

**As Reported by the House State Government Committee**

**126th General Assembly**

**Regular Session**

**2005-2006**

**Sub. H. B. No. 2**

**Representatives Widowfield, Buehrer, Flowers, Walcher, Hartnett, Mitchell,  
Uecker, Carmichael, Book, D. Stewart**

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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 44  
assistance from refunds of federal income taxes that are payable 45  
to recipients of the overpayments. 46

**Sec. 5747.026.** (A) For taxable years beginning on or after 47  
January 1, 2002, a each member of the national guard ~~or a~~ and each 48  
member of a reserve component of the armed forces of the United 49  
States called to active ~~or other~~ duty ~~under operation Iraqi~~ 50

~~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.

(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.

(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  
~~under operation~~ ~~Iraqi freedom~~ terminates.

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

(C)(1) ~~Divisions (A) and (B) of this section do not apply to~~

~~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 137  
individual shall be made and filed by the individual's duly 138  
authorized agent, guardian, conservator, fiduciary, or other 139  
person charged with the care of the person or property of that 140  
individual. 141

(C) Returns or notices required of an estate or a trust shall 142  
be made and filed by the fiduciary of the estate or trust. 143

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 144  
of this section, any pass-through entity may file a single return 145  
on behalf of one or more of the entity's investors other than an 146  
investor that is a person subject to the tax imposed under section 147  
5733.06 of the Revised Code. The single return shall set forth the 148  
name, address, and social security number or other identifying 149  
number of each of those pass-through entity investors and shall 150  
indicate the distributive share of each of those pass-through 151  
entity investor's income taxable in this state in accordance with 152  
sections 5747.20 to 5747.231 of the Revised Code. Such 153  
pass-through entity investors for whom the pass-through entity 154  
elects to file a single return are not entitled to the exemption 155  
or credit provided for by sections 5747.02 and 5747.022 of the 156  
Revised Code; shall calculate the tax before business credits at 157  
the highest rate of tax set forth in section 5747.02 of the 158  
Revised Code for the taxable year for which the return is filed; 159  
and are entitled to only their distributive share of the business 160  
credits as defined in division (D)(2) of this section. A single 161  
check drawn by the pass-through entity shall accompany the return 162  
in full payment of the tax due, as shown on the single return, for 163  
such investors, other than investors who are persons subject to 164  
the tax imposed under section 5733.06 of the Revised Code. 165

(b)(i) A pass-through entity shall not include in such a 166  
single return any investor that is a trust to the extent that any 167  
direct or indirect current, future, or contingent beneficiary of 168  
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 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:

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

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

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

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

(e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;

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

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

(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
(1) 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 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	224 225 226 227 228 229 230 231 232 233 234 235 236



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  
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 tax 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. 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 the tax 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 tax commissioner may require returns and payments to be  
made otherwise than as provided in this section.

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

(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 324  
investor is required to file the return and make the payment of 325  
taxes required by this chapter on account of the investor's other 326  
income that is not included in a single return filed by a 327  
pass-through entity, the investor is entitled to a refundable 328  
credit equal to the investor's proportionate share of the tax paid 329  
by the pass-through entity on behalf of the investor. The investor 330

shall claim the credit for the investor's taxable year in which or 331  
with which ends the taxable year of the pass-through entity. 332  
Nothing in this chapter shall be construed to allow any credit 333  
provided in this chapter to be claimed more than once. For the 334  
purposes of computing any interest, penalty, or interest penalty, 335  
the investor shall be deemed to have paid the refundable credit 336  
provided by this division on the day that the pass-through entity 337  
paid the estimated tax or the tax giving rise to the credit. 338

**Sec. 5747.113.** (A) Any taxpayer claiming a refund under 339  
section 5747.11 of the Revised Code for taxable years ending on or 340  
after October 14, 1983, who wishes to contribute any part of ~~his~~ 341  
the taxpayer's refund to the natural areas and preserves fund 342  
created in section 1517.11 of the Revised Code, the nongame and 343  
endangered wildlife fund created in section 1531.26 of the Revised 344  
Code, the military injury relief fund created in section 5903.21 345  
of the Revised Code, or ~~both,~~ all or any combination of those 346  
funds may designate on ~~his~~ the taxpayer's income tax return the 347  
amount that ~~he~~ the taxpayer wishes to contribute to the fund or 348  
funds. A designated contribution is irrevocable upon the filing of 349  
the return and shall be made in the full amount designated if the 350  
refund found due the taxpayer upon the initial processing of ~~his~~ 351  
the taxpayer's return, after any deductions including those 352  
required by section 5747.12 of the Revised Code, is greater than 353  
or equal to the designated contribution. If the refund due as 354  
initially determined is less than the designated contribution, the 355  
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