

**As Introduced**

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

**S. B. No. 193**

**Senators Gibbs, Schuring**

**Cosponsors: Senators Jones, Schaffer, Cates, Buehrer**

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**A B I L L**

To amend sections 5747.07 and 5747.15 and to enact 1  
section 5747.073 of the Revised Code to authorize 2  
a \$2,400 income tax withholding credit for an 3  
employer that hires and employs a previously 4  
unemployed individual. 5

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

**Section 1.** That sections 5747.07 and 5747.15 be amended and 6  
section 5747.073 of the Revised Code be enacted to read as 7  
follows: 8

**Sec. 5747.07.** (A) As used in this section: 9

(1) "Partial weekly withholding period" means a period during 10  
which an employer directly, indirectly, or constructively pays 11  
compensation to, or credits compensation to the benefit of, an 12  
employee, and that consists of a consecutive Saturday, Sunday, 13  
Monday, and Tuesday or a consecutive Wednesday, Thursday, and 14  
Friday. There are two partial weekly withholding periods each 15  
week, except that a partial weekly withholding period cannot 16  
extend from one calendar year into the next calendar year; if the 17  
first day of January falls on a day other than Saturday or 18  
Wednesday, the partial weekly withholding period ends on the 19

thirty-first day of December and there are three partial weekly  
withholding periods during that week.

(2) "Undeposited taxes" means the taxes an employer is  
required to deduct and withhold from an employee's compensation  
pursuant to section 5747.06 of the Revised Code that have not been  
remitted to the tax commissioner pursuant to this section or to  
the treasurer of state pursuant to section 5747.072 of the Revised  
Code.

(3) A "week" begins on Saturday and concludes at the end of  
the following Friday.

(B) Except as provided in divisions (C) and (D) of this  
section ~~and in~~ division (A) of section 5747.072 of the Revised  
Code, and section 5747.073 of the Revised Code, every employer  
required to deduct and withhold any amount under section 5747.06  
of the Revised Code shall file a return and shall pay the amount  
required by law as follows:

(1) An employer who accumulates or is required to accumulate  
undeposited taxes of one hundred thousand dollars or more during a  
partial weekly withholding period shall make the payment of the  
undeposited taxes by the close of the first banking day after the  
day on which the accumulation reaches one hundred thousand  
dollars. If required under division (I) of this section, the  
payment shall be made by electronic funds transfer under section  
5747.072 of the Revised Code.

(2)(a) Except as required by division (B)(1) of this section,  
an employer described in division (B)(2)(b) of this section shall  
make the payment of undeposited taxes within three banking days  
after the close of a partial weekly withholding period during  
which the employer was required to deduct and withhold any amount  
under this chapter. If required under division (I) of this  
section, the payment shall be made by electronic funds transfer

under section 5747.072 of the Revised Code. 51

(b) For amounts required to be deducted and withheld during 52  
1994, an employer described in division (B)(2)(b) of this section 53  
is one whose actual or required payments under this section 54  
exceeded one hundred eighty thousand dollars during the 55  
twelve-month period ending June 30, 1993. For amounts required to 56  
be deducted and withheld during 1995 and each year thereafter, an 57  
employer described in division (B)(2)(b) of this section is one 58  
whose actual or required payments under this section were at least 59  
eighty-four thousand dollars during the twelve-month period ending 60  
on the thirtieth day of June of the preceding calendar year. 61

(3) Except as required by divisions (B)(1) and (2) of this 62  
section, if an employer's actual or required payments were more 63  
than two thousand dollars during the twelve-month period ending on 64  
the thirtieth day of June of the preceding calendar year, the 65  
employer shall make the payment of undeposited taxes for each 66  
month during which they were required to be withheld no later than 67  
fifteen days following the last day of that month. The employer 68  
shall file the return prescribed by the tax commissioner with the 69  
payment. 70

(4) Except as required by divisions (B)(1), (2), and (3) of 71  
this section, an employer shall make the payment of undeposited 72  
taxes for each calendar quarter during which they were required to 73  
be withheld no later than the last day of the month following the 74  
last day of March, June, September, and December each year. The 75  
employer shall file the return prescribed by the tax commissioner 76  
with the payment. 77

