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Committee**

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

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Senators Carey, Amstutz, Padgett, Gardner, Niehaus, Clancy, Roberts,  
Wilson, Goodman, Austria**

**—**

**A B I L L**

To amend sections 5747.026 and 5747.08 of the Revised 1  
Code to grant to all members of the National Guard 2  
and reserve components of the United States armed 3  
forces who have been called to active duty an 4  
extension of time in which to file income tax 5  
returns and pay income taxes, to increase the 6  
number of authorized participants in the Ohio 7  
National Guard Scholarship Program for the 2005 8  
summer term, and to declare an emergency. 9

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

Section 1. That sections 5747.026 and 5747.08 of the Revised Code be amended to read as follows:

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.

(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. If the amount owed is two thousand four hundred dollars or less, the contract shall be for not longer than twelve months. If the amount owed is more than two thousand four hundred dollars, the contract shall be for not longer than twenty-four months.

(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, 40  
report, or other tax document nor be required to pay any tax 41  
otherwise due under this chapter and Chapter 5748. of the Revised 42  
Code before the sixty-first day after the applicant's active duty 43  
under operation Iraqi freedom terminates. 44

(3) Taxes paid pursuant to a contract entered into under 45  
division (B)(1) of this section are not delinquent. The tax 46  
commissioner shall not require any payments of penalties, interest 47  
penalties, or interest in connection with ~~such~~ those taxes for the 48  
extension period. 49

(C)(1) ~~Divisions (A) and (B) of this section do not apply to~~ 50  
~~any taxable year for which a taxpayer receives an extension of~~ 51  
~~time in which to file a federal income tax return or pay federal~~ 52  
~~income tax under the Internal Revenue Code~~ Nothing in this 53  
division denies to any person described in this division the 54  
application of divisions (A) and (B) of this section. 55

(2)(a) A qualifying taxpayer who is eligible for an extension 56  
under the Internal Revenue Code shall receive both an extension of 57  
time in which to file any return, report, or other tax document 58  
described in this chapter and an extension of time in which to 59  
make any payment of taxes required under this chapter ~~or~~ and 60  
Chapter 5748. of the Revised Code. The length of any extension 61  
granted under division (C)(2)(a) of this section shall be equal to 62  
the length of the corresponding extension that the taxpayer 63  
receives under the Internal Revenue Code. As used in this section, 64  
"qualifying taxpayer" means a member of the national guard, or a 65  
member of the reserve component of the armed forces of the United 66  
States, who is called to active duty pursuant to either an 67  
executive order issued by the president of the United States or an 68  
act of the congress of the United States. 69

(b) Taxes ~~paid~~ whose payment is extended in accordance with 70  
division (C)(2)(a) of this section are not delinquent during the 71

extension period. The tax commissioner shall not require any 72  
payment of penalties, interest penalties, or interest in 73  
connection with ~~such~~ those taxes for the extension period. The tax 74  
commissioner shall not include any period of extension granted 75  
under division (C)(2)(a) of this section in calculating the 76  
penalty, interest penalty, or interest due on any unpaid tax. 77

(D) For each taxable year to which division (A), (B), or (C) 78  
of this section applies to a taxpayer, the provisions of divisions 79  
(B)(2) and (3) or (C) of this section, as applicable, apply to the 80  
spouse of that taxpayer if the filing status of the spouse and the 81  
taxpayer is married filing jointly for that year. 82

(E) The tax commissioner ~~shall~~ may adopt rules necessary to 83  
administer this section, including rules establishing the 84  
following: 85

(1) Forms and procedures by which applicants may apply for 86  
extensions; 87

(2) Criteria for eligibility; 88

(3) A schedule for repayment of deferred taxes. 89

**Sec. 5747.08.** An annual return with respect to the tax 90  
imposed by section 5747.02 of the Revised Code and each tax 91  
imposed under Chapter 5748. of the Revised Code shall be made by 92  
every taxpayer for any taxable year for which the taxpayer is 93  
liable for the tax imposed by that section or under that chapter, 94  
unless the total credits allowed under divisions (E), (F), and (G) 95  
of section 5747.05 of the Revised Code for the year are equal to 96  
or exceed the tax imposed by section 5747.02 of the Revised Code, 97  
in which case no return shall be required unless the taxpayer is 98  
liable for a tax imposed pursuant to Chapter 5748. of the Revised 99  
Code. 100

(A) If an individual is deceased, any return or notice 101

required of that individual under this chapter shall be made and 102  
filed by that decedent's executor, administrator, or other person 103  
charged with the property of that decedent. 104

