

AN ACT

To amend section 5747.98 and to enact sections 122.85 and 5747.66 of the Revised Code to authorize income tax credits for investments in motion pictures produced in Ohio.

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

SECTION 1. That section 5747.98 be amended and sections 122.85 and 5747.66 of the Revised Code be enacted to read as follows:

Sec. 122.85. (A) As used in this section and in section 5747.66 of the Revised Code:

(1) "Allocated share" means the share of a qualifying investor's credit amount allocated as described in division (E) of this section.

(2) "Base investment" means the amount of money invested by a qualifying investor in a motion picture production company multiplied by the percentage that anticipated eligible production expenditures are of the total production budget that is expended, as determined under division (H) of this section. If the amount invested is three hundred thousand dollars or less, the base investment equals zero.

(3) "Certificate owner" means a qualifying investor to which a tax credit certificate is issued or any other person to which a credit amount is allocated or transferred under this section.

(4) "Company" means a corporation, partnership, limited liability company, or other form of business association.

(5) "Eligible production expenditures" means expenditures made in or after 2009 for goods or services consumed in this state, by a motion picture production company directly for the production of a tax credit-eligible production. "Eligible production expenditures" includes, but is not limited to, expenditures for resident and nonresident cast and crew wages and fringe benefits, accommodations, travel, costs of set construction and operations, editing and related services, photography, sound synchronization, lighting, wardrobe, makeup and accessories, film processing, transfer, sound mixing, special and visual effects, music, location fees, the purchase or rental of facilities and equipment, and out-of-state goods purchased or leased and

ultimately consumed in full or on a pro rata basis in this state.

(6) "Qualifying investor" means an individual or a partnership or other pass-through entity, as defined in section 5733.04 of the Revised Code, that invests money in a tax credit-eligible production.

(7) "Motion picture" means entertainment content created in whole or in part within this state, including feature-length films; documentaries; long-form, specials, miniseries, series, and interstitial television programming; sound recordings, videos, and music videos; interactive television; interactive games; videogames; commercials; infomercials; any format of digital media, including an interactive web site, created for distribution or exhibition to the general public; and any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film or videotape, provided the motion picture qualifies as a motion picture. "Motion picture" does not include any television program created primarily as news, weather, or financial market reports, a production featuring current events or sporting events, an awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production used for corporate training or in-house corporate advertising or other similar productions, any production for purposes of political advocacy, or any production for which records are required to be maintained under 18 U.S.C. 2257 with respect to sexually explicit content.

(8) "Motion picture production company" means a company engaged in the business of producing motion pictures, but does not include any company owned, affiliated, or controlled, in whole or in part, by any company or person that is in default on a loan made by the state or a loan guaranteed by the state.

(9) "Tax credit-eligible production" means a motion picture production, investment in which qualifies for tax credits under section 5747.66 of the Revised Code as certified by the director of development under division (B) of this section.

(10) "Transfer agent" means a motion picture production company or another person designated by such a company under division (G) of this section.

(B) For the purpose of encouraging the development of a strong capital base for motion picture productions in this state, the director of development, on or after January 1, 2009, but before January 1, 2014, may certify a motion picture produced by a motion picture production company

as a tax credit-eligible production. In the case of a television series, the director may certify the production of each episode of the series as a separate tax credit-eligible production. If the director determines that the production of two or more commercials or videos are related parts of a distinct advertising, promotional, informational, or entertainment series or undertaking, the director may certify the productions as a single tax credit-eligible production for the purpose of computing the credit amounts under division (D) of this section.

The director of development shall not certify a motion picture production as a tax credit-eligible production unless the motion picture production company and a financially responsible affiliate of the company formally agree to reimburse this state for the amount of tax credits allowed and claimed under section 5747.66 of the Revised Code on the basis of expenditures that are certified under division (H) of this section but thereafter are determined not to qualify as eligible production expenditures. The reimbursement shall be in a form and amount acceptable to the director of development. For the purposes of this division, a financially responsible affiliate of a motion picture production company is a person related to the motion picture production company by direct or indirect ownership or control of a majority of the capital stock or other equity interests and that the director of development determines to be financially capable of reimbursing this state as required by this division.

(C) A motion picture production company shall apply for certification of a motion picture as a tax credit-eligible production on a form and in the manner prescribed by the director. Every application shall include, at a minimum, all of the following information:

(1) The name, address, and telephone number of the motion picture production company;

(2) The name and telephone number of the company's contact person;

(3) A list of the scheduled first preproduction date through the scheduled last production date in Ohio;

(4) The total production budget of the motion picture;

(5) The amount expended in this state by the company directly for the production and the percentage that amount is of the total production budget of the motion picture;

(6) The total percentage of principal photography of the motion picture being shot in Ohio;

(7) The level of employment of cast and crew who reside in Ohio;

(8) A synopsis of the script;

(9) A creative elements list that includes the names of the principal cast

and crew, and the producer and director.