(C) The return and payment schedules prescribed by divisions 78  
(B)(1) and (2) of this section do not apply to the return and 79  
payment of undeposited school district income taxes arising from 80  
taxes levied pursuant to Chapter 5748. of the Revised Code. 81  
Undeposited school district income taxes shall be returned and 82

paid pursuant to divisions (B)(3) and (4) of this section, as 83  
applicable. 84

(D)(1) The requirements of division (B) of this section are 85  
met if the amount paid is not less than ninety-five per cent of 86  
the actual tax withheld or required to be withheld for the prior 87  
quarterly, monthly, or partial weekly withholding period, and the 88  
underpayment is not due to willful neglect. Any underpayment of 89  
withheld tax shall be paid within thirty days of the date on which 90  
the withheld tax was due without regard to division (D)(1) of this 91  
section. An employer described in division (B)(1) or (2) of this 92  
section shall make the payment by electronic funds transfer under 93  
section 5747.072 of the Revised Code. 94

(2) If the tax commissioner believes that quarterly or 95  
monthly payments would result in a delay that might jeopardize the 96  
remittance of withholding payments, the commissioner may order 97  
that the payments be made weekly, or more frequently if necessary, 98  
and the payments shall be made no later than three banking days 99  
following the close of the period for which the jeopardy order is 100  
made. An order requiring weekly or more frequent payments shall be 101  
delivered to the employer personally or by certified mail and 102  
remains in effect until the commissioner notifies the employer to 103  
the contrary. 104

(3) If compelling circumstances exist concerning the 105  
remittance of undeposited taxes, the commissioner may order the 106  
employer to make payments under any of the payment schedules under 107  
division (B) of this section. The order shall be delivered to the 108  
employer personally or by certified mail and shall remain in 109  
effect until the commissioner notifies the employer to the 110  
contrary. For purposes of division (D)(3) of this section, 111  
"compelling circumstances" exist if either or both of the 112  
following are true: 113

(a) Based upon annualization of payments made or required to 114

be made during the preceding calendar year and during the current 115  
calendar year, the employer would be required for the next 116  
calendar year to make payments under division (B)(2) of this 117  
section. 118

(b) Based upon annualization of payments made or required to 119  
be made during the current calendar year, the employer would be 120  
required for the next calendar year to make payments under 121  
division (B)(2) of this section. 122

(E)(1) An employer described in division (B)(1) or (2) of 123  
this section shall file, not later than the last day of the month 124  
following the end of each calendar quarter, a return covering, but 125  
not limited to, both the actual amount deducted and withheld and 126  
the amount required to be deducted and withheld for the tax 127  
imposed under section 5747.02 of the Revised Code during each 128  
partial weekly withholding period or portion of a partial weekly 129  
withholding period during that quarter. The employer shall file 130  
the quarterly return even if the aggregate amount required to be 131  
deducted and withheld for the quarter is zero dollars. At the time 132  
of filing the return, the employer shall pay any amounts of 133  
undeposited taxes for the quarter, whether actually deducted and 134  
withheld or required to be deducted and withheld, that have not 135  
been previously paid. If required under division (I) of this 136  
section, the payment shall be made by electronic funds transfer. 137  
The tax commissioner shall prescribe the form and other 138  
requirements of the quarterly return. 139

(2) In addition to other returns required to be filed and 140  
payments required to be made under this section, every employer 141  
required to deduct and withhold taxes shall file, not later than 142  
the thirty-first day of January of each year, an annual return 143  
covering, but not limited to, both the aggregate amount deducted 144  
and withheld and the aggregate amount required to be deducted and 145  
withheld during the entire preceding year for the tax imposed 146

under section 5747.02 of the Revised Code and for each tax imposed 147  
under Chapter 5748. of the Revised Code. At the time of filing 148  
that return, the employer shall pay over any amounts of 149  
undeposited taxes for the preceding year, whether actually 150  
deducted and withheld or required to be deducted and withheld, 151  
that have not been previously paid. The employer shall make the 152  
annual report, to each employee and to the tax commissioner, of 153  
the compensation paid and each tax withheld, as the commissioner 154  
by rule may prescribe. 155

