

As Passed by the House

128th General Assembly

Regular Session

2009-2010

Am. Sub. S. B. No. 194

Senator Kearney

Cosponsors: Senators Miller, D., Fedor, Goodman, Jones, Morano, Turner, Schiavoni, Sawyer, Buehrer, Cafaro, Carey, Coughlin, Gibbs, Gillmor, Grendell, Harris, Hughes, Strahorn, Wagoner, Wilson, Patton, Seitz
Representatives Amstutz, Balderson, Batchelder, Beck, Belcher, Blair, Bolon, Boose, Boyd, Brown, Bubp, Carney, Chandler, Coley, Combs, DeBose, Derickson, Dodd, Domenick, Driehaus, Evans, Foley, Gardner, Garland, Garrison, Gerberry, Goyal, Grossman, Hackett, Harris, Harwood, Heard, Hottinger, Koziura, Letson, Luckie, Lundy, Maag, Mallory, Martin, McClain, McGregor, Moran, Morgan, Oelslager, Otterman, Patten, Pillich, Reece, Ruhl, Sayre, Skindell, Snitchler, Stautberg, Stewart, Uecker, Weddington, Williams, B., Williams, S., Winburn, Yuko, Zehringer

—

A B I L L

To amend section 5747.08 of the Revised Code to 1
permit individual taxpayers to direct the state to 2
transmit an income tax refund directly to the 3
taxpayer's checking, savings, or individual 4
retirement account if the taxpayer files a return 5
electronically. 6

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

Section 1. That section 5747.08 of the Revised Code be 7
amended to read as follows: 8

Sec. 5747.08. An annual return with respect to the tax 9
imposed by section 5747.02 of the Revised Code and each tax 10
imposed under Chapter 5748. of the Revised Code shall be made by 11
every taxpayer for any taxable year for which the taxpayer is 12
liable for the tax imposed by that section or under that chapter, 13
unless the total credits allowed under divisions (E), (F), and (G) 14
of section 5747.05 of the Revised Code for the year are equal to 15
or exceed the tax imposed by section 5747.02 of the Revised Code, 16
in which case no return shall be required unless the taxpayer is 17
liable for a tax imposed pursuant to Chapter 5748. of the Revised 18
Code. 19

(A) If an individual is deceased, any return or notice 20
required of that individual under this chapter shall be made and 21
filed by that decedent's executor, administrator, or other person 22
charged with the property of that decedent. 23

(B) If an individual is unable to make a return or notice 24
required by this chapter, the return or notice required of that 25
individual shall be made and filed by the individual's duly 26
authorized agent, guardian, conservator, fiduciary, or other 27
person charged with the care of the person or property of that 28
individual. 29

(C) Returns or notices required of an estate or a trust shall 30
be made and filed by the fiduciary of the estate or trust. 31

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 32
of this section, any pass-through entity may file a single return 33
on behalf of one or more of the entity's investors other than an 34
investor that is a person subject to the tax imposed under section 35
5733.06 of the Revised Code. The single return shall set forth the 36
name, address, and social security number or other identifying 37
number of each of those pass-through entity investors and shall 38
indicate the distributive share of each of those pass-through 39

entity investor's income taxable in this state in accordance with 40
sections 5747.20 to 5747.231 of the Revised Code. Such 41
pass-through entity investors for whom the pass-through entity 42
elects to file a single return are not entitled to the exemption 43
or credit provided for by sections 5747.02 and 5747.022 of the 44
Revised Code; shall calculate the tax before business credits at 45
the highest rate of tax set forth in section 5747.02 of the 46
Revised Code for the taxable year for which the return is filed; 47
and are entitled to only their distributive share of the business 48
credits as defined in division (D)(2) of this section. A single 49
check drawn by the pass-through entity shall accompany the return 50
in full payment of the tax due, as shown on the single return, for 51
such investors, other than investors who are persons subject to 52
the tax imposed under section 5733.06 of the Revised Code. 53

(b)(i) A pass-through entity shall not include in such a 54
single return any investor that is a trust to the extent that any 55
direct or indirect current, future, or contingent beneficiary of 56
the trust is a person subject to the tax imposed under section 57
5733.06 of the Revised Code. 58

