

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 191

**Senators Eklund, Cafaro
Cosponsors: Senators LaRose, Yuko, Schiavoni**

A BILL

To amend section 5747.98 and to enact sections 1
122.851 and 5747.67 of the Revised Code to 2
authorize a refundable income tax credit for 3
individual investors in a sound recording 4
production company equal to a portion of the 5
company's costs for a recording production or 6
recording infrastructure project in Ohio. 7

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

Section 1. That section 5747.98 be amended and sections 8
122.851 and 5747.67 of the Revised Code be enacted to read as 9
follows: 10

Sec. 122.851. (A) As used in this section: 11

(1) "Eligible expenditures" means actual production- 12
related costs in this state by a sound recording company for a 13
tax credit-eligible production or actual capital costs in this 14
state by a sound recording company for a tax credit-eligible 15
project. 16

(2) "Expenditure in this state" means the cost of either 17
of the following: 18

(a) Acquiring tangible personal property or services in this state that are subject to tax levied under section 5739.02 or 5741.02 of the Revised Code; 19
20
21

(b) Compensation for services performed within the state subject to the tax levied under section 5747.02 of the Revised Code. 22
23
24

(3) "Sound recording" means a recording of a music, poetry, or spoken performance recorded, in whole or in part, in this state. "Sound recording" does not include the audio portions of dialogue or words spoken and recorded as part of television news coverage or athletic events. 25
26
27
28
29

(4) "Sound recording production company" means a sole proprietorship or a pass-through entity engaged in the production of sound recordings. 30
31
32

(5) "Tax credit-eligible production" means the production of a sound recording, or a series of such productions occurring over a twelve-month period, certified by the director of development services under division (B) of this section as eligible for the tax credit authorized under section 5747.67 of the Revised Code. 33
34
35
36
37
38

(6) "Tax credit-eligible project" means a capital project to construct or improve infrastructure for creating sound recording productions certified by the director of development services under division (B) of this section as eligible for the tax credit authorized under section 5747.67 of the Revised Code. 39
40
41
42
43

(7) "Investor" means an individual who owns a sound production company that is a sole proprietorship or an individual who owns a proportionate or distributive share of a sound recording production company that is a pass-through 44
45
46
47

entity. 48

(8) "Pass-through entity" has the same meaning as in 49
section 5733.04 of the Revised Code, but does not include a sole 50
proprietorship. 51

(9) "Capital costs of a tax credit-eligible project" means 52
expenditures directly related to a tax credit-eligible project, 53
including land and land acquisition costs, construction costs, 54
design fees, furniture, fixtures, and equipment purchased 55
subject to a sale agreement or capital lease, but does not 56
include general administrative costs or insurance. 57

(10) "Production-related costs" means expenditures 58
directly related to a tax credit-eligible production. 59

(B) (1) The director of development services may certify a 60
sound recording production or sound recording infrastructure 61
project as a tax credit-eligible production or tax credit- 62
eligible project, respectively. A sound recording production 63
company shall apply for certification of a sound recording 64
production or a sound recording capital infrastructure project 65
as a tax credit-eligible production or tax credit-eligible 66
project, respectively, in the form and manner prescribed by the 67
director. 68

(a) An application to certify a tax credit-eligible 69
production shall include all of the following: 70

(i) The production's distribution plan; 71

(ii) The production's preliminary budget, including 72
estimated eligible expenditures; 73

(iii) A description of the type of sound to be recorded; 74

(iv) A list of the production's principal creative 75

<u>elements, including performing artists and producers;</u>	76
<u>(v) The location, including street address, of the recording studio or other location where production will occur;</u>	77
<u>(vi) A statement that the production will qualify as a tax credit-eligible production;</u>	79
<u>(vii) The production's estimated start and completion dates;</u>	81
<u>(viii) Any other information required by the director.</u>	83
<u>(b) An application to certify a tax credit-eligible project shall include all of the following:</u>	84
<u>(i) A detailed description of the project, including the project's location;</u>	86
<u>(ii) The project's preliminary budget, including eligible expenditures;</u>	88
<u>(iii) A statement that the project will qualify as a tax credit-eligible sound recording infrastructure project;</u>	90
<u>(iv) The project's estimated start and completion dates;</u>	92
<u>(v) Any other information required by the director.</u>	93
<u>(2) Upon receipt of a complete application, the director of development services may certify the sound recording production or sound recording infrastructure project as a tax credit-eligible production or tax credit-eligible project, respectively. If the director receives an application that is incomplete, the director may request that the applicant provide any omitted information or reject the application. Within one hundred eighty days after receiving a complete application, the director shall approve or reject the application, and notify the</u>	94
	95
	96
	97
	98
	99
	100
	101
	102

applicant of the director's decision. The director also shall 103
notify the tax commissioner and investor of each production or 104
project the director certifies as a tax credit-eligible 105
production or tax credit-eligible sound recording infrastructure 106
project. 107

