

(123rd General Assembly)
(Amended House Bill Number 99)

AN ACT

To amend sections 5733.26 and 5747.08 and to enact sections 5733.261 and 5747.132 of the Revised Code to eliminate the payment of interest by a taxpayer on repayment of certain excess refunds of state income or corporation franchise taxes.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5733.26 and 5747.08 be amended and sections 5733.261 and 5747.132 of the Revised Code be enacted to read as follows:

Sec. 5733.26. (A) If Except as provided in section 5733.261 of the Revised Code, if the tax imposed by section 5733.06 of the Revised Code, or any portion of that tax, whether determined by the tax commissioner or the taxpayer, is not paid on or before the date prescribed for its payment, interest shall be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for its payment until it is paid or until the day an assessment is issued under section 5733.11 of the Revised Code, whichever occurs first.

(B) Interest shall be allowed and paid at the rate per annum prescribed by section 5703.47 of the Revised Code upon amounts refunded with respect to the tax imposed by section 5733.06 of the Revised Code. The interest shall run from whichever of the following dates is the latest until the date the refund is paid: the date of the illegal, erroneous, or excessive payment; the ninetieth day after the final date the annual report under section 5733.02 of the Revised Code was required to be filed; or the ninetieth day after the date that report was filed.

If the overpayment results from the carryback of a net capital loss to a previous taxable year, the overpayment is deemed not to have been made prior to the filing date, including any extension thereof, for the taxable year in which the net capital loss arises.

Sec. 5733.261. (A) As used in this section, "qualifying refund overpayment" means an amount received by a taxpayer in excess of a refund or request for payment claimed or made by or on behalf of the taxpayer on a

return, report, or other document filed with the tax commissioner.

(B) A taxpayer is not liable for any interest or penalty with respect to the repayment of a qualifying refund overpayment if the taxpayer pays the entire amount of the overpayment to the tax commissioner not later than thirty days after the taxpayer receives an assessment for it. If the taxpayer does not pay the entire amount of the overpayment to the commissioner within the time prescribed by this section, interest shall accrue on the amount of the deficiency pursuant to section 5733.11 of the Revised Code from the day the commissioner issues the assessment until the deficiency is paid.

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 divisions (E), (F), and (G) of section 5747.05 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 imposed pursuant to Chapter 5748. of the Revised Code.

(A) If an individual is deceased, any return or notice required of that individual under this chapter shall be made and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

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

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

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) of this section, any pass-through entity may file a single return on behalf of one or more of the entity's investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code. The single return shall set forth the name, address, and social security number of each of those pass-through entity investors and shall indicate the distributive share of each of those pass-through entity investor's income taxable in this state in accordance with sections 5747.20 to 5747.231 of the Revised Code. Such pass-through entity investors for whom the pass-through entity elects to file a single return are not entitled to the exemption or credit provided for

by sections 5747.02 and 5747.022 of the Revised Code; shall calculate the tax before business credits at the highest rate of tax set forth in section 5747.02 of the Revised Code for the taxable year for which the return is filed; and are entitled to only their distributive share of the business credits as defined in division (D)(2) of this section. A single check drawn by the pass-through entity shall accompany the return in full payment of the tax due for such investors other than investors who are persons subject to the tax imposed under section 5733.06 of the Revised Code.

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

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

(c) Nothing in division (D) of this section precludes the tax commissioner from requiring such investors to file the return and make the payment of taxes and related interest, penalty, and interest penalty required by this section or section 5747.02, 5747.09, or 5747.15 of the Revised Code. Nothing in division (D) of this section shall be construed to provide to such an investor or pass-through entity any additional deduction or credit, other than the credit provided by division (J) of this section, solely on account of the entity's filing a return in accordance with this section. Such a pass-through entity also shall make the filing and payment of estimated taxes on behalf of the pass-through entity investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code.

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

~~(b)~~(a) The retirement credit under division (B) of section 5747.055 of the Revised Code;

~~(e)~~(b) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;

~~(d)~~(c) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;

~~(e)~~(d) The dependent care credit under section 5747.054 of the Revised Code;

~~(f)~~(e) The lump sum retirement income credit under division (C) of

section 5747.055 of the Revised Code;

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

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

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

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

(h)(j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;

(h)(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;

(m)(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code.

