As Introduced

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H. B. No. 889

Representative White, E.
Cosponsors: Representatives Brennan, Piccolantonio, Upchurch

To amend sections 5747.08 and 5747.98 and to enact section 5747.87 of the Revised Code to authorize a nonrefundable income tax credit for fertility treatment expenses.

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

Section 1. That sections 5747.08 and 5747.98 be amended and section 5747.87 of the Revised Code be enacted to read as follows:

Sec. 5747.08. An annual return with respect to the tax imposed by section 5747.02 of the Revised Code and each tax imposed under Chapter 5748. of the Revised Code shall be made by every taxpayer for any taxable year for which the taxpayer is liable for the tax imposed by that section or under that chapter, unless the total credits allowed under division (E) of section 5747.05 and divisions (F) and (G) of section 5747.055 of the Revised Code for the year are equal to or exceed the tax imposed by section 5747.02 of the Revised Code, in which case no return shall be required unless the taxpayer is liable for a tax imposed pursuant to Chapter 5748. of the Revised Code.

(A) If an individual is deceased, any return or notice

required of that individual under this chapter shall be made and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(B) If an individual is unable to make a return or notice required by this chapter, the return or notice required of that individual shall be made and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(C) Returns or notices required of an estate or a trust shall be made and filed by the fiduciary of the estate or trust.

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) of this section, any pass-through entity may file a single return on behalf of one or more of the entity's investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code. The single return shall set forth the name, address, and social security number or other identifying number of each of those pass-through entity investors and shall indicate the distributive share of each of those pass-through entity investor's income taxable in this state in accordance with sections 5747.20 to 5747.231 of the Revised Code. Such pass-through entity investors for whom the pass-through entity elects to file a single return are not entitled to the exemption or credit provided for by sections 5747.02 and 5747.022 of the Revised Code; shall calculate the tax before business credits at the highest rate of tax set forth in section 5747.02 of the Revised Code for the taxable year for which the return is filed; and are entitled to only their distributive share of the business credits as defined in division (D)(2) of this section. A single check drawn by the

pass-through entity shall accompany the return in full payment of the tax due, as shown on the single return, for such investors, other than investors who are persons subject to the tax imposed under section 5733.06 of the Revised Code.

(b)(i) A pass-through entity shall not include in such a single return any investor that is a trust to the extent that any direct or indirect current, future, or contingent beneficiary of the trust is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(ii) A pass-through entity shall not include in such a single return any investor that is itself a pass-through entity to the extent that any direct or indirect investor in the second pass-through entity is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(c) Except as provided by division (L) of this section, nothing in division (D) of this section precludes the tax commissioner from requiring such investors to file the return and make the payment of taxes and related interest, penalty, and interest penalty required by this section or section 5747.02, 5747.09, or 5747.15 of the Revised Code. Nothing in division (D) of this section precludes such an investor from filing the annual return under this section, utilizing the refundable credit equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor under division (I) of this section, and making the payment of taxes imposed under section 5747.02 of the Revised Code. Nothing in division (D) of this section shall be construed to provide to such an investor or pass-through entity any additional deduction or credit, other than the credit provided by division (I) of this section, solely on account of the entity's filing a return

in accordance with this section. Such a pass-through entity also shall make the filing and payment of estimated taxes on behalf of the pass-through entity investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(2) For the purposes of this section, "business credits" means the credits listed in section 5747.98 of the Revised Code excluding the following credits:

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

(b) The senior citizen credit under division (F) of section 5747.055 of the Revised Code;

(c) The lump sum distribution credit under division (G) of section 5747.055 of the Revised Code;

(d) The dependent care credit under section 5747.054 of the Revised Code;

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

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

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

(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;

(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

(j) The joint filing credit under division (E) of section

5747.05 of the Revised Code;

(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;

(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

(m) The earned income tax credit under section 5747.71 of the Revised Code;

(n) The lead abatement credit under section 5747.26 of the Revised Code;

(o) The credit for education expenses under section 5747.72 of the Revised Code;

(p) The credit for tuition paid to a nonchartered nonpublic school under section 5747.75 of the Revised Code;

(q) The credit for fertility treatment expenses under section 5747.87 of the Revised Code.

(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division shall be construed to provide for any deduction or credit that would not be allowable if a nonresident pass-through entity investor were to file an annual return.

(4) If a pass-through entity makes the election provided for under division (D) of this section, the pass-through entity shall be liable for any additional taxes, interest, interest penalty, or penalties imposed by this chapter if the tax commissioner finds that the single return does not reflect the

correct tax due by the pass-through entity investors covered by that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass-through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass-through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section, "correct tax due" means the tax that would have been paid by the pass-through entity had the single return been filed in a manner reflecting the commissioner's findings. Nothing in division (D) of this section shall be construed to make or hold a pass-through entity liable for tax attributable to a pass-through entity investor's income from a source other than the pass-through entity electing to file the single return.

