

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**H. B. No. 6**

**Representatives Patten, Schneider**

**Cosponsors: Representatives DeGeeter, Garrison, Harris, Heard, Letson,  
Luckie, Murray, Newcomb, Szollosi, Yuko**

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**A BILL**

To amend sections 5733.98 and 5747.98 and to enact 1  
sections 122.85, 5733.58, and 5747.66 of the 2  
Revised Code to authorize refundable, 3  
nontransferable credits against the corporation 4  
franchise tax or income tax for production of 5  
motion pictures in Ohio. 6

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

**Section 1.** That sections 5733.98 and 5747.98 be amended and 7  
sections 122.85, 5733.58, and 5747.66 of the Revised Code be 8  
enacted to read as follows: 9

**Sec. 122.85.** (A) As used in this section and in sections 10  
5733.58 and 5747.66 of the Revised Code: 11

(1) "Tax credit-eligible production" means a motion picture 12  
production certified by the director of development under division 13  
(B) of this section as qualifying the motion picture company for a 14  
tax credit under section 5733.58 or 5747.66 of the Revised Code. 15

(2) "Certificate owner" means a motion picture company to 16  
which a tax credit certificate is issued. 17

(3) "Motion picture company" means an individual, corporation, partnership, limited liability company, or other form of business association producing a motion picture.

(4) "Eligible production expenditures" means expenditures made after the effective date of the enactment of this section by . . . . . of the 128th general assembly for goods or services purchased and consumed in this state by a motion picture 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, accommodations, 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, and the purchase or rental of facilities and equipment. With respect to payroll for nonresident cast and crew, "eligible production expenditures" means one hundred per cent of the payroll expenditure for tax credit-eligible productions certified before July 1, 2010, and seventy-five per cent of the payroll expenditure for tax credit-eligible productions certified on or after July 1, 2010.

(5) "Motion picture" means content created in whole or in part within this state for distribution or exhibition to the general public, including, but not limited to, feature-length films; documentaries; long-form, specials, miniseries, series, and interstitial television programming; and interactive web sites. "Motion picture" does not include any television program created primarily as news, weather, or financial market reports, a production featuring 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 or in-house corporate advertising or other similar productions, or any

production for which records are required to be maintained under 50  
18 U.S.C. 2257 with respect to sexually explicit content. 51

(B) For the purpose of encouraging and developing a strong 52  
film industry in this state, on or after July 1, 2009, the 53  
director of development may certify a motion picture produced by a 54  
motion picture company as a tax credit-eligible production. In the 55  
case of a television series, the director may certify the 56  
production of each episode of the series as a separate tax 57  
credit-eligible production. A motion picture company shall apply 58  
for certification of a motion picture as a tax credit-eligible 59  
production on a form and in the manner prescribed by the director. 60  
Each application shall include the following information: 61

(1) The name and telephone number of the motion picture 63  
production company; 64

(2) The name and telephone number of the company's contact 65  
person; 66

(3) A list of the first preproduction date through the last 67  
production date in Ohio; 68

(4) The Ohio production office address and telephone number; 69

(5) The total production budget of the motion picture; 70

(6) The total budgeted eligible production expenditures and 71  
the percentage that amount is of the total production budget of 72  
the motion picture; 73

(7) The total percentage of the motion picture being shot in 74  
Ohio; 75

(8) The level of employment of cast and crew who reside in 76  
Ohio; 77

(9) A synopsis of the script; 78

(10) The shooting script; 79

(11) A creative elements list that includes the names of the principal cast and crew and the producer and director; 80  
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(12) The motion picture's distribution plan, including domestic and international distribution, and sales estimates for the picture; 82  
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(13) Documentation of financial ability to undertake and complete the motion picture; 85  
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(14) Estimated value of the tax credit based upon total budgeted eligible production expenditures; 87  
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(15) Any other information considered necessary by the director. 89  
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Within ninety days after certification of a motion picture as a tax credit-eligible production, and any time thereafter upon the director's request, the motion picture company shall present to the director of development sufficient evidence of reviewable progress. If the motion picture company fails to present sufficient evidence, the director of development may rescind the certification. Upon rescission, the director shall notify the applicant that the certification has been rescinded. Nothing in this section prohibits an applicant whose tax credit-eligible production certification has been rescinded from submitting a subsequent application for certification. 91  
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(C)(1) A motion picture company whose motion picture has been certified as a tax credit-eligible production may apply to the director of development for a refundable credit against the tax imposed by section 5733.06 or 5747.02 of the Revised Code. The director in consultation with the tax commissioner shall prescribe the form and manner of the application and the information or documentation required to be submitted with the application. 102  
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The credit is determined as follows: 109

