

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 599

Representatives Lanese, Carruthers

Cosponsors: Representatives John, Johnson



A BILL

To amend section 5747.98 and to enact section 1
122.852 of the Revised Code to enact the 2
Entertainment Technology Initiative, authorizing 3
a refundable income tax credit for certain 4
entertainment technology companies engaged in 5
postproduction and digital distribution 6
services. 7

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

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

Sec. 122.852. (A) As used in this section: 10

(1) "Affiliate" means a person that directly, or 11
indirectly through one or more intermediaries, controls, is 12
controlled by, or is under common control with another person. 13
For the purpose of this division, a person is "controlled by" 14
another person if the controlling person holds, directly or 15
indirectly, the majority voting or ownership interest in the 16
controlled person or has control over the day-to-day operations 17
of the controlled person by contract or by law. 18

(2) "Motion picture," "production company," "eligible expenditures," and "tax credit-eligible production" have the same meanings as in section 122.85 of the Revised Code. 19
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(3) "Ohio institution of higher education" means all of the following: 22
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(a) A state institution of higher education, as defined in section 3345.011 of the Revised Code; 24
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(b) An institution authorized by the department of higher education under Chapter 1713. of the Revised Code to grant degrees and that is accredited by the appropriate regional and professional accrediting associations within whose jurisdiction it falls; 26
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(c) A private career school holding program authorizations issued by the state board of career colleges and schools under division (C) of section 3332.05 of the Revised Code; 31
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(d) A private institution exempt from regulation under Chapter 3332. of the Revised Code as prescribed in section 3333.046 of the Revised Code. 34
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(4) "Ohio investment expenditures" means qualifying payroll and amounts paid to purchase, lease, construct, expand, or improve a qualifying technology entertainment facility. "Ohio investment expenditures" include costs for design, engineering, and construction of the facility; exploration and implementation of sustainability features and other equipment or design characteristics that increase energy efficiency or contribute to a public or private certification of the facility; technical improvements to heating, ventilation, and air conditioning systems and electrical systems, including the design and installation of solar and wind energy systems or geothermal 37
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heating systems; and purchase and installation of electric 48
vehicle charging stations. "Ohio investment expenditures" 49
exclude any qualifying expenditures for which a qualifying 50
technology entertainment company received a credit under this 51
section and any eligible production expenditures for which a 52
production company received a credit under section 122.85 of the 53
Revised Code. 54

(5) "Pass-through entity" has the same meaning as in 55
section 5733.04 of the Revised Code. 56

(6) "Taxpayer" and "resident" have the same meanings as in 57
section 5747.01 of the Revised Code. 58

(7) "Qualifying employee" means an individual employed in 59
a full-time position, the duties of which consist primarily of 60
performing postproduction or digital distribution services in 61
this state and who, on the date the individual's employment 62
begins, (a) is a resident, as that term is defined in section 63
5747.01 of the Revised Code, (b) is enrolled in an Ohio 64
institution of higher education, or (c) graduated with a degree, 65
certificate, or credential received from an Ohio institution of 66
higher education in the preceding twelve months. 67

(8) "Qualifying payroll" means wages, salaries, and other 68
compensation paid to employees for performing postproduction and 69
digital distribution services in this state. 70

(9) "Postproduction or digital distribution services" 71
means any of a series of processes involved in making a motion 72
picture or an extended reality experience that occur after the 73
filming, shooting, or recording phase of production including 74
image processing and sound synchronization, editing and related 75
services, transfer of film to tape or digital format, audio 76

recording and mixing, music composition and recording, visual 77
effects, motion graphics and animation, color grading, data 78
storage, film or music delivery, postproduction supervision, 79
video mastering, metadata generation, creation and distribution 80
of digital cinema packages, quality control, digital delivery, 81
advertising and promotion, and distribution. 82

(10) "Qualifying entertainment technology facility" means 83
a building or complex of buildings having at least five thousand 84
square feet of cumulative floor space, located in this state, 85
and used primarily to perform postproduction or digital 86
distribution services for motion pictures or extended reality 87
experiences. 88

