

# As Introduced

127th General Assembly  
Regular Session  
2007-2008

H. B. No. 196

Representative Patton

Cosponsors: Representatives Combs, Collier, DeGeeter, Stebelton, Budish,  
Miller, Skindell

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## A B I L L

To amend section 5747.98 and to enact sections 122.85 1  
and 5747.66 of the Revised Code to authorize 2  
income tax credits for investments in motion 3  
pictures produced in Ohio. 4

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

**Section 1.** That section 5747.98 be amended and sections 5  
122.85 and 5747.66 of the Revised Code be enacted to read as 6  
follows: 7

**Sec. 122.85.** (A) As used in this section and in section 8  
5747.66 of the Revised Code: 9

(1) "Allocated share" means the share of a qualifying 10  
investor's credit amount allocated as described in division (E) of 11  
this section. 12

(2) "Base investment" means the amount of money invested by a 13  
qualifying investor in a motion picture production company 14  
multiplied by the percentage of the total production budget that 15  
is expended in this state by the company directly for the 16  
production of a tax credit-eligible production, as determined 17  
under division (H) of this section. 18

(3) "Certificate owner" means a qualifying investor to which 19  
a tax credit certificate is issued or any other person to which a 20  
credit amount is allocated or transferred under this section. 21

(4) "Company" means a corporation, partnership, limited 22  
liability company, or other form of business association. 23

(5) "Eligible production expenditures" means expenditures 24  
made in this state by a motion picture production company directly 25  
for the production of a tax credit-eligible production. 26

(6) "Headquartered in Ohio" means incorporated in this state 27  
in the case of a corporation, or, in the case of any other 28  
company, domiciled and headquartered in this state. 29

(7) "Qualifying investor" means an individual or a 30  
partnership or other pass-through entity, as defined in section 31  
5733.04 of the Revised Code, that invests money in a tax 32  
credit-eligible production. 33

(8) "Motion picture" means a nationally distributed 34  
feature-length film, video, television series, or commercial made 35  
in this state, in whole or in part, for theatrical or television 36  
viewing, or as a television pilot, but does not include the 37  
production of television coverage of news or sporting events. 38

(9) "Motion picture production company" means a company 39  
engaged in the business of producing motion pictures, but does not 40  
include any company owned, affiliated, or controlled, in whole or 41  
in part, by any company or person that is in default on a loan 42  
made by the state or a loan guaranteed by the state. 43

(10) "Tax credit-eligible production" means a motion picture 44  
production, investment in which qualifies for tax credits under 45  
section 5747.66 of the Revised Code as certified by the director 46  
of development under division (B) of this section. 47

(11) "Transfer agent" means a motion picture production 48

company or another person designated by such a company under 49  
division (G) of this section. 50

(B) For the purpose of encouraging the development of a 51  
strong capital base for motion picture productions in this state, 52  
the director of development may certify a motion picture produced 53  
by a motion picture production company headquartered in Ohio as a 54  
tax credit-eligible production. In the case of a television 55  
series, the director may certify the production of each episode of 56  
the series as a separate tax credit-eligible production. If the 57  
director determines that the production of two or more commercials 58  
or videos are related parts of a distinct advertising, 59  
promotional, informational, or entertainment series or 60  
undertaking, the director may certify the productions as a single 61  
tax credit-eligible production for the purpose of computing the 62  
credit amounts under division (D) of this section. 63

The director of development shall not certify a motion 64  
picture production as a tax credit-eligible production unless the 65  
motion picture production company and a financially responsible 66  
affiliate of the company formally agree to indemnify this state 67  
for the amount of tax credits allowed and claimed under section 68  
5747.66 of the Revised Code on the basis of expenditures that are 69  
certified under division (H) of this section but thereafter are 70  
determined not to qualify as eligible production expenditures. The 71  
indemnification shall be in a form and amount acceptable to the 72  
director of development. For the purposes of this division, a 73  
financially responsible affiliate of a motion picture production 74  
company is a person related to the motion picture production 75  
company by direct or indirect ownership or control of a majority 76  
of the capital stock or other equity interests and that the 77  
director of development determines to be financially capable of 78  
indemnifying this state as required by this division. 79

(C) A motion picture company shall apply for certification of 80

a motion picture as a tax credit-eligible production on a form and 81  
in the manner prescribed by the director. Every application shall 82  
include, at a minimum, all of the following information: 83

(1) The name and telephone number of the motion picture 84  
production company; 85

(2) The name and telephone number of the company's contact 86  
person; 87

(3) A list of the first preproduction date through the last 88  
production date in Ohio; 89

