

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 333**

**Representatives Becker, Leland**

**Cosponsors: Representatives Vitale, Retherford, Keller, Duffey, Thompson, Brinkman, Hambley, Henne, Dean, Roegner, Hood, Riedel, Goodman, Schaffer, Butler, Wiggam, Koehler, Slaby, Conditt, Brenner, Sweeney, Boggs, Zeltwanger, Miller, Young**

---

**A BILL**

To amend section 5747.08 of the Revised Code to  
allow married couples to elect to file either  
separate state tax returns or a joint state  
return, irrespective of their federal filing  
status.

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

**Section 1.** That section 5747.08 of the Revised Code be  
amended 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 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) Nothing in division (D) of this section precludes the 64  
tax commissioner from requiring such investors to file the 65  
return and make the payment of taxes and related interest, 66  
penalty, and interest penalty required by this section or 67  
section 5747.02, 5747.09, or 5747.15 of the Revised Code. 68  
Nothing in division (D) of this section precludes such an 69  
investor from filing the annual return under this section, 70  
utilizing the refundable credit equal to the investor's 71  
proportionate share of the tax paid by the pass-through entity 72  
on behalf of the investor under division (I) of this section, 73  
and making the payment of taxes imposed under section 5747.02 of 74  
the Revised Code. Nothing in division (D) of this section shall 75  
be construed to provide to such an investor or pass-through 76

entity any additional deduction or credit, other than the credit	77
provided by division (I) of this section, solely on account of	78
the entity's filing a return in accordance with this section.	79
Such a pass-through entity also shall make the filing and	80
payment of estimated taxes on behalf of the pass-through entity	81
investors other than an investor that is a person subject to the	82
tax imposed under section 5733.06 of the Revised Code.	83
(2) For the purposes of this section, "business credits"	84
means the credits listed in section 5747.98 of the Revised Code	85
excluding the following credits:	86
(a) The retirement income credit under division (B) of	87
section 5747.055 of the Revised Code;	88
(b) The senior citizen credit under division (F) of	89
section 5747.055 of the Revised Code;	90
(c) The lump sum distribution credit under division (G) of	91
section 5747.055 of the Revised Code;	92
(d) The dependent care credit under section 5747.054 of	93
the Revised Code;	94
(e) The lump sum retirement income credit under division	95
(C) of section 5747.055 of the Revised Code;	96
(f) The lump sum retirement income credit under division	97
(D) of section 5747.055 of the Revised Code;	98
(g) The lump sum retirement income credit under division	99
(E) of section 5747.055 of the Revised Code;	100
(h) The credit for displaced workers who pay for job	101
training under section 5747.27 of the Revised Code;	102
(i) The twenty-dollar personal exemption credit under	103

section 5747.022 of the Revised Code;	104
(j) The joint filing credit under division (E) of section 5747.05 of the Revised Code;	105 106
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	107 108
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	109 110
(m) The low-income credit under section 5747.056 of the Revised Code;	111 112
(n) The earned income tax credit under section 5747.71 of the Revised Code.	113 114
(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.	115 116 117 118 119 120 121 122
(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	123 124 125 126 127 128 129 130 131 132

entity's making the election provided for under division (D) of 133  
this section. For the purposes of division (D) of this section, 134  
"correct tax due" means the tax that would have been paid by the 135  
pass-through entity had the single return been filed in a manner 136  
reflecting the commissioner's findings. Nothing in division (D) 137  
of this section shall be construed to make or hold a pass- 138  
through entity liable for tax attributable to a pass-through 139  
entity investor's income from a source other than the pass- 140  
through entity electing to file the single return. 141

(E) If a husband and wife file a joint federal income tax 142  
return for a taxable year, they ~~shall~~ may elect to file a joint 143  
return or separate returns under this section for that taxable 144  
year, and, pursuant to that election, their liabilities are 145  
separate if they file separate returns or joint and several, 146  
~~but,~~ if they file a joint return. If the federal income tax 147  
liability of either spouse is determined on a separate federal 148  
income tax return, ~~they shall file separate returns under this~~ 149  
~~section.~~ 150

~~If or if~~ either spouse is not required to file a federal 151  
income tax return and either or both are required to file a 152  
return pursuant to this chapter, they may elect to file separate 153  
or joint returns, and, pursuant to that election, their 154  
liabilities are separate or joint and several. If a husband and 155  
wife file separate returns pursuant to this chapter, each must 156  
claim the taxpayer's own exemption, but not both, as authorized 157  
under section 5747.02 of the Revised Code on the taxpayer's own 158  
return. 159

(F) Each return or notice required to be filed under this 160  
section shall contain the signature of the taxpayer or the 161  
taxpayer's duly authorized agent and of the person who prepared 162

the return for the taxpayer, and shall include the taxpayer's 163  
social security number. Each return shall be verified by a 164  
declaration under the penalties of perjury. The tax commissioner 165  
shall prescribe the form that the signature and declaration 166  
shall take. 167

