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**126th General Assembly
Regular Session
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Sub. H. B. No. 2

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Williams, Wolpert, Yuko**

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A B I L L

To amend sections 5101.184, 5747.026, 5747.08, and 1
5747.113 and to enact section 5903.21 of the 2
Revised Code to grant to all members of the 3
National Guard and reserve components of the 4
United States armed forces who have been called to 5
active duty an extension of time in which to file 6
income tax returns and pay income taxes, to 7
increase the number of authorized participants in 8
the Ohio National Guard Scholarship Program for 9
the 2005 summer term, to allow taxpayers to donate 10
a portion of their Ohio income tax refund to 11
injured military personnel, and to declare an 12
emergency. 13

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

Section 1. That sections 5101.184, 5747.026, 5747.08 and 14
5747.113 be amended and section 5903.21 of the Revised Code be 15
enacted to read as follows: 16

Sec. 5101.184. (A) The director of job and family services 17
shall work with the tax commissioner to collect overpayments of 18
assistance under Chapter 5107., 5111., or 5115., former Chapter 19
5113., or section 5101.54 of the Revised Code from refunds of 20
state income taxes for taxable year 1992 and thereafter that are 21
payable to the recipients of such overpayments. 22

Any overpayment of assistance, whether obtained by fraud or 23
misrepresentation, as the result of an error by the recipient or 24
by the agency making the payment, or in any other manner, may be 25
collected under this section. Any reduction under section 5747.12 26
or 5747.121 of the Revised Code to an income tax refund shall be 27
made before a reduction under this section. No reduction shall be 28
made under this section if the amount of the refund is less than 29
twenty-five dollars after any reduction under section 5747.12 of 30
the Revised Code. A reduction under this section shall be made 31
before any part of the refund is contributed under section 32
5747.113 of the Revised Code ~~to the natural areas and preserves 33
fund or the nongame and endangered wildlife fund,~~ or is credited 34
under section 5747.12 of the Revised Code against tax due in any 35
subsequent year. 36

The director and the tax commissioner, by rules adopted in 37
accordance with Chapter 119. of the Revised Code, shall establish 38
procedures to implement this division. The procedures shall 39
provide for notice to a recipient of assistance and an opportunity 40
for the recipient to be heard before the recipient's income tax 41
refund is reduced. 42

(B) The director of job and family services may enter into 43

agreements with the federal government to collect overpayments of
assistance from refunds of federal income taxes that are payable
to recipients of the overpayments.

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Sec. 5747.026. (A) For taxable years beginning on or after
January 1, 2002, a each member of the national guard ~~or a~~ and each
member of a reserve component of the armed forces of the United
States called to active ~~or other~~ duty ~~under operation Iraqi~~
~~freedom~~ pursuant to an executive order issued by the president of
the United States or an act of the congress of the United States
may apply to the tax commissioner for both an extension for filing
of the return and an extension of time for payment of taxes
required under this chapter and under Chapter 5748. of the Revised
Code during the period of the member's duty service and for sixty
days thereafter. The application shall be filed on or before the
sixtieth day after the member's duty terminates. An applicant
shall provide such evidence as the tax commissioner considers
necessary to demonstrate eligibility for the extension.

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(B)(1) If the tax commissioner ~~determines~~ ascertains that an
applicant is qualified for an extension under this section, the
tax commissioner shall enter into a contract with the applicant
for the payment of the tax in installments that begin on the
sixty-first day after the applicant's active duty ~~under operation~~
~~Iraqi freedom~~ terminates. Except as provided in division (B)(3) of
this section, the tax commissioner may prescribe such contract
terms as the tax commissioner considers appropriate.

