

As Introduced

**128th General Assembly
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S. B. No. 40

Senator Schaffer

**Cosponsors: Senators Wagoner, Gibbs, Grendell, Roberts, Turner, Hughes,
Coughlin, Schuring, Stewart**

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A BILL

To amend sections 5747.08 and 5747.98 and to enact 1
section 5747.71 of the Revised Code to allow a 2
credit against the personal income tax for amounts 3
spent by teachers for instructional materials. 4

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

Section 1. That sections 5747.08 and 5747.98 be amended and 5
section 5747.71 of the Revised Code be enacted to read as follows: 6

Sec. 5747.08. An annual return with respect to the tax 7
imposed by section 5747.02 of the Revised Code and each tax 8
imposed under Chapter 5748. of the Revised Code shall be made by 9
every taxpayer for any taxable year for which the taxpayer is 10
liable for the tax imposed by that section or under that chapter, 11
unless the total credits allowed under divisions (E), (F), and (G) 12
of section 5747.05 of the Revised Code for the year are equal to 13
or exceed the tax imposed by section 5747.02 of the Revised Code, 14
in which case no return shall be required unless the taxpayer is 15
liable for a tax imposed pursuant to Chapter 5748. of the Revised 16
Code. 17

(A) If an individual is deceased, any return or notice 18

required of that individual under this chapter shall be made and 19
filed by that decedent's executor, administrator, or other person 20
charged with the property of that decedent. 21

(B) If an individual is unable to make a return or notice 22
required by this chapter, the return or notice required of that 23
individual shall be made and filed by the individual's duly 24
authorized agent, guardian, conservator, fiduciary, or other 25
person charged with the care of the person or property of that 26
individual. 27

(C) Returns or notices required of an estate or a trust shall 28
be made and filed by the fiduciary of the estate or trust. 29

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 30
of this section, any pass-through entity may file a single return 31
on behalf of one or more of the entity's investors other than an 32
investor that is a person subject to the tax imposed under section 33
5733.06 of the Revised Code. The single return shall set forth the 34
name, address, and social security number or other identifying 35
number of each of those pass-through entity investors and shall 36
indicate the distributive share of each of those pass-through 37
entity investor's income taxable in this state in accordance with 38
sections 5747.20 to 5747.231 of the Revised Code. Such 39
pass-through entity investors for whom the pass-through entity 40
elects to file a single return are not entitled to the exemption 41
or credit provided for by sections 5747.02 and 5747.022 of the 42
Revised Code; shall calculate the tax before business credits at 43
the highest rate of tax set forth in section 5747.02 of the 44
Revised Code for the taxable year for which the return is filed; 45
and are entitled to only their distributive share of the business 46
credits as defined in division (D)(2) of this section. A single 47
check drawn by the pass-through entity shall accompany the return 48
in full payment of the tax due, as shown on the single return, for 49
such investors, other than investors who are persons subject to 50

the tax imposed under section 5733.06 of the Revised Code. 51

(b)(i) A pass-through entity shall not include in such a 52
single return any investor that is a trust to the extent that any 53
direct or indirect current, future, or contingent beneficiary of 54
the trust is a person subject to the tax imposed under section 55
5733.06 of the Revised Code. 56

(ii) A pass-through entity shall not include in such a single 57
return any investor that is itself a pass-through entity to the 58
extent that any direct or indirect investor in the second 59
pass-through entity is a person subject to the tax imposed under 60
section 5733.06 of the Revised Code. 61

(c) Nothing in division (D) of this section precludes the tax 62
commissioner from requiring such investors to file the return and 63
make the payment of taxes and related interest, penalty, and 64
interest penalty required by this section or section 5747.02, 65
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 66
of this section shall be construed to provide to such an investor 67
or pass-through entity any additional deduction or credit, other 68
than the credit provided by division (J) of this section, solely 69
on account of the entity's filing a return in accordance with this 70
section. Such a pass-through entity also shall make the filing and 71
payment of estimated taxes on behalf of the pass-through entity 72
investors other than an investor that is a person subject to the 73
tax imposed under section 5733.06 of the Revised Code. 74

(2) For the purposes of this section, "business credits" 75
means the credits listed in section 5747.98 of the Revised Code 76
excluding the following credits: 77

(a) The retirement credit under division (B) of section 78
5747.055 of the Revised Code; 79

(b) The senior citizen credit under division (C) of section 80
5747.05 of the Revised Code; 81

(c) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;	82 83
(d) The dependent care credit under section 5747.054 of the Revised Code;	84 85
(e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	86 87
(f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	88 89
(g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	90 91
(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	92 93
(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	94 95
(j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	96 97
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	98 99
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	100 101
(m) The low-income credit under section 5747.056 of the Revised Code;	102 103
<u>(n) The credit for instructional material under section 5747.71 of the Revised Code.</u>	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.	106 107 108 109 110