(11) "Qualifying expenditures" means expenditures incurred 89
after the effective date of this section for goods and services 90
purchased and consumed in this state by a qualifying 91
entertainment technology company directly for performing 92
postproduction or digital distribution services for a motion 93
picture or extended reality experience. "Qualifying 94
expenditures" include expenses for qualifying payroll, equipment 95
rental, motor vehicle leases, food, lodging, airfare purchased 96
through a travel agent or company headquartered in this state, 97
insurance costs and bonding purchased through a domestic 98
insurance company, as that term is defined in section 5725.01 of 99
the Revised Code, and other costs directly related to 100
postproduction and digital distribution services and consistent 101
with generally accepted practices of the entertainment industry. 102

(12) "Qualifying entertainment technology company" or 103
"qualifying company" means a pass-through entity engaged in the 104
business of performing postproduction or digital distribution 105
services for motion pictures or extended reality experiences 106

<u>that meets all of the criteria prescribed by division (B) (2) of</u>	107
<u>this section.</u>	108
<u>(13) "Extended reality experience" includes experiences</u>	109
<u>utilizing mixed, extended, virtual, or augmented reality</u>	110
<u>technology, machine wearable technology, multiplatform</u>	111
<u>storytelling techniques, and modalities involving any of the</u>	112
<u>following:</u>	113
<u>(a) Merging real and virtual environments to produce</u>	114
<u>visualizations or experiences in which physical and digital</u>	115
<u>objects coexist and interact;</u>	116
<u>(b) Switching between an augmented reality experience and</u>	117
<u>a fully immersive virtual reality experience;</u>	118
<u>(c) Blending real world and virtual elements into a</u>	119
<u>cohesive multimodal experience;</u>	120
<u>(d) Generating interactions between humans and machines</u>	121
<u>through wearable technology and computers;</u>	122
<u>(e) Combining the physical world with computer-generated</u>	123
<u>virtual elements;</u>	124
<u>(f) Inserting or laying over audio content, visual</u>	125
<u>content, or both, into the real world through a delivery device;</u>	126
<u>(g) Creating interactive content that includes audio</u>	127
<u>elements, visual elements, or both audio and visual elements;</u>	128
<u>(h) Creating a computer-generated simulation of a three-</u>	129
<u>dimensional image or environment;</u>	130
<u>(i) Creating digital content that responds in real time to</u>	131
<u>user direction;</u>	132
<u>(j) Simulated multimodal sensory inputs to users that</u>	133

respond to real time feedback; 134

(k) Mixing real time computer graphic interfaces with live 135
actors or props. 136

(B) Following completion of a motion picture or extended 137
reality experience for which a qualifying entertainment 138
technology company incurred at least one hundred thousand 139
dollars in qualifying expenditures, the company may apply to the 140
director of development for a tax credit under this section. The 141
application shall be submitted in the form and manner prescribed 142
by rules adopted by the director under division (J) of this 143
section and shall include all of the following: 144

(1) The applicant's name and address; 145

(2) Documentation sufficient to establish that the 146
applicant meets all of the following criteria: 147

(a) At all times in the twelve months preceding the date 148
the motion picture or extended reality experience was completed, 149
the applicant employed at least five qualifying employees or, if 150
the motion picture or extended reality experience was completed 151
before July 1, 2025, at least three qualifying employees. 152

(b) The applicant employed at least two interns who 153
assisted with postproduction or digital distribution services 154
for the motion picture or extended reality experience, who were 155
enrolled in an Ohio institution of higher education at the time 156
the internship began, and whose internship with the applicant 157
was at least three months in duration. 158

(c) The applicant's aggregate qualifying payroll for the 159
twelve months preceding the date the motion picture or extended 160
reality experience was completed was at least three hundred 161
thousand dollars or, if the motion picture or extended reality 162

experience was completed before July 1, 2025, at least one 163
hundred fifty thousand dollars. 164

(d) The applicant incurred at least five hundred thousand 165
dollars in Ohio investment expenditures, excluding the 166
qualifying expenditures described in the application, before the 167
date the motion picture or extended reality experience was 168
completed. 169