(ii) A pass-through entity shall not include in such a single 59
return any investor that is itself a pass-through entity to the 60
extent that any direct or indirect investor in the second 61
pass-through entity is a person subject to the tax imposed under 62
section 5733.06 of the Revised Code. 63

(c) Nothing in division (D) of this section precludes the tax 64
commissioner from requiring such investors to file the return and 65
make the payment of taxes and related interest, penalty, and 66
interest penalty required by this section or section 5747.02, 67
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 68
of this section shall be construed to provide to such an investor 69
or pass-through entity any additional deduction or credit, other 70
than the credit provided by division (J) of this section, solely 71

on account of the entity's filing a return in accordance with this 72
section. Such a pass-through entity also shall make the filing and 73
payment of estimated taxes on behalf of the pass-through entity 74
investors other than an investor that is a person subject to the 75
tax imposed under section 5733.06 of the Revised Code. 76

(2) For the purposes of this section, "business credits" 77
means the credits listed in section 5747.98 of the Revised Code 78
excluding the following credits: 79

(a) The retirement credit under division (B) of section 80
5747.055 of the Revised Code; 81

(b) The senior citizen credit under division (C) of section 82
5747.05 of the Revised Code; 83

(c) The lump sum distribution credit under division (D) of 84
section 5747.05 of the Revised Code; 85

(d) The dependent care credit under section 5747.054 of the 86
Revised Code; 87

(e) The lump sum retirement income credit under division (C) 88
of section 5747.055 of the Revised Code; 89

(f) The lump sum retirement income credit under division (D) 90
of section 5747.055 of the Revised Code; 91

(g) The lump sum retirement income credit under division (E) 92
of section 5747.055 of the Revised Code; 93

(h) The credit for displaced workers who pay for job training 94
under section 5747.27 of the Revised Code; 95

(i) The twenty-dollar personal exemption credit under section 96
5747.022 of the Revised Code; 97

(j) The joint filing credit under division (G) of section 98
5747.05 of the Revised Code; 99

(k) The nonresident credit under division (A) of section 100

5747.05 of the Revised Code;	101
(1) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	102 103
(m) The low-income credit under section 5747.056 of the Revised Code.	104 105
(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division shall be construed to provide for any deduction or credit that would not be allowable if a nonresident pass-through entity investor were to file an annual return.	106 107 108 109 110 111 112 113
(4) If a pass-through entity makes the election provided for under division (D) of this section, the pass-through entity shall be liable for any additional taxes, interest, interest penalty, or penalties imposed by this chapter if the tax commissioner finds that the single return does not reflect the correct tax due by the pass-through entity investors covered by that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass-through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass-through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section, "correct tax due" means the tax that would have been paid by the pass-through entity had the single return been filed in a manner reflecting the tax commissioner's findings. Nothing in division (D) of this section shall be construed to make or hold a pass-through entity liable for tax attributable to a pass-through entity investor's income from a source other than the pass-through entity electing to file the single return.	114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132

(E) If a husband and wife file a joint federal income tax return for a taxable year, they shall file a joint return under this section for that taxable year, and their liabilities are joint and several, but, if the federal income tax liability of either spouse is determined on a separate federal income tax return, they shall file separate returns under this section.

If either spouse is not required to file a federal income tax return and either or both are required to file a return pursuant to this chapter, they may elect to file separate or joint returns, and, pursuant to that election, their liabilities are separate or joint and several. If a husband and wife file separate returns pursuant to this chapter, each must claim the taxpayer's own exemption, but not both, as authorized under section 5747.02 of the Revised Code on the taxpayer's own return.

(F) Each return or notice required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's social security number. Each return shall be verified by a declaration under the penalties of perjury. The tax commissioner shall prescribe the form that the signature and declaration shall take.