Each employer required to deduct and withhold any tax is 156  
liable for the payment of that amount required to be deducted and 157  
withheld, whether or not the tax has in fact been withheld, unless 158  
the failure to withhold was based upon the employer's good faith 159  
in reliance upon the statement of the employee as to liability, 160  
and the amount shall be deemed to be a special fund in trust for 161  
the general revenue fund. 162

(F) Each employer shall file with the employer's annual 163  
return the following items of information on employees for whom 164  
withholding is required under section 5747.06 of the Revised Code: 165

(1) The full name of each employee, the employee's address, 166  
the employee's school district of residence, and in the case of a 167  
nonresident employee, the employee's principal county of 168  
employment; 169

(2) The social security number of each employee; 170

(3) The total amount of compensation paid before any 171  
deductions to each employee for the period for which the annual 172  
return is made; 173

(4) The amount of the tax imposed by section 5747.02 of the 174  
Revised Code and the amount of each tax imposed under Chapter 175  
5748. of the Revised Code withheld from the compensation of the 176  
employee for the period for which the annual return is made. The 177

commissioner may extend upon good cause the period for filing any 178  
notice or return required to be filed under this section and may 179  
adopt rules relating to extensions of time. If the extension 180  
results in an extension of time for the payment of the amounts 181  
withheld with respect to which the return is filed, the employer 182  
shall pay, at the time the amount withheld is paid, an amount of 183  
interest computed at the rate per annum prescribed by section 184  
5703.47 of the Revised Code on that amount withheld, from the day 185  
that amount was originally required to be paid to the day of 186  
actual payment or to the day an assessment is issued under section 187  
5747.13 of the Revised Code, whichever occurs first. 188

(5) The full name and social security number of any employee 189  
who satisfied the conditions set forth in section 5747.073 of the 190  
Revised Code during the reporting year or the year immediately 191  
preceding the reporting year and for whom the employer claimed a 192  
credit under that section. The employer shall state the date the 193  
employee satisfied the conditions and the amount of any credit 194  
carried forward from the preceding reporting year. 195

(6) In addition to all other interest charges and penalties 196  
imposed, all amounts of taxes withheld or required to be withheld 197  
and remaining unpaid after the day the amounts are required to be 198  
paid shall bear interest from the date prescribed for payment at 199  
the rate per annum prescribed by section 5703.47 of the Revised 200  
Code on the amount unpaid, in addition to the amount withheld, 201  
until paid or until the day an assessment is issued under section 202  
5747.13 of the Revised Code, whichever occurs first. 203

(G) An employee of a corporation, limited liability company, 204  
or business trust having control or supervision of or charged with 205  
the responsibility of filing the report and making payment, or an 206  
officer, member, manager, or trustee of a corporation, limited 207  
liability company, or business trust who is responsible for the 208  
execution of the corporation's, limited liability company's, or 209

business trust's fiscal responsibilities, shall be personally 210  
liable for failure to file the report or pay the tax due as 211  
required by this section. The dissolution, termination, or 212  
bankruptcy of a corporation, limited liability company, or 213  
business trust does not discharge a responsible officer's, 214  
member's, manager's, employee's, or trustee's liability for a 215  
failure of the corporation, limited liability company, or business 216  
trust to file returns or pay tax due. 217

