

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 1
section 5747.87 of the Revised Code to authorize 2
a nonrefundable income tax credit for fertility 3
treatment expenses. 4

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

Section 1. That sections 5747.08 and 5747.98 be amended 5
and section 5747.87 of the Revised Code be enacted to read as 6
follows: 7

Sec. 5747.08. An annual return with respect to the tax 8
imposed by section 5747.02 of the Revised Code and each tax 9
imposed under Chapter 5748. of the Revised Code shall be made by 10
every taxpayer for any taxable year for which the taxpayer is 11
liable for the tax imposed by that section or under that 12
chapter, unless the total credits allowed under division (E) of 13
section 5747.05 and divisions (F) and (G) of section 5747.055 of 14
the Revised Code for the year are equal to or exceed the tax 15
imposed by section 5747.02 of the Revised Code, in which case no 16
return shall be required unless the taxpayer is liable for a tax 17
imposed pursuant to Chapter 5748. of the Revised Code. 18

(A) If an individual is deceased, any return or notice 19

required of that individual under this chapter shall be made and 20
filed by that decedent's executor, administrator, or other 21
person charged with the property of that decedent. 22

(B) If an individual is unable to make a return or notice 23
required by this chapter, the return or notice required of that 24
individual shall be made and filed by the individual's duly 25
authorized agent, guardian, conservator, fiduciary, or other 26
person charged with the care of the person or property of that 27
individual. 28

(C) Returns or notices required of an estate or a trust 29
shall be made and filed by the fiduciary of the estate or trust. 30

(D) (1) (a) Except as otherwise provided in division (D) (1) 31
(b) of this section, any pass-through entity may file a single 32
return on behalf of one or more of the entity's investors other 33
than an investor that is a person subject to the tax imposed 34
under section 5733.06 of the Revised Code. The single return 35
shall set forth the name, address, and social security number or 36
other identifying number of each of those pass-through entity 37
investors and shall indicate the distributive share of each of 38
those pass-through entity investor's income taxable in this 39
state in accordance with sections 5747.20 to 5747.231 of the 40
Revised Code. Such pass-through entity investors for whom the 41
pass-through entity elects to file a single return are not 42
entitled to the exemption or credit provided for by sections 43
5747.02 and 5747.022 of the Revised Code; shall calculate the 44
tax before business credits at the highest rate of tax set forth 45
in section 5747.02 of the Revised Code for the taxable year for 46
which the return is filed; and are entitled to only their 47
distributive share of the business credits as defined in 48
division (D) (2) of this section. A single check drawn by the 49

pass-through entity shall accompany the return in full payment 50
of the tax due, as shown on the single return, for such 51
investors, other than investors who are persons subject to the 52
tax imposed under section 5733.06 of the Revised Code. 53

(b) (i) A pass-through entity shall not include in such a 54
single return any investor that is a trust to the extent that 55
any direct or indirect current, future, or contingent 56
beneficiary of the trust is a person subject to the tax imposed 57
under section 5733.06 of the Revised Code. 58

(ii) A pass-through entity shall not include in such a 59
single return any investor that is itself a pass-through entity 60
to the extent that any direct or indirect investor in the second 61
pass-through entity is a person subject to the tax imposed under 62
section 5733.06 of the Revised Code. 63

(c) Except as provided by division (L) of this section, 64
nothing in division (D) of this section precludes the tax 65
commissioner from requiring such investors to file the return 66
and make the payment of taxes and related interest, penalty, and 67
interest penalty required by this section or section 5747.02, 68
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 69
of this section precludes such an investor from filing the 70
annual return under this section, utilizing the refundable 71
credit equal to the investor's proportionate share of the tax 72
paid by the pass-through entity on behalf of the investor under 73
division (I) of this section, and making the payment of taxes 74
imposed under section 5747.02 of the Revised Code. Nothing in 75
division (D) of this section shall be construed to provide to 76
such an investor or pass-through entity any additional deduction 77
or credit, other than the credit provided by division (I) of 78
this section, solely on account of the entity's filing a return 79

in accordance with this section. Such a pass-through entity also 80
shall make the filing and payment of estimated taxes on behalf 81
of the pass-through entity investors other than an investor that 82
is a person subject to the tax imposed under section 5733.06 of 83
the Revised Code. 84

(2) For the purposes of this section, "business credits" 85
means the credits listed in section 5747.98 of the Revised Code 86
excluding the following credits: 87

(a) The retirement income credit under division (B) of 88
section 5747.055 of the Revised Code; 89

(b) The senior citizen credit under division (F) of 90
section 5747.055 of the Revised Code; 91

(c) The lump sum distribution credit under division (G) of 92
section 5747.055 of the Revised Code; 93

(d) The dependent care credit under section 5747.054 of 94
the Revised Code; 95

(e) The lump sum retirement income credit under division 96
(C) of section 5747.055 of the Revised Code; 97