(E) If a husband and wife file a joint federal income tax return for a taxable year, they shall file a joint return under this section for that taxable year, and their liabilities are joint and several, but, if the federal income tax liability of either spouse is determined on a separate federal income tax return, they shall file separate returns under this section.

If either spouse is not required to file a federal income tax return and either or both are required to file a return pursuant to this chapter, they may elect to file separate or joint returns, and, pursuant to that election, their liabilities are separate or joint and several. If a husband and wife file separate returns pursuant to this chapter, each must claim the taxpayer's own exemption, but not both, as authorized under section 5747.02 of the Revised Code on the taxpayer's own return.

(F) Each return or notice required to be filed under this

section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's social security number. Each return shall be verified by a declaration under the penalties of perjury. The tax commissioner shall prescribe the form that the signature and declaration shall take.

(G) Each return or notice required to be filed under this section shall be made and filed as required by section 5747.04 of the Revised Code, on or before the fifteenth day of April of each year, on forms that the tax commissioner shall prescribe, together with remittance made payable to the treasurer of state in the combined amount of the state and all school district income taxes shown to be due on the form.

Upon good cause shown, the commissioner may extend the period for filing any notice or return required to be filed under this section and may adopt rules relating to extensions. If the extension results in an extension of time for the payment of any state or school district income tax liability with respect to which the return is filed, the taxpayer shall pay at the time the tax liability is paid an amount of interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that liability from the time that payment is due without extension to the time of actual payment. Except as provided in section 5747.132 of the Revised Code, in addition to all other interest charges and penalties, all taxes imposed under this chapter or Chapter 5748. of the Revised Code and remaining unpaid after they become due, except combined amounts due of one dollar or less, bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code until paid or until the day an assessment is issued under section 5747.13 of

the Revised Code, whichever occurs first.

If the commissioner considers it necessary in order to ensure the payment of the tax imposed by section 5747.02 of the Revised Code or any tax imposed under Chapter 5748. of the Revised Code, the commissioner may require returns and payments to be made otherwise than as provided in this section.

To the extent that any provision in this division conflicts with any provision in section 5747.026 of the Revised Code, the provision in that section prevails.

(H) The amounts withheld pursuant to section 5747.06, 5747.062, 5747.063, 5747.064, 5747.065, or 5747.071 of the Revised Code shall be allowed to the ultimate recipient of the income as credits against payment of the appropriate taxes imposed on the ultimate recipient by section 5747.02 and under Chapter 5748. of the Revised Code. As used in this division, "ultimate recipient" means the person who is required to report income from which amounts are withheld pursuant to section 5747.06, 5747.062, 5747.063, 5747.064, 5747.065, or 5747.071 of the Revised Code on the annual return required to be filed under this section.

(I) If a pass-through entity elects to file a single return under division (D) of this section and if any investor is required to file the annual return and make the payment of taxes required by this chapter on account of the investor's other income that is not included in a single return filed by a pass-through entity or any other investor elects to file the annual return, the investor is entitled to a refundable credit equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor. The investor shall claim the credit for the investor's taxable year in which or

with which ends the taxable year of the pass-through entity. Nothing in this chapter shall be construed to allow any credit provided in this chapter to be claimed more than once. For the purpose of computing any interest, penalty, or interest penalty, the investor shall be deemed to have paid the refundable credit provided by this division on the day that the pass-through entity paid the estimated tax or the tax giving rise to the credit.

(J) The tax commissioner shall ensure that each return required to be filed under this section includes a box that the taxpayer may check to authorize a paid tax preparer who prepared the return to communicate with the department of taxation about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the department of taxation to contact the preparer concerning questions that arise during the processing of the return and authorizes the preparer only to provide the department with information that is missing from the return, to contact the department for information about the processing of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the department and has shown to the preparer.

(K) The tax commissioner shall permit individual taxpayers to instruct the department of taxation to cause any refund of overpaid taxes to be deposited directly into a checking account, savings account, or an individual retirement account or individual retirement annuity, or preexisting college savings plan or program account offered by the Ohio tuition trust authority under Chapter 3334. of the Revised Code, as designated by the taxpayer, when the taxpayer files the annual return

required by this section electronically.

(L) If, for the taxable year, a nonresident or trust that is the owner of an electing pass-through entity, as defined in section 5747.38 of the Revised Code, does not have Ohio adjusted gross income or, in the case of a trust, modified Ohio taxable income other than from one or more electing pass-through entities, the nonresident or trust shall not be required to file an annual return under this section. Nothing in this division precludes such an owner from filing the annual return under this section, utilizing the refundable credit under section 5747.39 of the Revised Code equal to the owner's proportionate share of the tax levied under section 5747.38 of the Revised Code and paid by the electing pass-through entity, and making the payment of taxes imposed under section 5747.02 of the Revised Code.