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

Upon good cause shown, the tax commissioner may extend the

period for filing any notice or return required to be filed under 165
this section and may adopt rules relating to extensions. If the 166
extension results in an extension of time for the payment of any 167
state or school district income tax liability with respect to 168
which the return is filed, the taxpayer shall pay at the time the 169
tax liability is paid an amount of interest computed at the rate 170
per annum prescribed by section 5703.47 of the Revised Code on 171
that liability from the time that payment is due without extension 172
to the time of actual payment. Except as provided in section 173
5747.132 of the Revised Code, in addition to all other interest 174
charges and penalties, all taxes imposed under this chapter or 175
Chapter 5748. of the Revised Code and remaining unpaid after they 176
become due, except combined amounts due of one dollar or less, 177
bear interest at the rate per annum prescribed by section 5703.47 178
of the Revised Code until paid or until the day an assessment is 179
issued under section 5747.13 of the Revised Code, whichever occurs 180
first. 181

If the tax commissioner considers it necessary in order to 182
ensure the payment of the tax imposed by section 5747.02 of the 183
Revised Code or any tax imposed under Chapter 5748. of the Revised 184
Code, the tax commissioner may require returns and payments to be 185
made otherwise than as provided in this section. 186

To the extent that any provision in this division conflicts 187
with any provision in section 5747.026 of the Revised Code, the 188
provision in that section prevails. 189

(H) If any report, claim, statement, or other document 190
required to be filed, or any payment required to be made, within a 191
prescribed period or on or before a prescribed date under this 192
chapter is delivered after that period or that date by United 193
States mail to the agency, officer, or office with which the 194
report, claim, statement, or other document is required to be 195
filed, or to which the payment is required to be made, the date of 196

the postmark stamped on the cover in which the report, claim, 197
statement, or other document, or payment is mailed shall be deemed 198
to be the date of delivery or the date of payment. 199

If a payment is required to be made by electronic funds 200
transfer pursuant to section 5747.072 of the Revised Code, the 201
payment is considered to be made when the payment is received by 202
the treasurer of state or credited to an account designated by the 203
treasurer of state for the receipt of tax payments. 204

"The date of the postmark" means, in the event there is more 205
than one date on the cover, the earliest date imprinted on the 206
cover by the United States postal service. 207

(I) The amounts withheld by the employer pursuant to section 208
5747.06 of the Revised Code shall be allowed to the recipient of 209
the compensation as credits against payment of the appropriate 210
taxes imposed on the recipient by section 5747.02 and under 211
Chapter 5748. of the Revised Code. 212

(J) If, in accordance with division (D) of this section, a 213
pass-through entity elects to file a single return and if any 214
investor is required to file the return and make the payment of 215
taxes required by this chapter on account of the investor's other 216
income that is not included in a single return filed by a 217
pass-through entity, the investor is entitled to a refundable 218
credit equal to the investor's proportionate share of the tax paid 219
by the pass-through entity on behalf of the investor. The investor 220
shall claim the credit for the investor's taxable year in which or 221
with which ends the taxable year of the pass-through entity. 222
Nothing in this chapter shall be construed to allow any credit 223
provided in this chapter to be claimed more than once. For the 224
purposes of computing any interest, penalty, or interest penalty, 225
the investor shall be deemed to have paid the refundable credit 226
provided by this division on the day that the pass-through entity 227
paid the estimated tax or the tax giving rise to the credit. 228

(K) The tax commissioner shall ensure that each return 229
required to be filed under this section includes a box that the 230
taxpayer may check to authorize a paid tax preparer who prepared 231
the return to communicate with the department of taxation about 232
matters pertaining to the return. The return or instructions 233
accompanying the return shall indicate that by checking the box 234
the taxpayer authorizes the department of taxation to contact the 235
preparer concerning questions that arise during the processing of 236
the return and authorizes the preparer only to provide the 237
department with information that is missing from the return, to 238
contact the department for information about the processing of the 239
return or the status of the taxpayer's refund or payments, and to 240
respond to notices about mathematical errors, offsets, or return 241
preparation that the taxpayer has received from the department and 242
has shown to the preparer. 243

(L) The tax commissioner shall permit individual taxpayers to 244
instruct the department of taxation to cause any refund of 245
overpaid taxes to be deposited directly into a checking account, 246
savings account, or an individual retirement account or individual 247
retirement annuity, as designated by the taxpayer, when the 248
taxpayer files the annual return required by this section 249
electronically. 250

(M) The tax commissioner may adopt rules to administer this 251
section. 252

Section 2. That existing section 5747.08 of the Revised Code 253
is hereby repealed. 254