The director shall reject an application if the applicant 108
is a person, or any person owned, affiliated, or controlled, in 109
whole or in part, by any person that either owes debt that has 110
been certified to the attorney general under section 131.02 of 111
the Revised Code or has declared bankruptcy under which an 112
obligation of the person to pay or repay public funds or moneys 113
was discharged as a part of such bankruptcy. The rejection of an 114
application under this division does not prohibit an applicant 115
from filing another application under this section for the same 116
production or project. 117

(3) In making the director's determination under division 118
(B)(2) of this section, the director shall consider each of the 119
following factors: 120

(a) The impact of the production or project on the 121
encouragement and development in this state of a strong capital 122
and infrastructure base in order to achieve a more independent, 123
self-supporting music and sound recording industry; 124

(b) The impact of the production or project on the 125
employment of residents of this state; 126

(c) The impact of the production or project on the overall 127
economy of this state; 128

(d) If the application is for a tax credit-eligible 129
project, the availability of similar infrastructure facilities 130
located within fifty miles of the proposed project. 131

(C) A sound recording production company whose sound recording production or sound recording capital infrastructure project is certified under division (B) of this section as a tax credit-eligible production or tax credit-eligible project, after such production or project is completed, may apply to the director of development services to receive a refundable credit against the tax imposed under section 5747.02 of the Revised Code, which may be claimed by the company's investor or investors. The director in consultation with the tax commissioner shall prescribe the form and manner of the application under this division and the information or documentation required to be submitted with the application.

In addition to the application, the company shall report the eligible expenditures related to that production or project, which the director may require to be prepared by a certified public accountant. Before awarding a certificate under division (C) of this section, the director may inspect the books, accounts, records, and memoranda of a sound recording production company to audit the accuracy of that report. The amount of credit awarded to investors shall be proportionately reduced by the cost to the director of any such audit. Upon receiving and examining the report, the director may disallow any reported eligible expenditure the director determines is not an eligible expenditure. If the director disallows an expenditure, the director shall issue a written notice to the sound recording production company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the report and disallowance of any expenditure, the director shall determine eligible expenditures for the purpose of calculating the amount of the credit.

Subject to the aggregate credit limit in division (D) of

this section, upon receipt of an application under this 163
division, the director shall issue a certificate to each 164
applicable investor showing the amount of the credit the 165
investor may claim under section 5747.67 of the Revised Code. 166
The director shall calculate that credit as follows: 167

(1) The amount of the credit equals twenty-five per cent 168
of eligible expenditures in excess of five thousand dollars, 169
multiplied by the investor's proportionate or distributive share 170
of the sound production company if that company is a pass- 171
through entity. 172

(2) The amount of credit awarded to all investors for a 173
production or project shall not exceed fifty thousand dollars. 174
If the amount of the credit, as calculated under division (C) (1) 175
of this section, would exceed fifty thousand dollars, the 176
director shall reduce the amount of credit awarded to each 177
investor proportionately so that the total amount so awarded to 178
all such investors equals fifty thousand dollars. 179

(3) No credit shall be awarded on the basis of any portion 180
of an eligible expenditure that is also an eligible production 181
expenditure that forms the basis of a credit awarded under 182
section 122.85 of the Revised Code. 183

(4) No credit shall be awarded for taxable years beginning 184
on or after January 1, 2020. 185

(D) The aggregate amount of credits certified for all 186
investors under division (C) of this section for any fiscal year 187
shall not exceed three million dollars. The director shall award 188
credit certificates under that division for tax credit-eligible 189
productions or tax credit-eligible projects on a first-come, 190
first-served basis. 191

(E) The director of development services shall transmit a 192
copy of each certificate issued under division (C) of this 193
section to the tax commissioner. The director in consultation 194
with the tax commissioner shall adopt rules in accordance with 195
Chapter 119. of the Revised Code necessary for the 196
administration of the credit authorized in this section. 197