(M) The tax commissioner may adopt rules to administer this section.

Sec. 5747.87. (A) As used in this section:

(1) "Assisted reproductive technology" means any fertility-related treatment in which eggs are surgically removed from a woman's ovaries, combined with sperm in a laboratory, and transferred back to the woman or another gestational carrier, including in vitro fertilization, gamete intrafallopian transfer, or zygote intrafallopian transfer. "Assisted reproductive technology" does not include any treatment in which only sperm are handled, such as intrauterine insemination or procedures in which a woman takes drugs to stimulate egg production without planning to have the eggs surgically retrieved.

(2) "Treatment for conditions that impact fertility" means

any treatment or procedure that seeks to remedy one or more medical conditions or diagnoses that affect the male or female reproductive system and result in the inability to conceive through sexual intercourse, with the goal of achieving a successful pregnancy without the use of assisted reproductive technology. "Treatment for conditions that impact fertility" includes treatment for any of the following: conditions that result in a failure to ovulate, issues in the menstrual cycle, structural problems of the male or female reproductive system, infections that impact fertility, conditions that result in the failure of an egg to mature properly, implantation failure, endometriosis, polycystic ovary syndrome, primary ovary insufficiency, uterine fibroids, autoimmune disorders that impact fertility, and sperm disorders. Such treatments include medications that stimulate ovulation, intrauterine insemination, and laparascopic surgery.

(B) There is allowed a nonrefundable credit against a qualifying taxpayer's aggregate tax liability under section 5747.02 of the Revised Code equal to the amount of expenses incurred by the taxpayer or, if filing a joint return, the taxpayer's spouse in the taxable year for treatment for conditions that impact fertility or assisted reproductive technology treatment, up to the following limitation, as applicable:

(1) For treatment for conditions that impact fertility, three thousand five hundred dollars;

(2) For assisted reproductive technology treatment, nine thousand five hundred dollars.

The credit shall be claimed in the order required under section 5747.98 of the Revised Code. If the credit exceeds the

taxpayer's aggregate tax due under section 5747.02 of the Revised Code for that taxable year after allowing for credits that precede the credit under this section in that order, such excess shall be allowed as a credit in each of the ensuing seven taxable years, but the amount of any excess credit allowed in any such taxable year shall be deducted from the balance carried forward to the ensuing taxable year.

(C) The taxpayer shall provide, upon request of the tax commissioner, any documentation necessary to verify the taxpayer is entitled to the credit under this section.

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

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

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

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

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

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

The twenty-dollar personal exemption credit under section

5747.022 of the Revised Code;

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

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

The nonrefundable credit for education expenses under section 5747.72 of the Revised Code;

The nonrefundable credit for donations to scholarship granting organizations under section 5747.73 of the Revised Code;

The nonrefundable credit for tuition paid to a nonchartered nonpublic school under section 5747.75 of the Revised Code;

The nonrefundable vocational job credit under section 5747.057 of the Revised Code;

The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;

The enterprise zone credit under section 5709.66 of the Revised Code;

The credit for beginning farmers who participate in a financial management program under division (B) of section 5747.77 of the Revised Code;

The credit for commercial vehicle operator training expenses under section 5747.82 of the Revised Code;

The nonrefundable welcome home Ohio (WHO) program credit under section 122.633 of the Revised Code;

The credit for selling or renting agricultural assets to

beginning farmers under division (A) of section 5747.77 of the Revised Code;

The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;

The small business investment credit under section 5747.81 of the Revised Code;

The nonrefundable lead abatement credit under section 5747.26 of the Revised Code;

The opportunity zone investment credit under section 5747.86 of the Revised Code;

The nonrefundable credit for fertility treatment expenses under section 5747.87 of the Revised Code;

The enterprise zone credits under section 5709.65 of the Revised Code;

The research and development credit under section 5747.331 of the Revised Code;

The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;

The nonrefundable Ohio low-income housing tax credit under section 5747.83 of the Revised Code;

The nonrefundable affordable single-family home credit under section 5747.84 of the Revised Code;

The nonresident credit under division (A) of section 5747.05 of the Revised Code;

The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

The refundable motion picture and broadway theatrical production credit under section 5747.66 of the Revised Code;

The refundable credit for film and theater capital improvement projects under section 5747.67 of the Revised Code;

The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;

The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;

The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;

The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;

The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;

The refundable credit under section 5747.39 of the Revised Code for taxes levied under section 5747.38 of the Revised Code paid by an electing pass-through entity.

(B) For any credit, except the refundable credits enumerated in this section and the credit granted under division (H) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the taxpayer's aggregate amount of tax due under section 5747.02 of the Revised Code, 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.

Section 2. That existing sections 5747.08 and 5747.98 of the Revised Code are hereby repealed.