(B) If an individual is unable to make a return or notice 105  
required by this chapter, the return or notice required of that 106  
individual shall be made and filed by the individual's duly 107  
authorized agent, guardian, conservator, fiduciary, or other 108  
person charged with the care of the person or property of that 109  
individual. 110

(C) Returns or notices required of an estate or a trust shall 111  
be made and filed by the fiduciary of the estate or trust. 112

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 113  
of this section, any pass-through entity may file a single return 114  
on behalf of one or more of the entity's investors other than an 115  
investor that is a person subject to the tax imposed under section 116  
5733.06 of the Revised Code. The single return shall set forth the 117  
name, address, and social security number or other identifying 118  
number of each of those pass-through entity investors and shall 119  
indicate the distributive share of each of those pass-through 120  
entity investor's income taxable in this state in accordance with 121  
sections 5747.20 to 5747.231 of the Revised Code. Such 122  
pass-through entity investors for whom the pass-through entity 123  
elects to file a single return are not entitled to the exemption 124  
or credit provided for by sections 5747.02 and 5747.022 of the 125  
Revised Code; shall calculate the tax before business credits at 126  
the highest rate of tax set forth in section 5747.02 of the 127  
Revised Code for the taxable year for which the return is filed; 128  
and are entitled to only their distributive share of the business 129  
credits as defined in division (D)(2) of this section. A single 130  
check drawn by the pass-through entity shall accompany the return 131  
in full payment of the tax due, as shown on the single return, for 132  
such investors, other than investors who are persons subject to 133

the tax imposed under section 5733.06 of the Revised Code. 134

(b)(i) A pass-through entity shall not include in such a 135  
single return any investor that is a trust to the extent that any 136  
direct or indirect current, future, or contingent beneficiary of 137  
the trust is a person subject to the tax imposed under section 138  
5733.06 of the Revised Code. 139

(ii) A pass-through entity shall not include in such a single 140  
return any investor that is itself a pass-through entity to the 141  
extent that any direct or indirect investor in the second 142  
pass-through entity is a person subject to the tax imposed under 143  
section 5733.06 of the Revised Code. 144

(c) Nothing in division (D) of this section precludes the tax 145  
commissioner from requiring such investors to file the return and 146  
make the payment of taxes and related interest, penalty, and 147  
interest penalty required by this section or section 5747.02, 148  
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 149  
of this section shall be construed to provide to such an investor 150  
or pass-through entity any additional deduction or credit, other 151  
than the credit provided by division (J) of this section, solely 152  
on account of the entity's filing a return in accordance with this 153  
section. Such a pass-through entity also shall make the filing and 154  
payment of estimated taxes on behalf of the pass-through entity 155  
investors other than an investor that is a person subject to the 156  
tax imposed under section 5733.06 of the Revised Code. 157

(2) For the purposes of this section, "business credits" 158  
means the credits listed in section 5747.98 of the Revised Code 159  
excluding the following credits: 160

(a) The retirement credit under division (B) of section 161  
5747.055 of the Revised Code; 162

(b) The senior citizen credit under division (C) of section 163  
5747.05 of the Revised Code; 164

(c) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;	165 166
(d) The dependent care credit under section 5747.054 of the Revised Code;	167 168
(e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	169 170
(f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	171 172
(g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	173 174
(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	175 176
(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	177 178
(j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	179 180
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	181 182
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code.	183 184
(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.	185 186 187 188 189 190 191 192
(4) If a pass-through entity makes the election provided for	193

under division (D) of this section, the pass-through entity shall  
be liable for any additional taxes, interest, interest penalty, or  
penalties imposed by this chapter if the tax commissioner finds  
that the single return does not reflect the correct tax due by the  
pass-through entity investors covered by that return. Nothing in  
this division shall be construed to limit or alter the liability,  
if any, imposed on pass-through entity investors for unpaid or  
underpaid taxes, interest, interest penalty, or penalties as a  
result of the pass-through 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 the tax commissioner's  
findings. 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 226  
section shall contain the signature of the taxpayer or the 227  
taxpayer's duly authorized agent and of the person who prepared 228  
the return for the taxpayer, and shall include the taxpayer's 229  
social security number. Each return shall be verified by a 230  
declaration under the penalties of perjury. The tax commissioner 231  
shall prescribe the form that the signature and declaration shall 232  
take. 233

(G) Each return or notice required to be filed under this 234  
section shall be made and filed as required by section 5747.04 of 235  
the Revised Code, on or before the fifteenth day of April of each 236  
year, on forms that the tax commissioner shall prescribe, together 237  
with remittance made payable to the treasurer of state in the 238  
combined amount of the state and all school district income taxes 239  
shown to be due on the form, unless the combined amount shown to 240  
be due is one dollar or less, in which case that amount need not 241  
be remitted. 242