(F) On or before the thirty-first day of October each 198
even-numbered year, beginning in 2016, the director of 199
development services shall prepare a report evaluating the 200
effect of the credit authorized under this section and submit 201
that report to the chair and ranking minority member of the 202
house of representatives and senate standing committees dealing 203
primarily with issues of taxation. The report shall include the 204
overall effect of credits awarded under this section, the amount 205
of such credit certificates issued, the number of new jobs 206
created and payroll subject to the tax under section 5747.02 of 207
the Revised Code created as a result of the credits, the 208
economic effect of the credits on the sound recording industry, 209
the amount of new sounds recording infrastructure that has been 210
developed in the state, and any other factors that describe the 211
effect of the credits. 212

(G) The tax commissioner may assess an investor under 213
section 5747.13 of the Revised Code for any amount of credit 214
claimed by the investor but later determined by the commissioner 215
or the director of development services to be disallowed under 216
this section, subject to the time limitations in that section. 217

(H) As a condition for a sound recording production 218
company's investors being awarded a certificate under division 219
(C) of this section, the director of development services may 220
require a tax credit-eligible production to display the state's 221

name or logo, as prescribed by the director. 222

Sec. 5747.67. (A) Any term used in this section has the 223
same meaning as in section 122.851 of the Revised Code. 224

(B) There is allowed a refundable credit against the tax 225
imposed by section 5747.02 of the Revised Code for any 226
individual who, on the last day of the individual's taxable 227
year, holds a tax credit certificate issued under division (C) 228
of section 122.851 of the Revised Code. The credit shall be 229
claimed for the taxable year that includes the date the 230
certificate was issued by the director of development services 231
under that division. The credit amount equals the amount stated 232
in the certificate. The credit shall be claimed in the order 233
required under section 5747.98 of the Revised Code. If the 234
credit amount exceeds the tax otherwise due under section 235
5747.02 of the Revised Code after deducting all other credits in 236
that order, the excess shall be refunded. 237

Sec. 5747.98. (A) To provide a uniform procedure for 238
calculating the amount of tax due under section 5747.02 of the 239
Revised Code, a taxpayer shall claim any credits to which the 240
taxpayer is entitled in the following order: 241

(1) The retirement income credit under division (B) of 242
section 5747.055 of the Revised Code; 243

(2) The senior citizen credit under division (C) of 244
section 5747.05 of the Revised Code; 245

(3) The lump sum distribution credit under division (D) of 246
section 5747.05 of the Revised Code; 247

(4) The dependent care credit under section 5747.054 of 248
the Revised Code; 249

(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	250 251
(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	252 253
(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	254 255
(8) The low-income credit under section 5747.056 of the Revised Code;	256 257
(9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	258 259
(10) The campaign contribution credit under section 5747.29 of the Revised Code;	260 261
(11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	262 263
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	264 265
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	266 267
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	268 269
(15) The earned income credit under section 5747.71 of the Revised Code;	270 271
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	272 273
(17) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	274 275

(18) The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;	276 277
(19) The credit for selling alternative fuel under section 5747.77 of the Revised Code;	278 279
(20) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;	280 281 282
(21) The job training credit under section 5747.39 of the Revised Code;	283 284
(22) The enterprise zone credit under section 5709.66 of the Revised Code;	285 286
(23) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	287 288
(24) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	289 290
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	291 292
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	293 294
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	295 296
(28) The small business investment credit under section 5747.81 of the Revised Code;	297 298
(29) The enterprise zone credits under section 5709.65 of the Revised Code;	299 300
(30) The research and development credit under section 5747.331 of the Revised Code;	301 302

(31) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	303 304
(32) The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	305 306
(33) The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;	307 308 309
(34) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	310 311
(35) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;	312 313 314
(36) 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;	315 316 317 318
(37) The refundable motion picture production credit under section 5747.66 of the Revised Code;	319 320
(38) The refundable credit for financial institution taxes paid by a pass-through entity granted under section 5747.65 of the Revised Code;	321 322 323
<u>(39) The refundable sound recording production credit under section 5747.67 of the Revised Code.</u>	324 325
(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 tax due after allowing for any other credit that precedes it in the order	326 327 328 329 330

required under this section. Any excess amount of a particular 331
credit may be carried forward if authorized under the section 332
creating that credit. Nothing in this chapter shall be construed 333
to allow a taxpayer to claim, directly or indirectly, a credit 334
more than once for a taxable year. 335

Section 2. That existing section 5747.98 of the Revised 336
Code is hereby repealed. 337