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(2) If the tax commissioner ~~determines~~ ascertains that an
applicant is qualified for an extension under this section, the
applicant shall ~~not~~ neither be required to file any return,
report, or other tax document nor be required to pay any tax
otherwise due under this chapter and Chapter 5748. of the Revised
Code before the sixty-first day after the applicant's active duty

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~~under operation Iraqi freedom terminates.~~ 75

(3) Taxes paid pursuant to a contract entered into under 76
division (B)(1) of this section are not delinquent. The tax 77
commissioner shall not require any payments of penalties, interest 78
penalties, or interest in connection with ~~such~~ those taxes for the 79
extension period. 80

~~(C)(1) Divisions (A) and (B) of this section do not apply to~~ 81
~~any taxable year for which a taxpayer receives an extension of~~ 82
~~time in which to file a federal income tax return or pay federal~~ 83
~~income tax under the Internal Revenue Code~~ Nothing in this 84
division denies to any person described in this division the 85
application of divisions (A) and (B) of this section. 86

(2)(a) A qualifying taxpayer who is eligible for an extension 87
under the Internal Revenue Code shall receive both an extension of 88
time in which to file any return, report, or other tax document 89
described in this chapter and an extension of time in which to 90
make any payment of taxes required under this chapter ~~or~~ and 91
Chapter 5748. of the Revised Code. The length of any extension 92
granted under division (C)(2)(a) of this section shall be equal to 93
the length of the corresponding extension that the taxpayer 94
receives under the Internal Revenue Code. As used in this section, 95
"qualifying taxpayer" means a member of the national guard, or a 96
member of the reserve component of the armed forces of the United 97
States, who is called to active duty pursuant to either an 98
executive order issued by the president of the United States or an 99
act of the congress of the United States. 100

(b) Taxes ~~paid~~ whose payment is extended in accordance with 101
division (C)(2)(a) of this section are not delinquent during the 102
extension period. The tax commissioner shall not require any 103
payment of penalties, interest penalties, or interest in 104
connection with ~~such~~ those taxes for the extension period. The tax 105
commissioner shall not include any period of extension granted 106

under division (C)(2)(a) of this section in calculating the 107
penalty, interest penalty, or interest due on any unpaid tax. 108

(D) For each taxable year to which division (A), (B), or (C) 109
of this section applies to a taxpayer, the provisions of divisions 110
(B)(2) and (3) or (C) of this section, as applicable, apply to the 111
spouse of that taxpayer if the filing status of the spouse and the 112
taxpayer is married filing jointly for that year. 113

(E) The tax commissioner ~~shall~~ may adopt rules necessary to 114
administer this section, including rules establishing the 115
following: 116

(1) Forms and procedures by which applicants may apply for 117
extensions; 118

(2) Criteria for eligibility; 119

(3) A schedule for repayment of deferred taxes. 120

Sec. 5747.08. An annual return with respect to the tax 121
imposed by section 5747.02 of the Revised Code and each tax 122
imposed under Chapter 5748. of the Revised Code shall be made by 123
every taxpayer for any taxable year for which the taxpayer is 124
liable for the tax imposed by that section or under that chapter, 125
unless the total credits allowed under divisions (E), (F), and (G) 126
of section 5747.05 of the Revised Code for the year are equal to 127
or exceed the tax imposed by section 5747.02 of the Revised Code, 128
in which case no return shall be required unless the taxpayer is 129
liable for a tax imposed pursuant to Chapter 5748. of the Revised 130
Code. 131

(A) If an individual is deceased, any return or notice 132
required of that individual under this chapter shall be made and 133
filed by that decedent's executor, administrator, or other person 134
charged with the property of that decedent. 135

(B) If an individual is unable to make a return or notice 136

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 or other identifying 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, as shown on the single return, 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 169
5733.06 of the Revised Code. 170

(ii) A pass-through entity shall not include in such a single 171
return any investor that is itself a pass-through entity to the 172
extent that any direct or indirect investor in the second 173
pass-through entity is a person subject to the tax imposed under 174
section 5733.06 of the Revised Code. 175

(c) Nothing in division (D) of this section precludes the tax 176
commissioner from requiring such investors to file the return and 177
make the payment of taxes and related interest, penalty, and 178
interest penalty required by this section or section 5747.02, 179
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 180
of this section shall be construed to provide to such an investor 181
or pass-through entity any additional deduction or credit, other 182
than the credit provided by division (J) of this section, solely 183
on account of the entity's filing a return in accordance with this 184
section. Such a pass-through entity also shall make the filing and 185
payment of estimated taxes on behalf of the pass-through entity 186
investors other than an investor that is a person subject to the 187
tax imposed under section 5733.06 of the Revised Code. 188