(H) If an employer required to deduct and withhold income tax 218  
from compensation and to pay that tax to the state under sections 219  
5747.06 and 5747.07 of the Revised Code sells the employer's 220  
business or stock of merchandise or quits the employer's business, 221  
the taxes required to be deducted and withheld and paid to the 222  
state pursuant to those sections prior to that time, together with 223  
any interest and penalties imposed on those taxes, become due and 224  
payable immediately, and that person shall make a final return 225  
within fifteen days after the date of selling or quitting 226  
business. The employer's successor shall withhold a sufficient 227  
amount of the purchase money to cover the amount of the taxes, 228  
interest, and penalties due and unpaid, until the former owner 229  
produces a receipt from the tax commissioner showing that the 230  
taxes, interest, and penalties have been paid or a certificate 231  
indicating that no such taxes are due. If the purchaser of the 232  
business or stock of merchandise fails to withhold purchase money, 233  
the purchaser shall be personally liable for the payment of the 234  
taxes, interest, and penalties accrued and unpaid during the 235  
operation of the business by the former owner. If the amount of 236  
taxes, interest, and penalties outstanding at the time of the 237  
purchase exceeds the total purchase money, the tax commissioner in 238  
the commissioner's discretion may adjust the liability of the 239  
seller or the responsibility of the purchaser to pay that 240  
liability to maximize the collection of withholding tax revenue. 241



(I)(1) An employer described in division (I)(2) of this section shall make all payments required by this section for the year by electronic funds transfer under section 5747.072 of the Revised Code.

(2)(a) For 1994, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1993.

(b) For 1995, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1994.

(c) For 1996, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded three hundred thousand dollars during the twelve-month period ending June 30, 1995.

(d) For 1997 through 2000, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.

(e) For 2001 and thereafter, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.

Sec. 5747.073. An employer required to deduct and withhold income tax from an employee's compensation under section 5747.06 and remit such amounts under section 5747.07 of the Revised Code is entitled to a credit against the amount required to be remitted

if the employer employs an employee meeting each of the following 272  
conditions: 273

(A) The employee was unemployed for the four consecutive 274  
weeks immediately preceding the date of hire. 275

(B) The employee was hired on or after January 1, 2010, but 276  
before January 1, 2011. 277

(C) During employment the employee was lawfully employable in 278  
the United States under federal law, as affirmed under this 279  
section, and resided in this state. 280

(D) The employee has been employed by the taxpayer for 281  
twenty-four consecutive months for compensation greater than or 282  
equal to the average monthly employment compensation benefits paid 283  
to persons receiving unemployment compensation pursuant to Chapter 284  
4141. of the Revised Code. 285

The credit equals two thousand four hundred dollars for each 286  
such employee. The credit shall be deducted from the remittance of 287  
undeposited taxes due for the partial weekly withholding period 288  
that includes the last day of the employee's twenty-fourth month 289  
of employment. Excess credit may be deducted from remittances of 290  
undeposited taxes for subsequent partial weekly withholding 291  
periods until fully utilized. 292

The credit under this section shall not be allowed for a 293  
taxpayer unless the taxpayer executes a notarized statement 294  
affirming that the taxpayer used the federal government's 295  
electronic employment verification system, currently known as 296  
"E-verify," or a successor system to verify the lawful employment 297  
eligibility of each employee on the basis of whom the credit is 298  
claimed. The taxpayer shall make the statement available for 299  
inspection by the tax commissioner upon the commissioner's 300  
request. 301

**Sec. 5747.15.** (A) In addition to any other penalty imposed by 302  
this chapter or Chapter 5703. of the Revised Code, the following 303  
penalties shall apply: 304

(1) If a taxpayer, qualifying entity, or employer required to 305  
file any report or return, including an informational notice, 306  
report, or return, under this chapter fails to make and file the 307  
report or return within the time prescribed, including any 308  
extensions of time granted by the tax commissioner, a penalty may 309  
be imposed not exceeding the greater of fifty dollars per month or 310  
fraction of a month, not to exceed five hundred dollars, or five 311  
per cent per month or fraction of a month, not to exceed fifty per 312  
cent, of the sum of the taxes required to be shown on the report 313  
or return, for each month or fraction of a month elapsing between 314  
the due date, including extensions of the due date, and the date 315  
on which filed. 316

(2) If a taxpayer fails to pay any amount of tax required to 317  
be paid under section 5733.41 or Chapters 5747. or 5748. of the 318  
Revised Code, except estimated tax under section 5747.09 or 319  
5747.43 of the Revised Code, by the dates prescribed for payment, 320  
a penalty may be imposed not exceeding twice the applicable 321  
interest charged under division (G) of section 5747.08 of the 322  
Revised Code for the delinquent payment. 323

