

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 323

Representative Fowler Arthur

**Cosponsors: Representatives Ferguson, Gross, Seitz, McClain, Callender, Powell,
Zeltwanger, Riedel, Young, T., Brinkman**

A BILL

To amend sections 5747.08 and 5747.98 and to enact 1
section 5747.38 of the Revised Code to authorize 2
a personal income tax credit for certain primary 3
and secondary education 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 5747.38 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) 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	105

5747.05 of the Revised Code;	106
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	107
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	108
(m) The earned income tax credit under section 5747.71 of the Revised Code;	109
(n) The lead abatement credit under section 5747.26 of the Revised Code;	110
(o) The education tax credit under section 5747.38 of the Revised Code.	111
(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.	112
(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	113
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entity's making the election provided for under division (D) of 135
this section. For the purposes of division (D) of this section, 136
"correct tax due" means the tax that would have been paid by the 137
pass-through entity had the single return been filed in a manner 138
reflecting the commissioner's findings. Nothing in division (D) 139
of this section shall be construed to make or hold a pass- 140
through entity liable for tax attributable to a pass-through 141
entity investor's income from a source other than the pass- 142
through entity electing to file the single return. 143

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

If either spouse is not required to file a federal income 150
tax return and either or both are required to file a return 151
pursuant to this chapter, they may elect to file separate or 152
joint returns, and, pursuant to that election, their liabilities 153
are separate or joint and several. If a husband and wife file 154
separate returns pursuant to this chapter, each must claim the 155
taxpayer's own exemption, but not both, as authorized under 156
section 5747.02 of the Revised Code on the taxpayer's own 157
return. 158

(F) Each return or notice required to be filed under this 159
section shall contain the signature of the taxpayer or the 160
taxpayer's duly authorized agent and of the person who prepared 161
the return for the taxpayer, and shall include the taxpayer's 162
social security number. Each return shall be verified by a 163
declaration under the penalties of perjury. The tax commissioner 164

shall prescribe the form that the signature and declaration 165
shall take. 166

(G) Each return or notice required to be filed under this 167
section shall be made and filed as required by section 5747.04 168
of the Revised Code, on or before the fifteenth day of April of 169
each year, on forms that the tax commissioner shall prescribe, 170
together with remittance made payable to the treasurer of state 171
in the combined amount of the state and all school district 172
income taxes shown to be due on the form. 173

Upon good cause shown, the commissioner may extend the 174
period for filing any notice or return required to be filed 175
under this section and may adopt rules relating to extensions. 176
If the extension results in an extension of time for the payment 177
of any state or school district income tax liability with 178
respect to which the return is filed, the taxpayer shall pay at 179
the time the tax liability is paid an amount of interest 180
computed at the rate per annum prescribed by section 5703.47 of 181
the Revised Code on that liability from the time that payment is 182
due without extension to the time of actual payment. Except as 183
provided in section 5747.132 of the Revised Code, in addition to 184
all other interest charges and penalties, all taxes imposed 185
under this chapter or Chapter 5748. of the Revised Code and 186
remaining unpaid after they become due, except combined amounts 187
due of one dollar or less, bear interest at the rate per annum 188
prescribed by section 5703.47 of the Revised Code until paid or 189
until the day an assessment is issued under section 5747.13 of 190
the Revised Code, whichever occurs first. 191

If the commissioner considers it necessary in order to 192
ensure the payment of the tax imposed by section 5747.02 of the 193
Revised Code or any tax imposed under Chapter 5748. of the 194

Revised Code, the commissioner may require returns and payments 195
to be made otherwise than as provided in this section. 196

To the extent that any provision in this division 197
conflicts with any provision in section 5747.026 of the Revised 198
Code, the provision in that section prevails. 199

(H) The amounts withheld by an employer pursuant to 200
section 5747.06 of the Revised Code, a casino operator pursuant 201
to section 5747.063 of the Revised Code, or a lottery sales 202
agent pursuant to section 5747.064 of the Revised Code shall be 203
allowed to the recipient of the compensation casino winnings, or 204
lottery prize award as credits against payment of the 205
appropriate taxes imposed on the recipient by section 5747.02 206
and under Chapter 5748. of the Revised Code. 207