(G) Each return or notice required to be filed under this 168  
section shall be made and filed as required by section 5747.04 169  
of the Revised Code, on or before the fifteenth day of April of 170  
each year, on forms that the tax commissioner shall prescribe, 171  
together with remittance made payable to the treasurer of state 172  
in the combined amount of the state and all school district 173  
income taxes shown to be due on the form. 174

Upon good cause shown, the commissioner may extend the 175  
period for filing any notice or return required to be filed 176  
under this section and may adopt rules relating to extensions. 177  
If the extension results in an extension of time for the payment 178  
of any state or school district income tax liability with 179  
respect to which the return is filed, the taxpayer shall pay at 180  
the time the tax liability is paid an amount of interest 181  
computed at the rate per annum prescribed by section 5703.47 of 182  
the Revised Code on that liability from the time that payment is 183  
due without extension to the time of actual payment. Except as 184  
provided in section 5747.132 of the Revised Code, in addition to 185  
all other interest charges and penalties, all taxes imposed 186  
under this chapter or Chapter 5748. of the Revised Code and 187  
remaining unpaid after they become due, except combined amounts 188  
due of one dollar or less, bear interest at the rate per annum 189  
prescribed by section 5703.47 of the Revised Code until paid or 190  
until the day an assessment is issued under section 5747.13 of 191  
the Revised Code, whichever occurs first. 192

If the commissioner considers it necessary in order to 193  
ensure the payment of the tax imposed by section 5747.02 of the 194  
Revised Code or any tax imposed under Chapter 5748. of the 195  
Revised Code, the commissioner may require returns and payments 196  
to be made otherwise than as provided in this section. 197

To the extent that any provision in this division 198  
conflicts with any provision in section 5747.026 of the Revised 199  
Code, the provision in that section prevails. 200

(H) The amounts withheld by an employer pursuant to 201  
section 5747.06 of the Revised Code, a casino operator pursuant 202  
to section 5747.063 of the Revised Code, or a lottery sales 203  
agent pursuant to section 5747.064 of the Revised Code shall be 204  
allowed to the recipient of the compensation casino winnings, or 205  
lottery prize award as credits against payment of the 206  
appropriate taxes imposed on the recipient by section 5747.02 207  
and under Chapter 5748. of the Revised Code. 208

(I) If a pass-through entity elects to file a single 209  
return under division (D) of this section and if any investor is 210  
required to file the annual return and make the payment of taxes 211  
required by this chapter on account of the investor's other 212  
income that is not included in a single return filed by a pass- 213  
through entity or any other investor elects to file the annual 214  
return, the investor is entitled to a refundable credit equal to 215  
the investor's proportionate share of the tax paid by the pass- 216  
through entity on behalf of the investor. The investor shall 217  
claim the credit for the investor's taxable year in which or 218  
with which ends the taxable year of the pass-through entity. 219  
Nothing in this chapter shall be construed to allow any credit 220  
provided in this chapter to be claimed more than once. For the 221  
purpose of computing any interest, penalty, or interest penalty, 222



the investor shall be deemed to have paid the refundable credit 223  
provided by this division on the day that the pass-through 224  
entity paid the estimated tax or the tax giving rise to the 225  
credit. 226

(J) The tax commissioner shall ensure that each return 227  
required to be filed under this section includes a box that the 228  
taxpayer may check to authorize a paid tax preparer who prepared 229  
the return to communicate with the department of taxation about 230  
matters pertaining to the return. The return or instructions 231  
accompanying the return shall indicate that by checking the box 232  
the taxpayer authorizes the department of taxation to contact 233  
the preparer concerning questions that arise during the 234  
processing of the return and authorizes the preparer only to 235  
provide the department with information that is missing from the 236  
return, to contact the department for information about the 237  
processing of the return or the status of the taxpayer's refund 238  
or payments, and to respond to notices about mathematical 239  
errors, offsets, or return preparation that the taxpayer has 240  
received from the department and has shown to the preparer. 241

(K) The tax commissioner shall permit individual taxpayers 242  
to instruct the department of taxation to cause any refund of 243  
overpaid taxes to be deposited directly into a checking account, 244  
savings account, or an individual retirement account or 245  
individual retirement annuity, or preexisting college savings 246  
plan or program account offered by the Ohio tuition trust 247  
authority under Chapter 3334. of the Revised Code, as designated 248  
by the taxpayer, when the taxpayer files the annual return 249  
required by this section electronically. 250

(L) The tax commissioner may adopt rules to administer 251  
this section. 252

<b>Section 2.</b> That existing section 5747.08 of the Revised	253
Code is hereby repealed.	254
<b>Section 3.</b> The amendment by this act of section 5747.08 of	255
the Revised Code applies to taxable years beginning in 2017 or	256
thereafter.	257