(f) The lump sum retirement income credit under division 98
(D) of section 5747.055 of the Revised Code; 99

(g) The lump sum retirement income credit under division 100
(E) of section 5747.055 of the Revised Code; 101

(h) The credit for displaced workers who pay for job 102
training under section 5747.27 of the Revised Code; 103

(i) The twenty-dollar personal exemption credit under 104
section 5747.022 of the Revised Code; 105

(j) The joint filing credit under division (E) of section 106

5747.05 of the Revised Code;	107
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	108 109
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	110 111
(m) The earned income tax credit under section 5747.71 of the Revised Code;	112 113
(n) The lead abatement credit under section 5747.26 of the Revised Code;	114 115
(o) The credit for education expenses under section 5747.72 of the Revised Code;	116 117
(p) The credit for tuition paid to a nonchartered nonpublic school under section 5747.75 of the Revised Code;	118 119
<u>(q) The credit for fertility treatment expenses under section 5747.87 of the Revised Code.</u>	120 121
(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.	122 123 124 125 126 127 128 129
(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	130 131 132 133 134

correct tax due by the pass-through entity investors covered by 135
that return. Nothing in this division shall be construed to 136
limit or alter the liability, if any, imposed on pass-through 137
entity investors for unpaid or underpaid taxes, interest, 138
interest penalty, or penalties as a result of the pass-through 139
entity's making the election provided for under division (D) of 140
this section. For the purposes of division (D) of this section, 141
"correct tax due" means the tax that would have been paid by the 142
pass-through entity had the single return been filed in a manner 143
reflecting the commissioner's findings. Nothing in division (D) 144
of this section shall be construed to make or hold a pass- 145
through entity liable for tax attributable to a pass-through 146
entity investor's income from a source other than the pass- 147
through entity electing to file the single return. 148

(E) If a husband and wife file a joint federal income tax 149
return for a taxable year, they shall file a joint return under 150
this section for that taxable year, and their liabilities are 151
joint and several, but, if the federal income tax liability of 152
either spouse is determined on a separate federal income tax 153
return, they shall file separate returns under this section. 154

If either spouse is not required to file a federal income 155
tax return and either or both are required to file a return 156
pursuant to this chapter, they may elect to file separate or 157
joint returns, and, pursuant to that election, their liabilities 158
are separate or joint and several. If a husband and wife file 159
separate returns pursuant to this chapter, each must claim the 160
taxpayer's own exemption, but not both, as authorized under 161
section 5747.02 of the Revised Code on the taxpayer's own 162
return. 163

(F) Each return or notice required to be filed under this 164

section shall contain the signature of the taxpayer or the 165
taxpayer's duly authorized agent and of the person who prepared 166
the return for the taxpayer, and shall include the taxpayer's 167
social security number. Each return shall be verified by a 168
declaration under the penalties of perjury. The tax commissioner 169
shall prescribe the form that the signature and declaration 170
shall take. 171

(G) Each return or notice required to be filed under this 172
section shall be made and filed as required by section 5747.04 173
of the Revised Code, on or before the fifteenth day of April of 174
each year, on forms that the tax commissioner shall prescribe, 175
together with remittance made payable to the treasurer of state 176
in the combined amount of the state and all school district 177
income taxes shown to be due on the form. 178

Upon good cause shown, the commissioner may extend the 179
period for filing any notice or return required to be filed 180
under this section and may adopt rules relating to extensions. 181
If the extension results in an extension of time for the payment 182
of any state or school district income tax liability with 183
respect to which the return is filed, the taxpayer shall pay at 184
the time the tax liability is paid an amount of interest 185
computed at the rate per annum prescribed by section 5703.47 of 186
the Revised Code on that liability from the time that payment is 187
due without extension to the time of actual payment. Except as 188
provided in section 5747.132 of the Revised Code, in addition to 189
all other interest charges and penalties, all taxes imposed 190
under this chapter or Chapter 5748. of the Revised Code and 191
remaining unpaid after they become due, except combined amounts 192
due of one dollar or less, bear interest at the rate per annum 193
prescribed by section 5703.47 of the Revised Code until paid or 194
until the day an assessment is issued under section 5747.13 of 195

the Revised Code, whichever occurs first. 196

If the commissioner considers it necessary in order to 197
ensure the payment of the tax imposed by section 5747.02 of the 198
Revised Code or any tax imposed under Chapter 5748. of the 199
Revised Code, the commissioner may require returns and payments 200
to be made otherwise than as provided in this section. 201

To the extent that any provision in this division 202
conflicts with any provision in section 5747.026 of the Revised 203
Code, the provision in that section prevails. 204