(3) A description of the motion picture or extended 170
reality experience for which the applicant performed 171
postproduction or digital distribution services, a synopsis of 172
the script, a creative elements list that includes the names of 173
the cast, crew, producer, and director, and a certification by 174
the applicant that the motion picture or extended reality 175
experience does not require records to be maintained under 18 176
U.S.C. 2257 with respect to sexually explicit content; 177

(4) If the motion picture or extended reality experience 178
is certified under section 122.85 of the Revised Code as a tax 179
credit-eligible production, a copy of the notice of such 180
certification; 181

(5) A detailed description of the postproduction or 182
digital distribution services performed by the applicant for the 183
motion picture or extended reality experience and a written 184
statement or master services agreement between the production 185
company and the applicant confirming a mutual commitment between 186
the parties with respect to those services; 187

(6) A report, prepared by an independent certified public 188
accountant engaged at the applicant's expense, itemizing the 189
qualifying expenditures incurred by the applicant; 190

(7) The date on which the motion picture or extended 191

<u>reality experience was completed;</u>	192
<u>(8) Any other information required by the director.</u>	193
<u>(C) (1) Applications submitted under division (B) of this</u>	194
<u>section shall be evaluated in the order in which completed</u>	195
<u>applications are received by the director of development. The</u>	196
<u>director shall approve or deny an application, and send notice</u>	197
<u>of such determination to the applicant, within thirty days of</u>	198
<u>receipt. Before making such a determination, the director may</u>	199
<u>inspect the books, accounts, records, and memoranda of the</u>	200
<u>qualifying entertainment technology company to evaluate the</u>	201
<u>accuracy of information included in the application.</u>	202
<u>(2) If the director receives an application that is</u>	203
<u>incomplete, the director may request that the applicant provide</u>	204
<u>the omitted information or may reject the application.</u>	205
<u>(3) In evaluating an application, the director may</u>	206
<u>disallow any expenditure the director determines is not a</u>	207
<u>qualifying expenditure. The director shall not disallow an</u>	208
<u>expenditure merely because it was or will be included in the</u>	209
<u>computation of a credit under section 122.85 of the Revised</u>	210
<u>Code. The same expenditure may qualify as both an eligible</u>	211
<u>expenditure under that section and a qualifying expenditure</u>	212
<u>under this section. The director shall disallow any expenditure</u>	213
<u>for which a tax credit has previously been approved under this</u>	214
<u>section.</u>	215
<u>(D) The director of development shall reject an</u>	216
<u>application submitted under division (B) of this section to</u>	217
<u>which any of the following apply:</u>	218
<u>(1) The applicant does not meet the criteria described in</u>	219
<u>division (B) (2) of this section.</u>	220

(2) The qualifying expenditures incurred by the applicant 221
for the motion picture or extended reality experience, net of 222
any expenditures disallowed under division (C) (3) of this 223
section, are less than one hundred thousand dollars. 224

(3) The motion picture or extended reality experience 225
requires records to be maintained under 18 U.S.C. 2257 with 226
respect to sexually explicit content. 227

(4) The credit limit in division (F) (1) or (2) of this 228
section has been reached, subject to division (F) (3) of this 229
section. 230

(5) The applicant is wholly or partly owned by, affiliated 231
with, or controlled by a person that is indebted to this state 232
for the payment of any tax, workers' compensation premium, 233
unemployment contribution, payment in lieu of unemployment 234
contribution, or certified claim under section 131.02 or 131.021 235
of the Revised Code, is indebted to a political subdivision that 236
has a certified claim under section 131.02 of the Revised Code, 237
or has declared bankruptcy under which an obligation of the 238
person to pay or repay public funds was discharged as part of 239
such bankruptcy. 240

(E) If the director of development approves an application 241
submitted under division (B) of this section, the director shall 242
issue the applicant a tax credit certificate that states the 243
credit amount and the amount of qualifying expenditures upon 244
which the credit amount is computed. Subject to division (F) of 245
this section, the credit amount shall equal one of the 246
following: 247