(3)(a) If an employer fails to pay any amount of tax imposed 324  
by section 5747.02 of the Revised Code and required to be paid 325  
under this chapter by the dates prescribed for payment, a penalty 326  
may be imposed not exceeding the sum of ten per cent of the 327  
delinquent payment plus twice the interest charged under division 328  
(F)~~(5)~~(6) of section 5747.07 of the Revised Code for the 329  
delinquent payment. 330

(b) If a qualifying entity fails to pay any amount of tax 331  
imposed by section 5733.41 or 5747.41 of the Revised Code and 332

required to be paid under this chapter by the dates prescribed for 333  
payment, a penalty may be imposed not exceeding the sum of ten per 334  
cent of the delinquent payment plus twice the applicable interest 335  
charged under division (G) of section 5747.08 of the Revised Code 336  
for the delinquent payment. 337

(4)(a) If an employer withholds from employees the tax 338  
imposed by section 5747.02 of the Revised Code and fails to remit 339  
the tax withheld to the state as required by this chapter on or 340  
before the dates prescribed for payment, a penalty may be imposed 341  
not exceeding fifty per cent of the delinquent payment. 342

(b) If a qualifying entity withholds any amount of tax 343  
imposed under section 5747.41 of the Revised Code from an 344  
individual's qualifying amount and fails to remit that amount to 345  
the state as required by sections 5747.42 to 5747.453 of the 346  
Revised Code on or before the dates prescribed for payment, a 347  
penalty may be imposed not exceeding fifty per cent of the 348  
delinquent payment. 349

(5) If a taxpayer, qualifying entity, or employer files what 350  
purports to be a return required by this chapter that does not 351  
contain information upon which the substantial correctness of the 352  
return may be judged or contains information that on its face 353  
indicates that the return is substantially incorrect, and the 354  
filing of the return in that manner is due to a position that is 355  
frivolous or a desire that is apparent from the return to delay or 356  
impede the administration of the tax levied by section 5733.41, 357  
5747.02, or 5747.41, or Chapter 5748. of the Revised Code, a 358  
penalty of up to five hundred dollars may be imposed. 359

(6) If a taxpayer or qualifying entity makes a fraudulent 360  
attempt to evade the reporting or payment of the tax required to 361  
be shown on any return required under this chapter, a penalty may 362  
be imposed not exceeding the greater of one thousand dollars or 363  
one hundred per cent of the tax required to be shown on the 364

return. 365

(7) If any person makes a false or fraudulent claim for a 366  
refund under this chapter, a penalty may be imposed not exceeding 367  
the greater of one thousand dollars or one hundred per cent of the 368  
claim. The penalty imposed under division (A)(7) of this section, 369  
any refund issued on the claim, and interest on any refund from 370  
the date of the refund, may be assessed under section 5747.13 of 371  
the Revised Code as tax, penalty, or interest imposed under 372  
section 5733.41, 5747.02, or 5747.41 of the Revised Code, without 373  
regard to whether the person making the claim is otherwise subject 374  
to the provisions of this chapter or Chapter 5733. of the Revised 375  
Code, and without regard to any time limitation for the assessment 376  
imposed by division (A) of section 5747.13 of the Revised Code. 377

(B) For purposes of this section, the taxes required to be 378  
shown on the return shall be reduced by the amount of any part of 379  
the taxes paid on or before the date, including any extensions of 380  
the date, prescribed for filing the return. 381

(C) Any penalty imposed under this section shall be in 382  
addition to all other penalties imposed under this section. All or 383  
part of any penalty imposed under this section may be abated by 384  
the commissioner. All or part of any penalty imposed under this 385  
section may be abated by the commissioner if the taxpayer, 386  
qualifying entity, or employer shows that the failure to comply 387  
with the provisions of this chapter is due to reasonable cause and 388  
not willful neglect. 389

**Section 2.** That existing sections 5747.07 and 5747.15 of the 390  
Revised Code are hereby repealed. 391