(2) For the purposes of this section, "business credits" 189
means the credits listed in section 5747.98 of the Revised Code 190
excluding the following credits: 191

(a) The retirement credit under division (B) of section 192
5747.055 of the Revised Code; 193

(b) The senior citizen credit under division (C) of section 194
5747.05 of the Revised Code; 195

(c) The lump sum distribution credit under division (D) of 196
section 5747.05 of the Revised Code; 197

(d) The dependent care credit under section 5747.054 of the 198

Revised Code;	199
(e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	200 201
(f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	202 203
(g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	204 205
(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	206 207
(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	208 209
(j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	210 211
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	212 213
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code.	214 215
(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.	216 217 218 219 220 221 222 223
(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 <u>tax</u> commissioner finds that the single return does not reflect the correct tax due by the	224 225 226 227 228

pass-through entity investors covered by that return. Nothing in 229
this division shall be construed to limit or alter the liability, 230
if any, imposed on pass-through entity investors for unpaid or 231
underpaid taxes, interest, interest penalty, or penalties as a 232
result of the pass-through entity's making the election provided 233
for under division (D) of this section. For the purposes of 234
division (D) of this section, "correct tax due" means the tax that 235
would have been paid by the pass-through entity had the single 236
return been filed in a manner reflecting the tax commissioner's 237
findings. Nothing in division (D) of this section shall be 238
construed to make or hold a pass-through entity liable for tax 239
attributable to a pass-through entity investor's income from a 240
source other than the pass-through entity electing to file the 241
single return. 242

(E) If a husband and wife file a joint federal income tax 243
return for a taxable year, they shall file a joint return under 244
this section for that taxable year, and their liabilities are 245
joint and several, but, if the federal income tax liability of 246
either spouse is determined on a separate federal income tax 247
return, they shall file separate returns under this section. 248

If either spouse is not required to file a federal income tax 249
return and either or both are required to file a return pursuant 250
to this chapter, they may elect to file separate or joint returns, 251
and, pursuant to that election, their liabilities are separate or 252
joint and several. If a husband and wife file separate returns 253
pursuant to this chapter, each must claim the taxpayer's own 254
exemption, but not both, as authorized under section 5747.02 of 255
the Revised Code on the taxpayer's own return. 256

(F) Each return or notice required to be filed under this 257
section shall contain the signature of the taxpayer or the 258
taxpayer's duly authorized agent and of the person who prepared 259
the return for the taxpayer, and shall include the taxpayer's 260

social security number. Each return shall be verified by a 261
declaration under the penalties of perjury. The tax commissioner 262
shall prescribe the form that the signature and declaration shall 263
take. 264

(G) Each return or notice required to be filed under this 265
section shall be made and filed as required by section 5747.04 of 266
the Revised Code, on or before the fifteenth day of April of each 267
year, on forms that the tax commissioner shall prescribe, together 268
with remittance made payable to the treasurer of state in the 269
combined amount of the state and all school district income taxes 270
shown to be due on the form, unless the combined amount shown to 271
be due is one dollar or less, in which case that amount need not 272
be remitted. 273

Upon good cause shown, the tax commissioner may extend the 274
period for filing any notice or return required to be filed under 275
this section and may adopt rules relating to extensions. If the 276
extension results in an extension of time for the payment of any 277
state or school district income tax liability with respect to 278
which the return is filed, the taxpayer shall pay at the time the 279
tax liability is paid an amount of interest computed at the rate 280
per annum prescribed by section 5703.47 of the Revised Code on 281
that liability from the time that payment is due without extension 282
to the time of actual payment. Except as provided in section 283
5747.132 of the Revised Code, in addition to all other interest 284
charges and penalties, all taxes imposed under this chapter or 285
Chapter 5748. of the Revised Code and remaining unpaid after they 286
become due, except combined amounts due of one dollar or less, 287
bear interest at the rate per annum prescribed by section 5703.47 288
of the Revised Code until paid or until the day an assessment is 289
issued under section 5747.13 of the Revised Code, whichever occurs 290
first. 291