(1) Ten per cent of the qualifying expenditures if the 248
motion picture or extended reality experience is certified as a 249

<u>tax credit-eligible production under section 122.85 of the</u>	250
<u>Revised Code;</u>	251
<u>(2) Thirty per cent of the qualifying expenditures if the</u>	252
<u>motion picture or extended reality experience is not certified</u>	253
<u>as a tax credit-eligible production under section 122.85 of the</u>	254
<u>Revised Code, plus an additional five per cent of the qualifying</u>	255
<u>expenditures if the postproduction or digital distribution</u>	256
<u>services are performed at a qualifying entertainment technology</u>	257
<u>facility owned or leased by the applicant.</u>	258
<u>(F) (1) The aggregate amount of tax credit approved by the</u>	259
<u>director of development under this section shall not exceed the</u>	260
<u>following:</u>	261
<u>(a) Two million dollars in each of fiscal years 2022 and</u>	262
<u>2023;</u>	263
<u>(b) Five million dollars in each of fiscal years 2024 and</u>	264
<u>2025;</u>	265
<u>(c) Ten million dollars in each of fiscal years 2026 and</u>	266
<u>2027;</u>	267
<u>(d) Twenty million dollars per fiscal year in fiscal year</u>	268
<u>2028 and thereafter.</u>	269
<u>(2) The amount of credits approved under this section in a</u>	270
<u>fiscal year for a qualifying entertainment technology company</u>	271
<u>and the company's affiliates shall not exceed twenty per cent of</u>	272
<u>the aggregate credit limit prescribed by division (F) (1) of this</u>	273
<u>section for that fiscal year.</u>	274
<u>(3) If approving a credit computed as described in</u>	275
<u>division (E) of this section would result in exceeding either of</u>	276
<u>the limits prescribed by division (F) (1) or (2) of this section,</u>	277

the director shall send notice to the applicant rejecting the 278
requested credit and explaining the reasons for that rejection. 279
In the same notice, the director may offer to approve a lesser 280
credit amount that would not result in exceeding the limits 281
prescribed by division (F)(1) or (2) of this section. The 282
applicant may accept the lesser credit amount as full 283
consideration for the applicant's qualifying expenditures or may 284
reject the lesser credit amount and reapply for the credit in a 285
following fiscal year. If the applicant does not respond, in 286
writing, within thirty days of the date the director issues an 287
offer of a lesser credit amount, the director shall consider the 288
offer rejected. 289

(G)(1) A qualifying entertainment technology company may 290
transfer the rights to claim any amount of a tax credit approved 291
under this section to one or more taxpayers. A qualifying 292
company that transfers the rights to claim a tax credit shall 293
notify the director of development and the tax commissioner. The 294
notice shall identify each transferee and the credit amount 295
transferred to each. 296

(2) A tax credit may be transferred among multiple 297
transferees through more than one transaction, but when any 298
credit amount is acquired by a person other than the qualifying 299
company to which it was awarded, that amount may not be 300
transferred again. 301

(3) Upon receiving a notice under division (G)(1) of this 302
section, the director shall issue updated tax credit 303
certificates to the qualifying company that transferred the tax 304
credit and to each transferee. Each updated certificate shall 305
include the same information required for certificates issued 306
under division (E) of this section. The director shall send 307

copies of the updated tax credit certificates to the tax 308
commissioner. 309

(4) A qualifying company that transfers a tax credit under 310
division (G) of this section shall not claim the credit to the 311
extent that it is transferred. A taxpayer to which a credit is 312
transferred shall not claim any portion of the credit that is 313
retained by the qualifying company or that is transferred by the 314
company to another taxpayer. 315

(H) There is hereby allowed a refundable credit against a 316
taxpayer's aggregate tax liability under section 5747.02 of the 317
Revised Code for a taxpayer that holds the rights to claim a tax 318
credit approved under this section. The credit shall equal the 319
credit amount indicated on the tax credit certificate. The 320
credit shall be claimed for the taxable year in which the 321
original certificate was issued under division (E) of this 322
section. The credit shall be claimed in the order required under 323
section 5747.98 of the Revised Code. If the credit amount 324
exceeds the aggregate amount of tax otherwise due under section 325
5747.02 of the Revised Code after deducting all other credits in 326
that order, the excess shall be refunded. Nothing in this 327
section limits or disallows the pass-through treatment of the 328
credit. 329

