or equity 191
owners, and such assignee shall be able to claim the credit so 192
long as its interest is acquired prior to the filing of its tax 193
return claiming the credit. 194

(6) An insurance company shall not be required to pay any 195
additional tax levied under section 5729.06 of the Revised Code 196
as a result of claiming the tax credit authorized by this 197

section. 198

(G) If any portion of the federal low-income housing tax credit allocated to a qualified project is recaptured under section 42(j) of the Internal Revenue Code or is otherwise disallowed, the director shall recapture a proportionate amount of the tax credits claimed pursuant to this section in connection with the same qualified project. 199
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If the director determines to recapture such a tax credit, the director shall certify the name of each owner of the qualified project to the tax commissioner and to the superintendent of insurance. The commissioner or superintendent shall determine the taxpayer that claimed the credit, the tax against which the credit was claimed, and the amount to be recaptured and make an assessment under Chapter 5725., 5726., 5729., or 5747. of the Revised Code, as applicable, for the amount to be recaptured. The time limitations on assessments under those chapters do not apply to an assessment made under this division, but the commissioner or superintendent, as appropriate, shall make the assessment within one year after the date the director certifies the amount to be recaptured to the commissioner or superintendent. 205
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(H) The director, in consultation with the tax commissioner and the superintendent of insurance, shall adopt any rules necessary to implement this section in accordance with Chapter 119. of the Revised Code. 219
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Sec. 5725.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5725.18 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits and offsets against tax liability to which it is entitled in the following order: 223
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The credit for an insurance company or insurance company group under section 5729.031 of the Revised Code;	228 229
The credit for eligible employee training costs under section 5725.31 of the Revised Code;	230 231
The credit for purchasers of qualified low-income community investments under section 5725.33 of the Revised Code;	232 233
The nonrefundable job retention credit under division (B) of section 122.171 of the Revised Code;	234 235
The nonrefundable credit for investments in rural business growth funds under section 122.152 of the Revised Code;	236 237
<u>The nonrefundable Ohio low-income housing tax credit under section 175.16 of the Revised Code;</u>	238 239
The nonrefundable credit for contributing capital to a transformational mixed use development project under section 5725.35 of the Revised Code;	240 241 242
The offset of assessments by the Ohio life and health insurance guaranty association permitted by section 3956.20 of the Revised Code;	243 244 245
The refundable credit for rehabilitating a historic building under section 5725.34 of the Revised Code;	246 247
The refundable credit for Ohio job retention under former division (B) (2) or (3) of section 122.171 of the Revised Code as those divisions existed before September 29, 2015, the effective date of the amendment of this section by H.B. 64 of the 131st general assembly;	248 249 250 251 252
The refundable credit for Ohio job creation under section 5725.32 of the Revised Code;	253 254

The refundable credit under section 5725.19 of the Revised Code for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code.

(B) For any credit except the refundable credits enumerated in this section, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

Sec. 5726.98. (A) To provide a uniform procedure for calculating the amount of tax due under section 5726.02 of the Revised Code, a taxpayer shall claim any credits to which the taxpayer is entitled under this chapter in the following order:

The nonrefundable job retention credit under division (B) of section 5726.50 of the Revised Code;

The nonrefundable credit for purchases of qualified low-income community investments under section 5726.54 of the Revised Code;

The nonrefundable credit for qualified research expenses under section 5726.56 of the Revised Code;

The nonrefundable credit for qualifying dealer in intangibles taxes under section 5726.57 of the Revised Code;

The nonrefundable Ohio low-income housing tax credit under section 175.16 of the Revised Code;

The refundable credit for rehabilitating an historic

building under section 5726.52 of the Revised Code;	283
The refundable job retention or job creation credit under	284
division (A) of section 5726.50 of the Revised Code;	285
The refundable credit under section 5726.53 of the Revised	286
Code for losses on loans made under the Ohio venture capital	287
program under sections 150.01 to 150.10 of the Revised Code;	288
The refundable motion picture and Broadway theatrical	289
production credit under section 5726.55 of the Revised Code.	290
(B) For any credit except the refundable credits	291
enumerated in this section, the amount of the credit for a	292
taxable year shall not exceed the tax due after allowing for any	293
other credit that precedes it in the order required under this	294
section. Any excess amount of a particular credit may be carried	295
forward if authorized under the section creating that credit.	296
Nothing in this chapter shall be construed to allow a taxpayer	297
to claim, directly or indirectly, a credit more than once for a	298
taxable year.	299
Sec. 5729.98. (A) To provide a uniform procedure for	300
calculating the amount of tax due under this chapter, a taxpayer	301
shall claim any credits and offsets against tax liability to	302
which it is entitled in the following order:	303
The credit for an insurance company or insurance company	304
group under section 5729.031 of the Revised Code;	305
The credit for eligible employee training costs under	306
section 5729.07 of the Revised Code;	307
The credit for purchases of qualified low-income community	308
investments under section 5729.16 of the Revised Code;	309
The nonrefundable job retention credit under division (B)	310