If the tax commissioner considers it necessary in order to 292

ensure the payment of the tax imposed by section 5747.02 of the 293
Revised Code or any tax imposed under Chapter 5748. of the Revised 294
Code, the tax commissioner may require returns and payments to be 295
made otherwise than as provided in this section. 296

To the extent that any provision in this division conflicts 297
with any provision in section 5747.026 of the Revised Code, the 298
provision in that section prevails. 299

(H) If any report, claim, statement, or other document 300
required to be filed, or any payment required to be made, within a 301
prescribed period or on or before a prescribed date under this 302
chapter is delivered after that period or that date by United 303
States mail to the agency, officer, or office with which the 304
report, claim, statement, or other document is required to be 305
filed, or to which the payment is required to be made, the date of 306
the postmark stamped on the cover in which the report, claim, 307
statement, or other document, or payment is mailed shall be deemed 308
to be the date of delivery or the date of payment. 309

If a payment is required to be made by electronic funds 310
transfer pursuant to section 5747.072 of the Revised Code, the 311
payment is considered to be made when the payment is received by 312
the treasurer of state or credited to an account designated by the 313
treasurer of state for the receipt of tax payments. 314

"The date of the postmark" means, in the event there is more 315
than one date on the cover, the earliest date imprinted on the 316
cover by the United States postal service. 317

(I) The amounts withheld by the employer pursuant to section 318
5747.06 of the Revised Code shall be allowed to the recipient of 319
the compensation as credits against payment of the appropriate 320
taxes imposed on the recipient by section 5747.02 and under 321
Chapter 5748. of the Revised Code. 322

(J) If, in accordance with division (D) of this section, a 323

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. 5747.113. (A) Any taxpayer claiming a refund under
section 5747.11 of the Revised Code for taxable years ending on or
after October 14, 1983, who wishes to contribute any part of ~~his~~
the taxpayer's refund to the natural areas and preserves fund
created in section 1517.11 of the Revised Code, the nongame and
endangered wildlife fund created in section 1531.26 of the Revised
Code, the military injury relief fund created in section 5903.21
of the Revised Code, or ~~both,~~ all or any combination of those
funds may designate on ~~his~~ the taxpayer's income tax return the
amount that ~~he~~ the taxpayer wishes to contribute to the fund or
funds. A designated contribution is irrevocable upon the filing of
the return and shall be made in the full amount designated if the
refund found due the taxpayer upon the initial processing of ~~his~~
the taxpayer's return, after any deductions including those
required by section 5747.12 of the Revised Code, is greater than
or equal to the designated contribution. If the refund due as
initially determined is less than the designated contribution, the

contribution shall be made in the full amount of the refund. The 356
tax commissioner shall subtract the amount of the contribution 357
from the amount of the refund initially found due the taxpayer and 358
shall certify the difference to the director of budget and 359
management and treasurer of state for payment to the taxpayer in 360
accordance with section 5747.11 of the Revised Code. For the 361
purpose of any subsequent determination of the taxpayer's net tax 362
payment, the contribution shall be considered a part of the refund 363
paid to the taxpayer. 364

(B) The tax commissioner shall provide a space on the income 365
tax return form in which a taxpayer may indicate that ~~he~~ the 366
taxpayer wishes to make a donation in accordance with this 367
section. The tax commissioner shall also print in the instructions 368
accompanying the income tax return form a description of the 369
purposes for which the natural areas and preserves fund ~~and~~, the 370
nongame and endangered wildlife fund, and the military injury 371
relief fund were created and the use of moneys from the income tax 372
refund contribution system established in this section. No person 373
shall designate on ~~his~~ the person's income tax return any part of 374
a refund claimed under section 5747.11 of the Revised Code as a 375
contribution to any fund other than the natural areas and 376
preserves fund, the nongame and endangered wildlife fund, the 377
military injury relief fund, or ~~both~~ all or any combination of 378
those funds. 379