(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.

(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 determines that the single return does not reflect the correct tax due by nonresident 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 entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section, "correct tax due" means the tax that would have been paid by the pass-through entity had the single return been filed in a manner reflecting and including the findings and determinations made by the tax commissioner. Nothing in division (D) of this section shall be construed to make or hold a pass-through entity liable for tax attributable to a pass-through entity investor's income from a source other than the pass-through entity electing to file the single return.

(E) If a husband and wife file a joint federal income tax return for a taxable year, they shall file a joint return under this section for that taxable

year, and their liabilities are joint and several, but, if the federal income tax liability of either spouse is determined on a separate federal income tax return, they shall file separate returns under this section.

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

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

(G) Each return or notice required to be filed under this section shall be made and filed as required by section 5747.04 of the Revised Code, on or before the fifteenth day of April of each year, on forms that the tax commissioner shall prescribe, together with remittance made payable to the treasurer of state in the combined amount of the state and all school district income taxes shown to be due on the form, unless the combined amount shown to be due is one dollar or less, in which case that amount need not be remitted.

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

If the commissioner considers it necessary in order to ensure the

payment of the tax imposed by section 5747.02 of the Revised Code or any tax imposed under Chapter 5748. of the Revised Code, the commissioner may require returns and payments to be made otherwise than as provided in this section.

(H) If any report, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is delivered after that period or that date by United States mail to the agency, officer, or office with which the report, claim, statement, or other document is required to be filed, or to which the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement, or other document, or payment is mailed shall be deemed to be the date of delivery or the date of payment.

If a payment is required to be made by electronic funds transfer pursuant to section 5747.072 of the Revised Code, the payment is considered to be made when the payment is received by the treasurer of state or credited to an account designated by the treasurer of state for the receipt of tax payments.

"The date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the United States postal service.

(I) The amounts withheld by the employer pursuant to section 5747.06 of the Revised Code shall be allowed to the recipient of the compensation as credits against payment of the appropriate taxes imposed on the recipient by section 5747.02 and under Chapter 5748. of the Revised Code.

(J) If, in accordance with division (D) of this section, a pass-through entity elects to file a single return and if any investor is required to file the return and make the payment of taxes required by this chapter on account of the investor's other income that is not included in a single return filed by a pass-through entity, the investor is entitled to a refundable credit equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor. The investor shall claim the credit for the investor's taxable year in which or with which ends the taxable year of the pass-through entity. Nothing in this chapter shall be construed to allow any credit provided in this chapter to be claimed more than once. For the purposes of computing any interest, penalty, or interest penalty, the investor shall be deemed to have paid the refundable credit provided by this division on the day that the pass-through entity paid the estimated tax or the tax giving rise to the credit.

Sec. 5747.132. (A) As used in this section:

(1) "Qualifying taxpayer" means a taxpayer, employer, or qualifying entity.

(2) "Qualifying refund overpayment" means an amount received by a qualifying taxpayer in excess of a refund or request for payment claimed or made by or on behalf of the qualifying taxpayer on a return, report, or other document filed with the tax commissioner.

(B) A qualifying taxpayer is not liable for any interest or penalty with respect to the repayment of a qualifying refund overpayment if the taxpayer pays the entire amount of the overpayment to the tax commissioner not later than thirty days after the taxpayer receives an assessment for it. if the taxpayer does not pay the entire amount of the overpayment to the commissioner within the time prescribed by this section, interest shall accrue on the amount of the deficiency pursuant to section 5747.13 of the Revised Code from the day the commissioner issues the assessment until the deficiency is paid.

SECTION 2. That existing sections 5733.26 and 5747.08 of the Revised Code are hereby repealed.

SECTION 3. The amendment or enactment by this act of sections 5733.26, 5733.261, 5747.08, and 5747.132 of the Revised Code shall be applied to prohibit the accrual of interest or penalty with respect to tax refund overpayment assessments received by taxpayers after the effective date of this act, regardless of the time of claim for the refund.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the _____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____