Upon good cause shown, the tax commissioner may extend the 243  
period for filing any notice or return required to be filed under 244  
this section and may adopt rules relating to extensions. If the 245  
extension results in an extension of time for the payment of any 246  
state or school district income tax liability with respect to 247  
which the return is filed, the taxpayer shall pay at the time the 248  
tax liability is paid an amount of interest computed at the rate 249  
per annum prescribed by section 5703.47 of the Revised Code on 250  
that liability from the time that payment is due without extension 251  
to the time of actual payment. Except as provided in section 252  
5747.132 of the Revised Code, in addition to all other interest 253  
charges and penalties, all taxes imposed under this chapter or 254  
Chapter 5748. of the Revised Code and remaining unpaid after they 255  
become due, except combined amounts due of one dollar or less, 256  
bear interest at the rate per annum prescribed by section 5703.47 257

of the Revised Code until paid or until the day an assessment is 258  
issued under section 5747.13 of the Revised Code, whichever occurs 259  
first. 260

If the tax commissioner considers it necessary in order to 261  
ensure the payment of the tax imposed by section 5747.02 of the 262  
Revised Code or any tax imposed under Chapter 5748. of the Revised 263  
Code, the tax commissioner may require returns and payments to be 264  
made otherwise than as provided in this section. 265

To the extent that any provision in this division conflicts 266  
with any provision in section 5747.026 of the Revised Code, the 267  
provision in that section prevails. 268

(H) If any report, claim, statement, or other document 269  
required to be filed, or any payment required to be made, within a 270  
prescribed period or on or before a prescribed date under this 271  
chapter is delivered after that period or that date by United 272  
States mail to the agency, officer, or office with which the 273  
report, claim, statement, or other document is required to be 274  
filed, or to which the payment is required to be made, the date of 275  
the postmark stamped on the cover in which the report, claim, 276  
statement, or other document, or payment is mailed shall be deemed 277  
to be the date of delivery or the date of payment. 278

If a payment is required to be made by electronic funds 279  
transfer pursuant to section 5747.072 of the Revised Code, the 280  
payment is considered to be made when the payment is received by 281  
the treasurer of state or credited to an account designated by the 282  
treasurer of state for the receipt of tax payments. 283

"The date of the postmark" means, in the event there is more 284  
than one date on the cover, the earliest date imprinted on the 285  
cover by the United States postal service. 286

(I) The amounts withheld by the employer pursuant to section 287  
5747.06 of the Revised Code shall be allowed to the recipient of 288

the compensation as credits against payment of the appropriate 289  
taxes imposed on the recipient by section 5747.02 and under 290  
Chapter 5748. of the Revised Code. 291

(J) If, in accordance with division (D) of this section, a 292  
pass-through entity elects to file a single return and if any 293  
investor is required to file the return and make the payment of 294  
taxes required by this chapter on account of the investor's other 295  
income that is not included in a single return filed by a 296  
pass-through entity, the investor is entitled to a refundable 297  
credit equal to the investor's proportionate share of the tax paid 298  
by the pass-through entity on behalf of the investor. The investor 299  
shall claim the credit for the investor's taxable year in which or 300  
with which ends the taxable year of the pass-through entity. 301  
Nothing in this chapter shall be construed to allow any credit 302  
provided in this chapter to be claimed more than once. For the 303  
purposes of computing any interest, penalty, or interest penalty, 304  
the investor shall be deemed to have paid the refundable credit 305  
provided by this division on the day that the pass-through entity 306  
paid the estimated tax or the tax giving rise to the credit. 307

**Section 2.** That existing sections 5747.026 and 5747.08 of the 308  
Revised Code are hereby repealed. 309

**Section 3.** Notwithstanding division (B)(1) of section 5919.34 310  
of the Revised Code, the number of participants in the Ohio 311  
national guard scholarship program for the summer term occurring 312  
in the year 2005 is limited to the equivalent of one thousand 313  
full-time participants. 314

**Section 4.** Sections 5747.026 and 5747.08 of the Revised Code, 315  
as amended by this act, shall apply to all years beginning on and 316  
after January 1, 2002. 317

**Section 5.** This act is hereby declared to be an emergency 318  
measure necessary for the immediate preservation of the public 319  
peace, health, and safety. The reason for such necessity lies in 320  
the fact that immediate action is necessary to alleviate the 321  
income tax filing and payment burdens currently faced by members 322  
of the National Guard and reserve components of the United States 323  
armed forces who have been called to active duty. Therefore, this 324  
act shall go into immediate effect. 325