(4) The Ohio production office address and telephone number; 90

(5) The total production budget of the motion picture; 91

(6) The amount expended in this state by the company directly 92  
for the production and the percentage that amount is of the total 93  
production budget of the motion picture; 94

(7) The total percentage of the motion picture being shot in 95  
Ohio; 96

(8) The level of employment of cast and crew who reside in 97  
Ohio; 98

(9) A synopsis of the script; 99

(10) A creative elements list that includes the names of the 100  
principal cast and crew, and the producer and director; 101

(11) The motion picture's distribution plan, including 102  
domestic and international distribution, and the sales estimates 103  
for the picture. 104

(D) Upon application by a qualifying investor, the director 105  
of development shall determine the qualifying investor's base 106  
investment, and shall issue a tax credit certificate to the 107  
qualifying investor. The director shall prescribe the form and 108  
manner of the application; the information or documentation 109

required to be submitted with the application; and the form and 110  
manner of issuing the certificate. The director shall assign a 111  
unique identifying number to each tax credit certificate and shall 112  
record the certificate in a register devised and maintained by the 113  
director for that purpose. The certificate shall state the amount 114  
of the qualifying investor's base investment and the total amount 115  
of the credit allowed for the base investment as prescribed in 116  
divisions (D)(1), (2), and (3) of this section: 117

(1) If the qualifying investor's base investment is greater 118  
than three hundred thousand dollars but not greater than eight 119  
million dollars, twenty-five per cent of the qualifying investor's 120  
base investment; 121

(2) If the qualifying investor's base investment is greater 122  
than eight million dollars but not greater than one hundred 123  
million dollars, two million dollars plus fifteen per cent of the 124  
qualifying investor's base investment in excess of eight million 125  
dollars; 126

(3) If the qualifying investor's base investment is greater 127  
than one hundred million dollars, fifteen million eight hundred 128  
thousand dollars plus five per cent of the base investment in 129  
excess of one hundred million dollars. 130

The credit amount shall be determined under this division on 131  
the basis of the base investment and on the basis of the eligible 132  
production expenditures as finally determined under division (H) 133  
of this section. Once the eligible production expenditures are 134  
finally determined under that division, the credit amount is not 135  
subject to adjustment unless the base investment amount is 136  
adjusted or unless an error was committed in the computation of 137  
the credit amount. 138

(E) If a qualifying investor is a pass-through entity as 139  
defined in section 5733.04 of the Revised Code, the pass-through 140

entity may allocate the credit amount among persons with an equity 141  
interest in the entity in any proportion or manner provided in the 142  
partnership agreement or other governing instrument of the entity, 143  
notwithstanding any application of the principles of section 704 144  
of the Internal Revenue Code. Upon allocation, the persons to 145  
which the credit is allocated become the certificate owners of 146  
their respective allocated shares of the credit. The pass-through 147  
entity shall certify to the transfer agent the allocated share 148  
allocated to each such person and provide such information as is 149  
necessary to allow the transfer agent to provide the statements 150  
and certifications required under division (G) of this section. 151

(F) Any certificate owner may transfer to any other person 152  
all or a portion of the credit amount owned by the certificate 153  
owner. Upon transfer, the transferee becomes the certificate owner 154  
of the credit amount transferred. The transferor shall notify the 155  
transfer agent of each transfer made by the transferor in 156  
accordance with rules prescribed by the director of development. 157  
The rules shall require the transferor to provide to the transfer 158  
agent the identity of the transferee and the unique identifying 159  
number assigned to the tax credit certificate that corresponds 160  
with the credit amount transferred. 161

(G) Each motion picture production company that has a motion 162  
picture production certified as a tax credit-eligible production 163  
shall designate itself or another person as the transfer agent for 164  
the purpose of providing the statements and certifications 165  
required under this division. Upon making the designation, the 166  
motion picture production company shall provide notice of the 167  
designation to each certificate owner of a certificate issued with 168  
respect to investments made in the company's motion picture 169  
production. Before claiming a credit under section 5747.66 of the 170  
Revised Code, a certificate owner shall request from the transfer 171  
agent a statement certifying the certificate owner's share of the 172

credit amount, and the transfer agent shall provide the statement 173  
to the certificate owner. The statement shall be in a form 174  
prescribed by the director of development. The transfer agent also 175  
shall provide a statement to the tax commissioner showing the 176  
identity of the certificate owner and the certificate owner's 177  
share of the credit amount. The statement shall be in a form 178  
prescribed by the tax commissioner. A tax credit may not be 179  
claimed by a certificate owner unless the transfer agent issues 180  
the statement to the certificate owner. 181