(a) If the total budgeted eligible production expenditures 110  
stated in the application submitted under division (B) of this 111  
section or the actual eligible production expenditures as finally 112  
determined under division (D) of this section, whichever is least, 113  
is less than or equal to three hundred thousand dollars, no credit 114  
is allowed; 115

(b) If the total budgeted eligible production expenditures 116  
stated in the application submitted under division (B) of this 117  
section or the actual eligible production expenditures as finally 118  
determined under division (D) of this section, whichever is least, 119  
is greater than three hundred thousand dollars, the credit equals 120  
twenty-five per cent of the least of those eligible production 121  
expenditure amounts, subject to the limitation in division (C)(4) 122  
of this section. 123

(2) Except as provided in division (C)(4) of this section, if 124  
the director of development approves a motion picture company's 125  
application for a credit, the director shall issue a tax credit 126  
certificate to the company. The director in consultation with the 127  
tax commissioner shall prescribe the form and manner of issuing 128  
certificates. The director shall assign a unique identifying 129  
number to each tax credit certificate and shall record the 130  
certificate in a register devised and maintained by the director 131  
for that purpose. The certificate shall state the amount of the 132  
eligible production expenditures on which the credit is based and 133  
the amount of the credit. Upon the issuance of a certificate, the 134  
director shall certify to the tax commissioner the name of the 135  
applicant, the amount of eligible production expenditures shown on 136  
the certificate, and any other information required by the rules 137  
adopted to administer this section. 138

(3) The amount of eligible production expenditures for which 139  
a tax credit may be claimed is subject to inspection and 140  
examination by the tax commissioner or employees of the 141

commissioner under section 5703.19 of the Revised Code and any 142  
other applicable law. Once the eligible production expenditures 143  
are finally determined under section 5703.19 of the Revised Code 144  
and division (D) of this section, the credit amount is not subject 145  
to adjustment unless the director determines an error was 146  
committed in the computation of the credit amount. 147

(4) No tax credit certificate may be issued before the 148  
completion of the tax credit-eligible production. Not more than 149  
twenty million dollars of tax credit may be allowed per fiscal 150  
biennium, and not more than five million dollars of tax credit may 151  
be allowed per tax credit-eligible production. 152

(D) A motion picture company whose motion picture has been 153  
certified as a tax credit-eligible production shall engage, at the 154  
company's expense, an independent certified public accountant to 155  
examine the company's production expenditures to identify the 156  
expenditures that qualify as eligible production expenditures. The 157  
certified public accountant shall issue a report to the company 158  
and to the director of development certifying the company's 159  
eligible production expenditures and any other information 160  
required by the director. Upon receiving and examining the report, 161  
the director may disallow any expenditure the director determines 162  
is not an eligible production expenditure. If the director 163  
disallows an expenditure, the director shall issue a written 164  
notice to the motion picture production company stating that the 165  
expenditure is disallowed and the reason for the disallowance. 166  
Upon examination of the report and disallowance of any 167  
expenditures, the director shall determine finally the lesser of 168  
the total budgeted eligible production expenditures stated in the 169  
application submitted under division (B) of this section or the 170  
actual eligible production expenditures for the purpose of 171  
computing the amount of the credit. 172

(E) No credit shall be allowed under section 5733.58 or 173

5747.66 of the Revised Code unless the director has reviewed the 174  
report and made the determination prescribed by division (D) of 175  
this section. 176

(F) This state reserves the right to refuse the use of this 177  
state's name in the credits of any tax credit-eligible motion 178  
picture production. 179

(G)(1) The director of development in consultation with the 180  
tax commissioner may adopt rules for the administration of this 181  
section, including rules setting forth and governing the criteria 182  
for determining whether a motion picture production is a tax 183  
credit-eligible production; activities that constitute the 184  
production of a motion picture; reporting sufficient evidence of 185  
reviewable progress; expenditures that qualify as eligible 186  
production expenditures; a competitive process for approving 187  
credits; and consideration of geographic distribution of credits. 188  
The rules may be adopted under Chapter 119. of the Revised Code. 189

(2) The director may require a reasonable application fee to 190  
cover administrative costs of the tax credit program. The fees 191  
collected shall be credited to the motion picture tax credit 192  
program operating fund, which is hereby created in the state 193  
treasury. The motion picture tax credit program operating fund 194  
shall consist of all grants, gifts, fees, and contributions made 195  
to the director of development for marketing and promotion of the 196  
motion picture industry within this state. The director of 197  
development shall use money in the fund to pay expenses related to 198  
the administration of the Ohio film office and the credit 199  
authorized by this section and sections 5733.58 and 5747.66 of the 200  
Revised Code. 201