(H) The amounts withheld pursuant to section 5747.06, 205
5747.062, 5747.063, 5747.064, 5747.065, or 5747.071 of the 206
Revised Code shall be allowed to the ultimate recipient of the 207
income as credits against payment of the appropriate taxes 208
imposed on the ultimate recipient by section 5747.02 and under 209
Chapter 5748. of the Revised Code. As used in this division, 210
"ultimate recipient" means the person who is required to report 211
income from which amounts are withheld pursuant to section 212
5747.06, 5747.062, 5747.063, 5747.064, 5747.065, or 5747.071 of 213
the Revised Code on the annual return required to be filed under 214
this section. 215

(I) If a pass-through entity elects to file a single 216
return under division (D) of this section and if any investor is 217
required to file the annual return and make the payment of taxes 218
required by this chapter on account of the investor's other 219
income that is not included in a single return filed by a pass- 220
through entity or any other investor elects to file the annual 221
return, the investor is entitled to a refundable credit equal to 222
the investor's proportionate share of the tax paid by the pass- 223
through entity on behalf of the investor. The investor shall 224
claim the credit for the investor's taxable year in which or 225

with which ends the taxable year of the pass-through entity. 226
Nothing in this chapter shall be construed to allow any credit 227
provided in this chapter to be claimed more than once. For the 228
purpose of computing any interest, penalty, or interest penalty, 229
the investor shall be deemed to have paid the refundable credit 230
provided by this division on the day that the pass-through 231
entity paid the estimated tax or the tax giving rise to the 232
credit. 233

(J) The tax commissioner shall ensure that each return 234
required to be filed under this section includes a box that the 235
taxpayer may check to authorize a paid tax preparer who prepared 236
the return to communicate with the department of taxation about 237
matters pertaining to the return. The return or instructions 238
accompanying the return shall indicate that by checking the box 239
the taxpayer authorizes the department of taxation to contact 240
the preparer concerning questions that arise during the 241
processing of the return and authorizes the preparer only to 242
provide the department with information that is missing from the 243
return, to contact the department for information about the 244
processing of the return or the status of the taxpayer's refund 245
or payments, and to respond to notices about mathematical 246
errors, offsets, or return preparation that the taxpayer has 247
received from the department and has shown to the preparer. 248

(K) The tax commissioner shall permit individual taxpayers 249
to instruct the department of taxation to cause any refund of 250
overpaid taxes to be deposited directly into a checking account, 251
savings account, or an individual retirement account or 252
individual retirement annuity, or preexisting college savings 253
plan or program account offered by the Ohio tuition trust 254
authority under Chapter 3334. of the Revised Code, as designated 255
by the taxpayer, when the taxpayer files the annual return 256

required by this section electronically. 257

(L) If, for the taxable year, a nonresident or trust that 258
is the owner of an electing pass-through entity, as defined in 259
section 5747.38 of the Revised Code, does not have Ohio adjusted 260
gross income or, in the case of a trust, modified Ohio taxable 261
income other than from one or more electing pass-through 262
entities, the nonresident or trust shall not be required to file 263
an annual return under this section. Nothing in this division 264
precludes such an owner from filing the annual return under this 265
section, utilizing the refundable credit under section 5747.39 266
of the Revised Code equal to the owner's proportionate share of 267
the tax levied under section 5747.38 of the Revised Code and 268
paid by the electing pass-through entity, and making the payment 269
of taxes imposed under section 5747.02 of the Revised Code. 270

(M) The tax commissioner may adopt rules to administer 271
this section. 272

Sec. 5747.87. (A) As used in this section: 273

(1) "Assisted reproductive technology" means any 274
fertility-related treatment in which eggs are surgically removed 275
from a woman's ovaries, combined with sperm in a laboratory, and 276
transferred back to the woman or another gestational carrier, 277
including in vitro fertilization, gamete intrafallopian 278
transfer, or zygote intrafallopian transfer. "Assisted 279
reproductive technology" does not include any treatment in which 280
only sperm are handled, such as intrauterine insemination or 281
procedures in which a woman takes drugs to stimulate egg 282
production without planning to have the eggs surgically 283
retrieved. 284

(2) "Treatment for conditions that impact fertility" means 285

any treatment or procedure that seeks to remedy one or more 286
medical conditions or diagnoses that affect the male or female 287
reproductive system and result in the inability to conceive 288
through sexual intercourse, with the goal of achieving a 289
successful pregnancy without the use of assisted reproductive 290
technology. "Treatment for conditions that impact fertility" 291
includes treatment for any of the following: conditions that 292
result in a failure to ovulate, issues in the menstrual cycle, 293
structural problems of the male or female reproductive system, 294
infections that impact fertility, conditions that result in the 295
failure of an egg to mature properly, implantation failure, 296
endometriosis, polycystic ovary syndrome, primary ovary 297
insufficiency, uterine fibroids, autoimmune disorders that 298
impact fertility, and sperm disorders. Such treatments include 299
medications that stimulate ovulation, intrauterine insemination, 300
and laparoscopic surgery. 301