(H) Each motion picture production company that has a motion 182  
picture production certified as a tax credit-eligible production 183  
shall engage, at the company's expense, an independent certified 184  
public accountant to examine the company's production expenditures 185  
to identify the expenditures that qualify as eligible production 186  
expenditures. The certified public accountant shall issue a report 187  
to the company and to the director of development certifying the 188  
company's eligible production expenditures and any other 189  
information required by the director. Upon receiving and examining 190  
the report, the director may disallow any expenditure the director 191  
determines is not an eligible production expense. If the director 192  
disallows an expenditure, the director, not later than thirty days 193  
after receiving the report, shall issue a written notice to the 194  
motion picture production company stating that the expenditure is 195  
disallowed, the reason for the disallowance, and the manner in 196  
which an appeal of the disallowance may be made. If the director 197  
does not issue the notice within the prescribed time, the eligible 198  
production expenditures certified by the certified public 199  
accountant's report are conclusively determined to be the eligible 200  
production expenditures on the basis of which base investments are 201  
determined and the credit is allowed under section 5747.66 of the 202  
Revised Code. 203

The company, not later than thirty days after issuance of the 204

notice, may appeal the disallowance by filing a notice of appeal 205  
with the director. If a notice of appeal is properly and timely 206  
filed, the director shall schedule a hearing on the appeal. The 207  
company shall be given the opportunity to present evidence and 208  
testimony at the hearing regarding the disallowed expenditures. 209  
The hearing may be continued from time to time as necessary. On 210  
the basis of evidence or testimony presented by the company, the 211  
director, within thirty days after the conclusion of the hearing, 212  
may revise or affirm the initial notice of disallowance of 213  
expenditures and issue a final notice to the company stating the 214  
revision or affirmation. The director's final notice is not 215  
appealable. 216

(I)(1) No credit shall be allowed under section 5747.66 of 217  
the Revised Code on the basis of any expenditure unless the 218  
expenditure has been certified by a certified public accountant 219  
under division (H) of this section and has not been disallowed by 220  
the director of development under that division. 221

(2) A credit shall not be disallowed under section 5747.66 of 222  
the Revised Code if, after the director of development issues the 223  
final notice under division (H) of this section, it is discovered 224  
that the credit is claimed on the basis of expenditures that do 225  
not qualify as eligible production expenditures but that were 226  
certified as eligible production expenditures by the certified 227  
public accountant and not disallowed by the director. 228

(J) This state reserves the right to refuse the use of this 229  
state's name in the credits of any tax credit-eligible motion 230  
picture production. 231

(K) The director of development shall adopt rules for the 232  
administration of this section, including rules governing the 233  
criteria for determining whether a motion picture production is a 234  
tax credit eligible production, which criteria shall be developed 235  
by the director in consultation with the tax commissioner; 236

expenditures that qualify as eligible production expenditures; the 237  
form and manner of certifications by transfer agents; 238  
indemnification requirements under division (B) of this section; 239  
and the appeal procedure under division (H) of this section. The 240  
rules shall be adopted under Chapter 119. of the Revised Code. 241

**Sec. 5747.66.** Any term used in this section has the same 242  
meaning as in section 122.85 of the Revised Code. 243

A nonrefundable credit is allowed against the tax imposed by 244  
section 5747.02 of the Revised Code for any individual who, on the 245  
last day of the individual's taxable year, is the certificate 246  
owner of a tax credit certificate issued under section 122.85 of 247  
the Revised Code. If the individual is the qualifying investor, 248  
the credit shall be claimed for the individual's taxable year that 249  
includes the day the base investment was made. If the individual 250  
is not the qualifying investor, the credit shall be claimed for 251  
the individual's taxable year that includes the last day of the 252  
qualifying investor's taxable year in which the qualifying 253  
investor's base investment was made. The amount of the credit 254  
shall equal the credit amount certified by the transfer agent 255  
under division (G) of section 122.85 of the Revised Code. The 256  
credit shall be claimed in the order required under section 257  
5747.98 of the Revised Code. If the credit amount exceeds the tax 258  
otherwise due under section 5747.02 of the Revised Code after 259  
deducting all other credits in that order, the excess may be 260  
carried forward for not more than ten taxable years following the 261  
taxable year in which the credit is first claimed, and the amount 262  
claimed in any year shall be deducted from the balance carried 263  
forward to an ensuing year. 264