**Sec. 5733.58. (A) Any term used in this section has the same** 202  
**meaning as in section 122.85 of the Revised Code.** 203

(B) There is allowed a credit against the tax imposed by 204

section 5733.06 of the Revised Code for any corporation that is 205  
the certificate owner of a tax credit certificate issued under 206  
section 122.85 of the Revised Code. The credit shall be claimed 207  
for the taxable year in which the certificate is issued by the 208  
director of development. The credit amount equals the amount 209  
stated in the certificate. The credit shall be claimed in the 210  
order required under section 5733.98 of the Revised Code. If the 211  
credit amount exceeds the tax otherwise due under section 5733.06 212  
of the Revised Code after deducting all other credits in that 213  
order, the excess shall be refunded. 214

(C) If, pursuant to division (G) of section 5733.01 of the 215  
Revised Code, the corporation is not required to pay tax under 216  
this chapter, the corporation may file an annual report under 217  
section 5733.02 of the Revised Code and claim the credit 218  
authorized by this section. Nothing in this section allows a 219  
corporation to claim more than one credit per tax credit-eligible 220  
production. 221

**Sec. 5733.98.** (A) To provide a uniform procedure for 222  
calculating the amount of tax imposed by section 5733.06 of the 223  
Revised Code that is due under this chapter, a taxpayer shall 224  
claim any credits to which it is entitled in the following order, 225  
except as otherwise provided in section 5733.058 of the Revised 226  
Code: 227

(1) For tax year 2005, the credit for taxes paid by a 228  
qualifying pass-through entity allowed under section 5733.0611 of 229  
the Revised Code; 230

(2) The credit allowed for financial institutions under 231  
section 5733.45 of the Revised Code; 232

(3) The credit for qualifying affiliated groups under section 233  
5733.068 of the Revised Code; 234



(4) The subsidiary corporation credit under section 5733.067 of the Revised Code;	235 236
(5) The savings and loan assessment credit under section 5733.063 of the Revised Code;	237 238
(6) The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;	239 240
(7) The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;	241 242
(8) The credit for employers that reimburse employee child care expenses under section 5733.38 of the Revised Code;	243 244
(9) The credit for maintaining railroad active grade crossing warning devices under section 5733.43 of the Revised Code;	245 246
(10) The credit for purchases of lights and reflectors under section 5733.44 of the Revised Code;	247 248
(11) The job retention credit under division (B) of section 5733.0610 of the Revised Code;	249 250
(12) The credit for tax years 2008 and 2009 for selling alternative fuel under section 5733.48 of the Revised Code;	251 252
(13) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	253 254
(14) The job training credit under section 5733.42 of the Revised Code;	255 256
(15) The credit for qualified research expenses under section 5733.351 of the Revised Code;	257 258
(16) The enterprise zone credit under section 5709.66 of the Revised Code;	259 260
(17) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	261 262
(18) The credit for employers that establish on-site child	263

day-care centers under section 5733.37 of the Revised Code;	264
(19) The ethanol plant investment credit under section 5733.46 of the Revised Code;	265 266
(20) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	267 268
(21) The export sales credit under section 5733.069 of the Revised Code;	269 270
(22) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	271 272
(23) The enterprise zone credits under section 5709.65 of the Revised Code;	273 274
(24) The credit for using Ohio coal under section 5733.39 of the Revised Code;	275 276
(25) The credit for small telephone companies under section 5733.57 of the Revised Code;	277 278
(26) The credit for eligible nonrecurring 9-1-1 charges under section 5733.55 of the Revised Code;	279 280
(27) For tax year 2005, the credit for providing programs to aid the communicatively impaired under division (A) of section 5733.56 of the Revised Code;	281 282 283
(28) The research and development credit under section 5733.352 of the Revised Code;	284 285
(29) For tax years 2006 and subsequent tax years, the credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;	286 287 288
(30) The refundable credit for rehabilitating a historic building under section 5733.47 of the Revised Code;	289 290
(31) The refundable jobs creation credit under division (A) of section 5733.0610 of the Revised Code;	291 292