(B) There is allowed a nonrefundable credit against a 302
qualifying taxpayer's aggregate tax liability under section 303
5747.02 of the Revised Code equal to the amount of expenses 304
incurred by the taxpayer or, if filing a joint return, the 305
taxpayer's spouse in the taxable year for treatment for 306
conditions that impact fertility or assisted reproductive 307
technology treatment, up to the following limitation, as 308
applicable: 309

(1) For treatment for conditions that impact fertility, 310
three thousand five hundred dollars; 311

(2) For assisted reproductive technology treatment, nine 312
thousand five hundred dollars. 313

The credit shall be claimed in the order required under 314
section 5747.98 of the Revised Code. If the credit exceeds the 315

taxpayer's aggregate tax due under section 5747.02 of the 316
Revised Code for that taxable year after allowing for credits 317
that precede the credit under this section in that order, such 318
excess shall be allowed as a credit in each of the ensuing seven 319
taxable years, but the amount of any excess credit allowed in 320
any such taxable year shall be deducted from the balance carried 321
forward to the ensuing taxable year. 322

(C) The taxpayer shall provide, upon request of the tax 323
commissioner, any documentation necessary to verify the taxpayer 324
is entitled to the credit under this section. 325

Sec. 5747.98. (A) To provide a uniform procedure for 326
calculating a taxpayer's aggregate tax liability under section 327
5747.02 of the Revised Code, a taxpayer shall claim any credits 328
to which the taxpayer is entitled in the following order: 329

Either the retirement income credit under division (B) of 330
section 5747.055 of the Revised Code or the lump sum retirement 331
income credits under divisions (C), (D), and (E) of that 332
section; 333

Either the senior citizen credit under division (F) of 334
section 5747.055 of the Revised Code or the lump sum 335
distribution credit under division (G) of that section; 336

The dependent care credit under section 5747.054 of the 337
Revised Code; 338

The credit for displaced workers who pay for job training 339
under section 5747.27 of the Revised Code; 340

The campaign contribution credit under section 5747.29 of 341
the Revised Code; 342

The twenty-dollar personal exemption credit under section 343

5747.022 of the Revised Code;	344
The joint filing credit under division (G) <u>(E)</u> of section	345
5747.05 of the Revised Code;	346
The earned income credit under section 5747.71 of the	347
Revised Code;	348
The nonrefundable credit for education expenses under	349
section 5747.72 of the Revised Code;	350
The nonrefundable credit for donations to scholarship	351
granting organizations under section 5747.73 of the Revised	352
Code;	353
The nonrefundable credit for tuition paid to a	354
nonchartered nonpublic school under section 5747.75 of the	355
Revised Code;	356
The nonrefundable vocational job credit under section	357
5747.057 of the Revised Code;	358
The nonrefundable job retention credit under division (B)	359
of section 5747.058 of the Revised Code;	360
The enterprise zone credit under section 5709.66 of the	361
Revised Code;	362
The credit for beginning farmers who participate in a	363
financial management program under division (B) of section	364
5747.77 of the Revised Code;	365
The credit for commercial vehicle operator training	366
expenses under section 5747.82 of the Revised Code;	367
The nonrefundable welcome home Ohio (WHO) program credit	368
under section 122.633 of the Revised Code;	369
The credit for selling or renting agricultural assets to	370

beginning farmers under division (A) of section 5747.77 of the Revised Code;	371 372
The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	373 374
The small business investment credit under section 5747.81 of the Revised Code;	375 376
The nonrefundable lead abatement credit under section 5747.26 of the Revised Code;	377 378
The opportunity zone investment credit under section 5747.86 of the Revised Code;	379 380
<u>The nonrefundable credit for fertility treatment expenses under section 5747.87 of the Revised Code;</u>	381 382
The enterprise zone credits under section 5709.65 of the Revised Code;	383 384
The research and development credit under section 5747.331 of the Revised Code;	385 386
The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	387 388
The nonrefundable Ohio low-income housing tax credit under section 5747.83 of the Revised Code;	389 390
The nonrefundable affordable single-family home credit under section 5747.84 of the Revised Code;	391 392
The nonresident credit under division (A) of section 5747.05 of the Revised Code;	393 394
The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	395 396

The refundable motion picture and Broadway theatrical production credit under section 5747.66 of the Revised Code;	397 398
The refundable credit for film and theater capital improvement projects under section 5747.67 of the Revised Code;	399 400
The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;	401 402 403
The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	404 405
The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;	406 407 408
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;	409 410 411
The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	412 413
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.	414 415 416
(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	417 418 419 420 421 422 423 424

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 5747.08 and 5747.98 of 428
the Revised Code are hereby repealed. 429