(I) If a pass-through entity elects to file a single 208
return under division (D) of this section and if any investor is 209
required to file the annual return and make the payment of taxes 210
required by this chapter on account of the investor's other 211
income that is not included in a single return filed by a pass- 212
through entity or any other investor elects to file the annual 213
return, the investor is entitled to a refundable credit equal to 214
the investor's proportionate share of the tax paid by the pass- 215
through entity on behalf of the investor. The investor shall 216
claim the credit for the investor's taxable year in which or 217
with which ends the taxable year of the pass-through entity. 218
Nothing in this chapter shall be construed to allow any credit 219
provided in this chapter to be claimed more than once. For the 220
purpose of computing any interest, penalty, or interest penalty, 221
the investor shall be deemed to have paid the refundable credit 222
provided by this division on the day that the pass-through 223
entity paid the estimated tax or the tax giving rise to the 224

credit. 225

(J) The tax commissioner shall ensure that each return 226
required to be filed under this section includes a box that the 227
taxpayer may check to authorize a paid tax preparer who prepared 228
the return to communicate with the department of taxation about 229
matters pertaining to the return. The return or instructions 230
accompanying the return shall indicate that by checking the box 231
the taxpayer authorizes the department of taxation to contact 232
the preparer concerning questions that arise during the 233
processing of the return and authorizes the preparer only to 234
provide the department with information that is missing from the 235
return, to contact the department for information about the 236
processing of the return or the status of the taxpayer's refund 237
or payments, and to respond to notices about mathematical 238
errors, offsets, or return preparation that the taxpayer has 239
received from the department and has shown to the preparer. 240

(K) The tax commissioner shall permit individual taxpayers 241
to instruct the department of taxation to cause any refund of 242
overpaid taxes to be deposited directly into a checking account, 243
savings account, or an individual retirement account or 244
individual retirement annuity, or preexisting college savings 245
plan or program account offered by the Ohio tuition trust 246
authority under Chapter 3334. of the Revised Code, as designated 247
by the taxpayer, when the taxpayer files the annual return 248
required by this section electronically. 249

(L) A taxpayer claiming the deduction under division (A) 250
(31) of section 5747.01 of the Revised Code for a taxable year 251
shall indicate on the taxpayer's return the north American 252
industry classification system code of each business or 253
professional activity from which the taxpayer's business income 254

was derived. The tax commissioner shall provide space on the 255
return for this purpose and shall prescribe, by rule adopted in 256
accordance with Chapter 119. of the Revised Code, the manner by 257
which such a taxpayer shall determine the taxpayer's proper 258
classification codes and business or professional activities 259
from which the taxpayer derives business income. 260

(M) The tax commissioner may adopt rules to administer 261
this section. 262

Sec. 5747.38. (A) As used in this section: 263

(1) "Qualifying taxpayer" means a taxpayer that is either 264
of the following: 265

(a) An educator who provides instruction to a qualifying 266
student; 267

(b) An individual with a dependent who is a qualifying 268
student. 269

(2) "Educator" means an individual who satisfies either of 270
the following: 271

(a) Holds a certificate, license, registration, or permit 272
described in Chapter 3319. or section 3301.071 of the Revised 273
Code; 274

(b) Provides home instruction, as authorized under section 275
3321.04 of the Revised Code. 276

(3) "Qualifying student" means a student who received 277
instruction from a public, chartered nonpublic, or nonchartered 278
nonpublic school for the school year or was excused from the 279
compulsory attendance law for the purpose of home instruction 280
for that year under section 3321.04 of the Revised Code. 281

(4) "Education expenses" means expenses or fees for books, 282
supplementary materials, supplies, tutoring, educational field 283
trips, or lessons, including for music, art, or kinesthetic 284
learning. "Education expenses" does not include expenses or fees 285
for tuition or room and board. 286

(B) There is hereby allowed a nonrefundable credit against 287
a qualifying taxpayer's aggregate tax liability under section 288
5747.02 of the Revised Code equal to the amount of education 289
expenses incurred by the taxpayer in the taxable year for the 290
benefit of each of the taxpayer's qualifying students described 291
in division (A) (1) (a) or (b) of this section, except that the 292
credit shall not exceed, for any taxable year, one thousand five 293
hundred dollars of the education expenses incurred for the 294
benefit of any particular qualifying student. The credit shall 295
be claimed in the order required under section 5747.98 of the 296
Revised Code. 297