(I) The tax commissioner may revoke or reduce the amount 330
of any tax credit certificate issued under this section if the 331
commissioner or the director of development determines that some 332
or all of the expenditures used to compute the credit amount are 333
not qualifying expenditures. If the credit has already been 334
claimed, the commissioner shall make an assessment under section 335
5747.13 of the Revised Code against the qualifying company or 336
the taxpayers to which the tax credit was transferred. The 337

cumulative assessed amount shall equal the difference between 338
the amount of credit claimed and the amount that the credit 339
would have equaled had the ineligible expenditures been 340
disallowed. An assessment initiated under this division is not 341
subject to the time limitations on assessments prescribed by 342
section 5747.13 of the Revised Code. 343

(J) The director of development, in consultation with the 344
tax commissioner, shall adopt rules in accordance with Chapter 345
119. of the Revised Code as are necessary for the administration 346
of this section. 347

Sec. 5747.98. (A) To provide a uniform procedure for 348
calculating a taxpayer's aggregate tax liability under section 349
5747.02 of the Revised Code, a taxpayer shall claim any credits 350
to which the taxpayer is entitled in the following order: 351

Either the retirement income credit under division (B) of 352
section 5747.055 of the Revised Code or the lump sum retirement 353
income credits under divisions (C), (D), and (E) of that 354
section; 355

Either the senior citizen credit under division (F) of 356
section 5747.055 of the Revised Code or the lump sum 357
distribution credit under division (G) of that section; 358

The dependent care credit under section 5747.054 of the 359
Revised Code; 360

The credit for displaced workers who pay for job training 361
under section 5747.27 of the Revised Code; 362

The campaign contribution credit under section 5747.29 of 363
the Revised Code; 364

The twenty-dollar personal exemption credit under section 365

5747.022 of the Revised Code;	366
The joint filing credit under division (G) of section	367
5747.05 of the Revised Code;	368
The earned income credit under section 5747.71 of the	369
Revised Code;	370
The nonrefundable credit for education expenses under	371
section 5747.72 of the Revised Code;	372
The nonrefundable credit for donations to scholarship	373
granting organizations under section 5747.73 of the Revised	374
Code;	375
The nonrefundable credit for tuition paid to a	376
nonchartered nonpublic school under section 5747.75 of the	377
Revised Code;	378
The nonrefundable vocational job credit under section	379
5747.057 of the Revised Code;	380
The credit for adoption of a minor child under section	381
5747.37 of the Revised Code;	382
The nonrefundable job retention credit under division (B)	383
of section 5747.058 of the Revised Code;	384
The enterprise zone credit under section 5709.66 of the	385
Revised Code;	386
The credit for purchases of qualifying grape production	387
property under section 5747.28 of the Revised Code;	388
The small business investment credit under section 5747.81	389
of the Revised Code;	390
The nonrefundable lead abatement credit under section	391
5747.26 of the Revised Code;	392

The opportunity zone investment credit under section 122.84 of the Revised Code;	393 394
The enterprise zone credits under section 5709.65 of the Revised Code;	395 396
The research and development credit under section 5747.331 of the Revised Code;	397 398
The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	399 400
The nonresident credit under division (A) of section 5747.05 of the Revised Code;	401 402
The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	403 404
The refundable motion picture and Broadway theatrical production credit under section 5747.66 of the Revised Code;	405 406
<u>The refundable entertainment technology initiative credit under section 122.852 of the Revised Code;</u>	407 408
The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;	409 410 411
The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	412 413
The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;	414 415 416
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;	417 418 419

The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code. 420
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(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. 422
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Section 2. That existing section 5747.98 of the Revised Code is hereby repealed. 433
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Section 3. This act shall be known as the "Entertainment Technology Initiative." 435
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