(D) Upon application by a qualifying investor, the director of development shall determine the qualifying investor's base investment, and shall issue a tax credit certificate to the qualifying investor. The director shall prescribe the form and manner of the application; the information or documentation required to be submitted with the application; and the form and manner of issuing the certificate. The director shall assign a unique identifying number to each tax credit certificate and shall record the certificate in a register devised and maintained by the director for that purpose. The certificate shall state the amount of the qualifying investor's base investment and the total amount of the credit allowed, which shall equal twenty-five per cent of the qualifying investor's base investment. Not more than one hundred million dollars in tax credit certificates may be issued per year, and not more than twenty-five million dollars in tax credit certificates may be issued per tax credit-eligible production.

The credit amount shall be determined under this division on the basis of the base investment and on the basis of the eligible production expenditures as finally determined under division (H) of this section. Once the eligible production expenditures are finally determined under that division, the credit amount is not subject to adjustment unless the base investment amount is adjusted or unless an error was committed in the computation of the credit amount.

(E) If a qualifying investor is a pass-through entity as defined in section 5733.04 of the Revised Code, the pass-through entity may allocate the credit amount among persons with an equity interest in the entity in any proportion or manner provided in the partnership agreement or other governing instrument of the entity, notwithstanding any application of the principles of section 704 of the Internal Revenue Code. Upon allocation, the persons to which the credit is allocated become the certificate owners of their respective allocated shares of the credit. The pass-through entity shall certify to the transfer agent the allocated share allocated to each such person and provide such information as is necessary to allow the transfer agent to provide the statements and certifications required under division (G) of this section.

(F) Any certificate owner may transfer to any other person all or a portion of the credit amount owned by the certificate owner. Upon transfer, the transferee becomes the certificate owner of the credit amount transferred. The transferor shall notify the transfer agent of each transfer made by the transferor in accordance with rules prescribed by the director of development. The rules shall require the transferor to provide to the transfer

agent the identity of the transferee and the unique identifying number assigned to the tax credit certificate that corresponds with the credit amount transferred.

(G) Each motion picture production company that has a motion picture production certified as a tax credit-eligible production shall designate itself or another person as the transfer agent for the purpose of providing the statements and certifications required under this division. Upon making the designation, the motion picture production company shall provide notice of the designation to each certificate owner of a certificate issued with respect to investments made in the company's motion picture production. Before claiming a credit under section 5747.66 of the Revised Code, a certificate owner shall request from the transfer agent a statement certifying the certificate owner's share of the credit amount, and the transfer agent shall provide the statement to the certificate owner. The statement shall be in a form prescribed by the director of development. The transfer agent also shall provide a statement to the tax commissioner showing the identity of the certificate owner and the certificate owner's share of the credit amount. The statement shall be in a form prescribed by the tax commissioner. A tax credit may not be claimed by a certificate owner unless the transfer agent issues the statement to the certificate owner.

(H) Each motion picture production company that has a motion picture production certified as a tax credit-eligible production shall engage, at the company's expense, an independent certified public accountant to examine the company's production expenditures to identify the expenditures that qualify as eligible production expenditures. The certified public accountant shall issue a report to the company and to the director of development certifying the company's eligible production expenditures and any other information required by the director. Upon receiving and examining the report, the director may disallow any expenditure the director determines is not an eligible production expense. If the director disallows an expenditure, the director, not later than thirty days after receiving the report, shall issue a written notice to the motion picture production company stating that the expenditure is disallowed, the reason for the disallowance, and the manner in which an appeal of the disallowance may be made. If the director does not issue the notice within the prescribed time, the eligible production expenditures certified by the certified public accountant's report are conclusively determined to be the eligible production expenditures on the basis of which base investments are determined and the credit is allowed under section 5747.66 of the Revised Code.

The company, not later than thirty days after issuance of the notice, may

appeal the disallowance by filing a notice of appeal with the director. If a notice of appeal is properly and timely filed, the director shall schedule a hearing on the appeal. The company shall be given the opportunity to present evidence and testimony at the hearing regarding the disallowed expenditures. The hearing may be continued from time to time as necessary. On the basis of evidence or testimony presented by the company, the director, within thirty days after the conclusion of the hearing, may revise or affirm the initial notice of disallowance of expenditures and issue a final notice to the company stating the revision or affirmation. The director's final notice is not appealable.

(I)(1) No credit shall be allowed under section 5747.66 of the Revised Code on the basis of any expenditure unless the expenditure has been certified by a certified public accountant under division (H) of this section and has not been disallowed by the director of development under that division.