of section 122.171 of the Revised Code;	311
The nonrefundable credit for investments in rural business	312
growth funds under section 122.152 of the Revised Code;	313
<u>The nonrefundable Ohio low-income housing tax credit under</u>	314
<u>section 175.16 of the Revised Code;</u>	315
The nonrefundable credit for contributing capital to a	316
transformational mixed use development project under section	317
5729.18 of the Revised Code;	318
The offset of assessments by the Ohio life and health	319
insurance guaranty association against tax liability permitted	320
by section 3956.20 of the Revised Code;	321
The refundable credit for rehabilitating a historic	322
building under section 5729.17 of the Revised Code;	323
The refundable credit for Ohio job retention under former	324
division (B) (2) or (3) of section 122.171 of the Revised Code as	325
those divisions existed before September 29, 2015, the effective	326
date of the amendment of this section by H.B. 64 of the 131st	327
general assembly;	328
The refundable credit for Ohio job creation under section	329
5729.032 of the Revised Code;	330
The refundable credit under section 5729.08 of the Revised	331
Code for losses on loans made under the Ohio venture capital	332
program under sections 150.01 to 150.10 of the Revised Code.	333
(B) For any credit except the refundable credits	334
enumerated in this section, the amount of the credit for a	335
taxable year shall not exceed the tax due after allowing for any	336
other credit that precedes it in the order required under this	337
section. Any excess amount of a particular credit may be carried	338

forward if authorized under the section creating that credit. 339
Nothing in this chapter shall be construed to allow a taxpayer 340
to claim, directly or indirectly, a credit more than once for a 341
taxable year. 342

Sec. 5747.98. (A) To provide a uniform procedure for 343
calculating a taxpayer's aggregate tax liability under section 344
5747.02 of the Revised Code, a taxpayer shall claim any credits 345
to which the taxpayer is entitled in the following order: 346

Either the retirement income credit under division (B) of 347
section 5747.055 of the Revised Code or the lump sum retirement 348
income credits under divisions (C), (D), and (E) of that 349
section; 350

Either the senior citizen credit under division (F) of 351
section 5747.055 of the Revised Code or the lump sum 352
distribution credit under division (G) of that section; 353

The dependent care credit under section 5747.054 of the 354
Revised Code; 355

The credit for displaced workers who pay for job training 356
under section 5747.27 of the Revised Code; 357

The campaign contribution credit under section 5747.29 of 358
the Revised Code; 359

The twenty-dollar personal exemption credit under section 360
5747.022 of the Revised Code; 361

The joint filing credit under division (G) of section 362
5747.05 of the Revised Code; 363

The earned income credit under section 5747.71 of the 364
Revised Code; 365

The nonrefundable credit for education expenses under section 5747.72 of the Revised Code;	366 367
The nonrefundable credit for donations to scholarship granting organizations under section 5747.73 of the Revised Code;	368 369 370
The nonrefundable credit for tuition paid to a nonchartered nonpublic school under section 5747.75 of the Revised Code;	371 372 373
The nonrefundable vocational job credit under section 5747.057 of the Revised Code;	374 375
The credit for adoption of a minor child under section 5747.37 of the Revised Code;	376 377
The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;	378 379
The enterprise zone credit under section 5709.66 of the Revised Code;	380 381
The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	382 383
The small business investment credit under section 5747.81 of the Revised Code;	384 385
The nonrefundable lead abatement credit under section 5747.26 of the Revised Code;	386 387
The opportunity zone investment credit under section 122.84 of the Revised Code;	388 389
The enterprise zone credits under section 5709.65 of the Revised Code;	390 391
The research and development credit under section 5747.331	392

of the Revised Code;	393
The credit for rehabilitating a historic building under	394
section 5747.76 of the Revised Code;	395
The nonresident credit under division (A) of section	396
5747.05 of the Revised Code;	397
The credit for a resident's out-of-state income under	398
division (B) of section 5747.05 of the Revised Code;	399
<u>The nonrefundable Ohio low-income housing tax credit under</u>	400
<u>section 175.16 of the Revised Code;</u>	401
The refundable motion picture and Broadway theatrical	402
production credit under section 5747.66 of the Revised Code;	403
The refundable jobs creation credit or job retention	404
credit under division (A) of section 5747.058 of the Revised	405
Code;	406
The refundable credit for taxes paid by a qualifying	407
entity granted under section 5747.059 of the Revised Code;	408
The refundable credits for taxes paid by a qualifying	409
pass-through entity granted under division (I) of section	410
5747.08 of the Revised Code;	411
The refundable credit under section 5747.80 of the Revised	412
Code for losses on loans made to the Ohio venture capital	413
program under sections 150.01 to 150.10 of the Revised Code;	414
The refundable credit for rehabilitating a historic	415
building under section 5747.76 of the Revised Code.	416
(B) For any credit, except the refundable credits	417
enumerated in this section and the credit granted under division	418
(H) of section 5747.08 of the Revised Code, the amount of the	419

credit for a taxable year shall not exceed the taxpayer's 420
aggregate amount of tax due under section 5747.02 of the Revised 421
Code, after allowing for any other credit that precedes it in 422
the order required under this section. Any excess amount of a 423
particular credit may be carried forward if authorized under the 424
section creating that credit. Nothing in this chapter shall be 425
construed to allow a taxpayer to claim, directly or indirectly, 426
a credit more than once for a taxable year. 427

Section 2. That existing sections 5725.98, 5726.98, 428
5729.98, and 5747.98 of the Revised Code are hereby repealed. 429

Section 3. The General Assembly, applying the principle 430
stated in division (B) of section 1.52 of the Revised Code that 431
amendments are to be harmonized if reasonably capable of 432
simultaneous operation, finds that the following sections, 433
presented in this act as composites of the sections as amended 434
by the acts indicated, are the resulting versions of the 435
sections in effect prior to the effective date of the sections 436
as presented in this act: 437

Section 5725.98 of the Revised Code as amended by both 438
H.B. 197 and S.B. 39 of the 133rd General Assembly. 439

Section 5729.98 of the Revised Code as amended by both 440
H.B. 197 and S.B. 39 of the 133rd General Assembly. 441