**Sec. 5747.98.** (A) To provide a uniform procedure for 265  
calculating the amount of tax due under section 5747.02 of the 266  
Revised Code, a taxpayer shall claim any credits to which the 267

taxpayer is entitled in the following order:	268
(1) The retirement income credit under division (B) of	269
section 5747.055 of the Revised Code;	270
(2) The senior citizen credit under division (C) of section	271
5747.05 of the Revised Code;	272
(3) The lump sum distribution credit under division (D) of	273
section 5747.05 of the Revised Code;	274
(4) The dependent care credit under section 5747.054 of the	275
Revised Code;	276
(5) The lump sum retirement income credit under division (C)	277
of section 5747.055 of the Revised Code;	278
(6) The lump sum retirement income credit under division (D)	279
of section 5747.055 of the Revised Code;	280
(7) The lump sum retirement income credit under division (E)	281
of section 5747.055 of the Revised Code;	282
(8) The low-income credit under section 5747.056 of the	283
Revised Code;	284
(9) The credit for displaced workers who pay for job training	285
under section 5747.27 of the Revised Code;	286
(10) The campaign contribution credit under section 5747.29	287
of the Revised Code;	288
(11) The twenty-dollar personal exemption credit under	289
section 5747.022 of the Revised Code;	290
(12) The joint filing credit under division (G) of section	291
5747.05 of the Revised Code;	292
(13) The nonresident credit under division (A) of section	293
5747.05 of the Revised Code;	294
(14) The credit for a resident's out-of-state income under	295
division (B) of section 5747.05 of the Revised Code;	296

(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	297 298
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	299 300
(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	301 302
(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	303 304
(19) The job retention credit under division (B) of section 5747.058 of the Revised Code;	305 306
(20) The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;	307 308 309
(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;	310 311 312
(22) The job training credit under section 5747.39 of the Revised Code;	313 314
(23) The enterprise zone credit under section 5709.66 of the Revised Code;	315 316
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	317 318
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	319 320
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	321 322
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	323 324
(28) The export sales credit under section 5747.057 of the	325

Revised Code; 326

(29) The credit for research and development and technology 327  
transfer investors under section 5747.33 of the Revised Code; 328

(30) The enterprise zone credits under section 5709.65 of the 329  
Revised Code; 330

(31) The credit for investment in a motion picture production 331  
under section 5747.66 of the Revised Code; 332

(32) The research and development credit under section 333  
5747.331 of the Revised Code; 334

~~(32)~~(33) The refundable jobs creation credit under division 335  
(A) of section 5747.058 of the Revised Code; 336

~~(33)~~(34) The refundable credit for taxes paid by a qualifying 337  
entity granted under section 5747.059 of the Revised Code; 338

~~(34)~~(35) The refundable credits for taxes paid by a 339  
qualifying pass-through entity granted under division (J) of 340  
section 5747.08 of the Revised Code; 341

~~(35)~~(36) The refundable credit for tax withheld under 342  
division (B)(1) of section 5747.062 of the Revised Code; 343

~~(36)~~(37) The refundable credit under section 5747.80 of the 344  
Revised Code for losses on loans made to the Ohio venture capital 345  
program under sections 150.01 to 150.10 of the Revised Code. 346

(B) For any credit, except the refundable credits enumerated 347  
in ~~divisions (A)(32) to (36)~~ of this section and the credit 348  
granted under division (I) of section 5747.08 of the Revised Code, 349  
the amount of the credit for a taxable year shall not exceed the 350  
tax due after allowing for any other credit that precedes it in 351  
the order required under this section. Any excess amount of a 352  
particular credit may be carried forward if authorized under the 353  
section creating that credit. Nothing in this chapter shall be 354  
construed to allow a taxpayer to claim, directly or indirectly, a 355

credit more than once for a taxable year. 356

**Section 2.** That existing section 5747.98 of the Revised Code 357  
is hereby repealed. 358

**Section 3.** (A) In adopting the rules required under division 359  
(K) of section 122.85 of the Revised Code, as enacted by this act, 360  
the Director of Development shall file the notice and text of the 361  
proposed rules as required by division (B) of section 119.03 of 362  
the Revised Code not later than two hundred five days after the 363  
effective date of this act. 364

(B) Not later than eighty days after the effective date of 365  
this act, the Director of Development shall adopt initial rules to 366  
effect the same purposes of the rules required under division (K) 367  
of section 122.85 of the Revised Code, as enacted by this act. The 368  
initial rules shall be adopted pursuant to section 111.15 of the 369  
Revised Code, but division (D) of that section does not apply to 370  
the adoption of the initial rules. The initial rules shall be 371  
effective until the final rules adopted pursuant to division (A) 372  
of this section and Chapter 119. of the Revised Code take effect. 373