(32) The refundable credit for tax withheld under division	293
(B)(2) of section 5747.062 of the Revised Code;	294
(33) The refundable credit under section 5733.49 of the	295
Revised Code for losses on loans made to the Ohio venture capital	296
program under sections 150.01 to 150.10 of the Revised Code;	297
(34) For tax years 2006, 2007, and 2008, the refundable	298
credit allowable under division (B) of section 5733.56 of the	299
Revised Code;	300
<u>(35) The refundable motion picture production credit under</u>	301
<u>section 5733.58 of the Revised Code.</u>	302
(B) For any credit except the <u>refundable</u> credits enumerated	303
in <del>divisions (A)(30) to (34)</del> of this section, the amount of the	304
credit for a tax year shall not exceed the tax due after allowing	305
for any other credit that precedes it in the order required under	306
this section. Any excess amount of a particular credit may be	307
carried forward if authorized under the section creating that	308
credit.	309
<u>Sec. 5747.66. (A) Any term used in this section has the same</u>	310
<u>meaning as in section 122.85 of the Revised Code.</u>	311
<u>(B) There is allowed a credit against the tax imposed by</u>	312
<u>section 5747.02 of the Revised Code for any individual who, on the</u>	313
<u>last day of the individual's taxable year, is the certificate</u>	314
<u>owner of a tax credit certificate issued under section 122.85 of</u>	315
<u>the Revised Code. The credit shall be claimed for the taxable year</u>	316
<u>that includes the date the certificate was issued by the director</u>	317
<u>of development. The credit amount equals the amount stated in the</u>	318
<u>certificate. The credit shall be claimed in the order required</u>	319
<u>under section 5747.98 of the Revised Code. If the credit amount</u>	320
<u>exceeds the tax otherwise due under section 5747.02 of the Revised</u>	321
<u>Code after deducting all other credits in that order, the excess</u>	322

<u>shall be refunded.</u>	323
<u>Nothing in this section limits or disallows pass-through</u>	324
<u>treatment of the credit.</u>	325
<b>Sec. 5747.98.</b> (A) To provide a uniform procedure for	326
calculating the amount of tax due under section 5747.02 of the	327
Revised Code, a taxpayer shall claim any credits to which the	328
taxpayer is entitled in the following order:	329
(1) The retirement income credit under division (B) of	330
section 5747.055 of the Revised Code;	331
(2) The senior citizen credit under division (C) of section	332
5747.05 of the Revised Code;	333
(3) The lump sum distribution credit under division (D) of	334
section 5747.05 of the Revised Code;	335
(4) The dependent care credit under section 5747.054 of the	336
Revised Code;	337
(5) The lump sum retirement income credit under division (C)	338
of section 5747.055 of the Revised Code;	339
(6) The lump sum retirement income credit under division (D)	340
of section 5747.055 of the Revised Code;	341
(7) The lump sum retirement income credit under division (E)	342
of section 5747.055 of the Revised Code;	343
(8) The low-income credit under section 5747.056 of the	344
Revised Code;	345
(9) The credit for displaced workers who pay for job training	346
under section 5747.27 of the Revised Code;	347
(10) The campaign contribution credit under section 5747.29	348
of the Revised Code;	349
(11) The twenty-dollar personal exemption credit under	350

section 5747.022 of the Revised Code;	351
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	352 353
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	354 355
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	356 357
(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	358 359
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	360 361
(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	362 363
(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	364 365
(19) The job retention credit under division (B) of section 5747.058 of the Revised Code;	366 367
(20) The credit for selling alternative fuel under section 5747.77 of the Revised Code;	368 369
(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;	370 371 372
(22) The job training credit under section 5747.39 of the Revised Code;	373 374
(23) The enterprise zone credit under section 5709.66 of the Revised Code;	375 376
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	377 378
(25) The credit for employers that establish on-site child	379

day-care centers under section 5747.35 of the Revised Code;	380
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	381 382
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	383 384
(28) The export sales credit under section 5747.057 of the Revised Code;	385 386
(29) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	387 388
(30) The enterprise zone credits under section 5709.65 of the Revised Code;	389 390
(31) The research and development credit under section 5747.331 of the Revised Code;	391 392
(32) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	393 394
(33) The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	395 396
(34) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;	397 398
(35) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	399 400
(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;	401 402 403
(37) The refundable credit for tax withheld under division (B)(1) of section 5747.062 of the Revised Code;	404 405
(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;	406 407 408

(39) The refundable motion picture production credit under 409  
section 5747.66 of the Revised Code. 410

(B) For any credit, except the refundable credits enumerated 411  
in ~~divisions (A)(33) to (38)~~ of this section and the credit 412  
granted under division (I) of section 5747.08 of the Revised Code, 413  
the amount of the credit for a taxable year shall not exceed the 414  
tax due after allowing for any other credit that precedes it in 415  
the order required under this section. Any excess amount of a 416  
particular credit may be carried forward if authorized under the 417  
section creating that credit. Nothing in this chapter shall be 418  
construed to allow a taxpayer to claim, directly or indirectly, a 419  
credit more than once for a taxable year. 420

**Section 2.** That existing sections 5733.98 and 5747.98 of the 422  
Revised Code are hereby repealed. 423