The tax commissioner may request that a qualifying 298
taxpayer claiming a credit under this section furnish 299
information as is necessary to support the claim for the credit 300
under this section, and no credit shall be allowed unless the 301
requested information is provided. 302

Sec. 5747.98. (A) To provide a uniform procedure for 303
calculating a taxpayer's aggregate tax liability under section 304
5747.02 of the Revised Code, a taxpayer shall claim any credits 305
to which the taxpayer is entitled in the following order: 306

Either the retirement income credit under division (B) of 307
section 5747.055 of the Revised Code or the lump sum retirement 308
income credits under divisions (C), (D), and (E) of that 309
section; 310

Either the senior citizen credit under division (F) of	311
section 5747.055 of the Revised Code or the lump sum	312
distribution credit under division (G) of that section;	313
The dependent care credit under section 5747.054 of the	314
Revised Code;	315
The credit for displaced workers who pay for job training	316
under section 5747.27 of the Revised Code;	317
The campaign contribution credit under section 5747.29 of	318
the Revised Code;	319
The twenty-dollar personal exemption credit under section	320
5747.022 of the Revised Code;	321
The joint filing credit under division (G) of section	322
5747.05 of the Revised Code;	323
The earned income credit under section 5747.71 of the	324
Revised Code;	325
<u>The nonrefundable education tax credit under section</u>	326
<u>5747.38 of the Revised Code;</u>	327
The credit for adoption of a minor child under section	328
5747.37 of the Revised Code;	329
The nonrefundable job retention credit under division (B)	330
of section 5747.058 of the Revised Code;	331
The enterprise zone credit under section 5709.66 of the	332
Revised Code;	333
The credit for purchases of qualifying grape production	334
property under section 5747.28 of the Revised Code;	335
The small business investment credit under section 5747.81	336
of the Revised Code;	337

The nonrefundable lead abatement credit under section	338
5747.26 of the Revised Code;	339
The opportunity zone investment credit under section	340
122.84 of the Revised Code;	341
The enterprise zone credits under section 5709.65 of the	342
Revised Code;	343
The research and development credit under section 5747.331	344
of the Revised Code;	345
The credit for rehabilitating a historic building under	346
section 5747.76 of the Revised Code;	347
The nonresident credit under division (A) of section	348
5747.05 of the Revised Code;	349
The credit for a resident's out-of-state income under	350
division (B) of section 5747.05 of the Revised Code;	351
The refundable motion picture and Broadway theatrical	352
production credit under section 5747.66 of the Revised Code;	353
The refundable jobs creation credit or job retention	354
credit under division (A) of section 5747.058 of the Revised	355
Code;	356
The refundable credit for taxes paid by a qualifying	357
entity granted under section 5747.059 of the Revised Code;	358
The refundable credits for taxes paid by a qualifying	359
pass-through entity granted under division (I) of section	360
5747.08 of the Revised Code;	361
The refundable credit under section 5747.80 of the Revised	362
Code for losses on loans made to the Ohio venture capital	363
program under sections 150.01 to 150.10 of the Revised Code;	364

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

(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.

Section 3. The amendment or enactment by this act of sections 5747.08, 5747.38, and 5747.98 of the Revised Code applies to taxable years beginning on or after January 1, 2021.

Section 4. Pursuant to division (G) of section 5703.95 of the Revised Code, which states that any bill introduced in the House of Representatives or the Senate that proposes to enact or modify one or more tax expenditures should include a statement explaining the objectives of the tax expenditure or its modification and the sponsor's intent in proposing the tax expenditure or its modification:

The purpose of the tax credit authorized by this act is to support the financial investments made by parents and educators in providing well rounded educational experiences for their children and students. The taxpayer may claim up to \$1,500 per

child or student per year for education expenses for books,	394
supplementary materials, supplies, tutoring, educational field	395
trips, or lessons, including for music, art, or kinesthetic	396
learning.	397