(C) The money collected under the income tax refund 380
contribution system established in this section shall be deposited 381
by the tax commissioner into the natural areas and preserves fund 382
~~and~~, the nongame and endangered wildlife fund, and the military 383
injury relief fund in the amounts designated on the tax returns. 384

(D) No later than the thirtieth day of September each year, 385
the tax commissioner shall determine the total amount contributed 386
to each fund under this section during the preceding eight months, 387

any adjustments to prior months, and the cost to the department of 388
taxation of administering the income tax refund contribution 389
system during that eight-month period. The commissioner shall make 390
an additional determination no later than the thirty-first day of 391
January of each year of the total amount contributed to each fund 392
under this section during the preceding four calendar months, any 393
adjustments to prior years made during that four-month period, and 394
the cost to the department of taxation of administering the income 395
tax contribution system during that period. The cost of 396
administering the income tax contribution system shall be 397
certified by the tax commissioner to the director of budget and 398
management, who shall transfer an amount equal to ~~one-half~~ 399
one-third of such administrative costs from the natural areas and 400
preserves fund ~~and one-half~~, one-third of such costs from the 401
nongame and endangered wildlife fund, and one-third of such costs 402
from the military injury relief fund to the litter control and 403
natural resource tax administration fund, which is hereby created, 404
provided that the moneys that the department receives to pay the 405
cost of administering the income tax refund contribution system in 406
any year shall not exceed two and one-half per cent of the total 407
amount contributed under that system during that year. 408

(E) The director of natural resources, in January of every 409
odd-numbered year, shall report to the general assembly on the 410
effectiveness of the income tax refund contribution system as it 411
pertains to the natural areas and preserves fund and the nongame 412
and endangered wildlife fund. The report shall include the amount 413
of money contributed to ~~the natural areas and preserves fund and~~ 414
~~the nongame and endangered wildlife fund~~ each fund in each of the 415
previous five years, the amount of money contributed directly to 416
each fund in addition to or independently of the income tax refund 417
contribution system in each of the previous five years, and the 418
purposes for which the money was expended. 419

Sec. 5903.21. (A) There is hereby created in the state 420
treasury the military injury relief fund, which shall consist of 421
money contributed to it under section 5747.113 of the Revised Code 422
and of contributions made directly to it. Any person may 423
contribute directly to the fund in addition to or independently of 424
the income tax refund contribution system established in section 425
5747.113 of the Revised Code. Money in the fund shall be used to 426
make grants to individuals injured while in active service as a 427
member of the armed forces of the United States and while serving 428
under operation Iraqi freedom or operation enduring freedom. An 429
individual who receives a grant under this section is not 430
precluded from receiving one or more additional grants under this 431
section and is not precluded from being considered for or 432
receiving assistance offered by the governor's office of veterans 433
affairs. 434

(B) Rules shall be adopted under Chapter 119. of the Revised 435
Code establishing all of the following: 436

(1) Forms and procedures by which individuals may apply for a 437
grant under this section; 438

(2) Criteria for reviewing, evaluating, and ranking grant 439
applications; 440

(3) Criteria for determining the amount of grants awarded 441
under this section; 442

(4) Other matters necessary to administer the grant program 443
established in this section. 444

Section 2. That existing sections 5101.184, 5747.026, 445
5747.08, and 5747.113 of the Revised Code are hereby repealed. 446

Section 3. Notwithstanding division (B)(1) of section 5919.34 447
of the Revised Code, the number of participants in the Ohio 448

national guard scholarship program for the summer term occurring 449
in the year 2005 is limited to the equivalent of one thousand 450
full-time participants. 451

Section 4. Sections 5747.026 and 5747.08 of the Revised Code, 452
as amended by this act, shall apply to all years beginning on and 453
after January 1, 2002. 454

Section 5. This act is hereby declared to be an emergency 455
measure necessary for the immediate preservation of the public 456
peace, health, and safety. The reason for such necessity lies in 457
the fact that immediate action is necessary to alleviate the 458
income tax filing and payment burdens currently faced by members 459
of the National Guard and reserve components of the United States 460
armed forces who have been called to active duty. Therefore, this 461
act shall go into immediate effect. 462