(2) A credit shall not be disallowed under section 5747.66 of the Revised Code if, after the director of development issues the final notice under division (H) of this section, it is discovered that the credit is claimed on the basis of expenditures that do not qualify as eligible production expenditures but that were certified as eligible production expenditures by the certified public accountant and not disallowed by the director.

(J) This state reserves the right to refuse the use of this state's name in the credits of any tax credit-eligible motion picture production.

(K) The director of development shall adopt rules for the administration of this section, including rules governing the criteria for determining whether a motion picture production is a tax credit eligible production, which criteria shall be developed by the director in consultation with the tax commissioner; expenditures that qualify as eligible production expenditures; the form and manner of certifications by transfer agents; reimbursement requirements under division (B) of this section; and the appeal procedure under division (H) of this section. The rules shall be adopted under Chapter 119. of the Revised Code.

Sec. 5747.66. Any term used in this section has the same meaning as in section 122.85 of the Revised Code.

A nonrefundable credit is allowed against the tax imposed by section 5747.02 of the Revised Code for any individual who, on the last day of the individual's taxable year, is the certificate owner of a tax credit certificate issued under section 122.85 of the Revised Code. If the individual is the qualifying investor, the credit shall be claimed for the individual's taxable year that includes the day the base investment was made. If the individual is

not the qualifying investor, the credit shall be claimed for the individual's taxable year that includes the last day of the qualifying investor's taxable year in which the qualifying investor's base investment was made. The amount of the credit shall equal the credit amount certified by the transfer agent under division (G) of section 122.85 of the Revised Code. The credit shall be claimed in the order required under section 5747.98 of the Revised Code. If the credit amount exceeds the tax otherwise due under section 5747.02 of the Revised Code after deducting all other credits in that order, the excess may be carried forward for not more than ten taxable years following the taxable year in which the credit is first claimed, and the amount claimed in any year shall be deducted from the balance carried forward to an ensuing year.

Sec. 5747.98. (A) To provide a uniform procedure for calculating the amount of tax due under section 5747.02 of the Revised Code, a taxpayer shall claim any credits to which the taxpayer is entitled in the following order:

- (1) The retirement income credit under division (B) of section 5747.055 of the Revised Code;
- (2) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;
- (3) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;
- (4) The dependent care credit under section 5747.054 of the Revised Code;
- (5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;
- (6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;
- (7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;
- (8) The low-income credit under section 5747.056 of the Revised Code;
- (9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;
- (10) The campaign contribution credit under section 5747.29 of the Revised Code;
- (11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;
- (12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;
- (13) The nonresident credit under division (A) of section 5747.05 of the

Revised Code;

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

(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;

(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;

(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;

(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;

(19) The job retention credit under division (B) of section 5747.058 of the Revised Code;

(20) The credit for selling alternative fuel under section 5747.77 of the Revised Code;

(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;

(22) The job training credit under section 5747.39 of the Revised Code;

(23) The enterprise zone credit under section 5709.66 of the Revised Code;

(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;

(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;

(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;

(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;

(28) The export sales credit under section 5747.057 of the Revised Code;

(29) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;

(30) The enterprise zone credits under section 5709.65 of the Revised Code;

(31) The credit for investment in a motion picture production under section 5747.66 of the Revised Code;

(32) The research and development credit under section 5747.331 of the Revised Code;

~~(32)~~(33) The refundable credit for rehabilitating a historic building

under section 5747.76 of the Revised Code;

~~(33)~~(34) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;

~~(34)~~(35) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;

~~(35)~~(36) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code;

~~(36)~~(37) The refundable credit for tax withheld under division (B)(1) of section 5747.062 of the Revised Code;

~~(37)~~(38) The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code.

(B) For any credit, except the refundable credits enumerated in ~~divisions (A)(32) to (37) of~~ this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

SECTION 2. That existing section 5747.98 of the Revised Code is hereby repealed.

SECTION 3. (A) In adopting the rules required under division (K) of section 122.85 of the Revised Code, as enacted by this act, the Director of Development shall file the notice and text of the proposed rules as required by division (B) of section 119.03 of the Revised Code not later than two hundred five days after the effective date of this act.

(B) Not later than eighty days after the effective date of this act, the Director of Development shall adopt initial rules to effect the same purposes of the rules required under division (K) of section 122.85 of the Revised Code, as enacted by this act. The initial rules shall be adopted pursuant to section 111.15 of the Revised Code, but division (D) of that section does not apply to the adoption of the initial rules. The initial rules shall be effective until the final rules adopted pursuant to division (A) of this section and Chapter 119. of the Revised Code take effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 196

127th G.A.

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 _____