Nothing in this division shall be construed to provide for any 111
deduction or credit that would not be allowable if a nonresident 112
pass-through entity investor were to file an annual return. 113

(4) If a pass-through entity makes the election provided for 114
under division (D) of this section, the pass-through entity shall 115
be liable for any additional taxes, interest, interest penalty, or 116
penalties imposed by this chapter if the tax commissioner finds 117
that the single return does not reflect the correct tax due by the 118
pass-through entity investors covered by that return. Nothing in 119
this division shall be construed to limit or alter the liability, 120
if any, imposed on pass-through entity investors for unpaid or 121
underpaid taxes, interest, interest penalty, or penalties as a 122
result of the pass-through entity's making the election provided 123
for under division (D) of this section. For the purposes of 124
division (D) of this section, "correct tax due" means the tax that 125
would have been paid by the pass-through entity had the single 126
return been filed in a manner reflecting the tax commissioner's 127
findings. Nothing in division (D) of this section shall be 128
construed to make or hold a pass-through entity liable for tax 129
attributable to a pass-through entity investor's income from a 130
source other than the pass-through entity electing to file the 131
single return. 132

(E) If a husband and wife file a joint federal income tax 133
return for a taxable year, they shall file a joint return under 134
this section for that taxable year, and their liabilities are 135
joint and several, but, if the federal income tax liability of 136
either spouse is determined on a separate federal income tax 137
return, they shall file separate returns under this section. 138

If either spouse is not required to file a federal income tax 139
return and either or both are required to file a return pursuant 140
to this chapter, they may elect to file separate or joint returns, 141
and, pursuant to that election, their liabilities are separate or 142

joint and several. If a husband and wife file separate returns 143
pursuant to this chapter, each must claim the taxpayer's own 144
exemption, but not both, as authorized under section 5747.02 of 145
the Revised Code on the taxpayer's own return. 146

(F) Each return or notice required to be filed under this 147
section shall contain the signature of the taxpayer or the 148
taxpayer's duly authorized agent and of the person who prepared 149
the return for the taxpayer, and shall include the taxpayer's 150
social security number. Each return shall be verified by a 151
declaration under the penalties of perjury. The tax commissioner 152
shall prescribe the form that the signature and declaration shall 153
take. 154

(G) Each return or notice required to be filed under this 155
section shall be made and filed as required by section 5747.04 of 156
the Revised Code, on or before the fifteenth day of April of each 157
year, on forms that the tax commissioner shall prescribe, together 158
with remittance made payable to the treasurer of state in the 159
combined amount of the state and all school district income taxes 160
shown to be due on the form, unless the combined amount shown to 161
be due is one dollar or less, in which case that amount need not 162
be remitted. 163

Upon good cause shown, the tax commissioner may extend the 164
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

Sec. 5747.71. (A) As used in this section: 244

(1) "Instructional material" means material used by a teacher 245
for general classroom instruction, even though the material may be 246
used from time to time by individual students or groups of 247
students. "Instructional material" does not include items given to 248
or used solely by an individual student, unless the student 249
receives instruction at home pursuant to an excuse from school 250
attendance under division (A)(2) of section 3321.04 of the Revised 251
Code and rules prescribed by the state board of education and the 252
student is the only student in the classroom receiving such 253
instruction by the teacher. 254

(2) "Teacher" means a classroom teacher in grades 255
kindergarten through twelve who holds an educator license under 256
Chapter 3319. of the Revised Code, or a person who instructs a 257
child at home and who is qualified to do so for the purposes of 258
division (A)(2) of section 3321.04 of the Revised Code and rules 259
prescribed by the state board of education. 260

(3) "Classroom" includes the place in which a child receives 261
instruction at home pursuant to an excuse from school attendance 262
under division (A)(2) of section 3321.04 of the Revised Code and 263
rules prescribed by the state board of education. 264

(B) There is hereby allowed a nonrefundable credit against 265
the tax imposed by section 5747.02 of the Revised Code for amounts 266
spent by a teacher during the teacher's taxable year on 267
instructional material used in the teacher's classroom. The amount 268

of the credit shall not exceed one hundred dollars. The credit 269
shall be claimed in the order required under section 5747.98 of 270
the Revised Code. 271

Sec. 5747.98. (A) To provide a uniform procedure for 272
calculating the amount of tax due under section 5747.02 of the 273
Revised Code, a taxpayer shall claim any credits to which the 274
taxpayer is entitled in the following order: 275

(1) The retirement income credit under division (B) of 276
section 5747.055 of the Revised Code; 277

(2) The senior citizen credit under division (C) of section 278
5747.05 of the Revised Code; 279

(3) The lump sum distribution credit under division (D) of 280
section 5747.05 of the Revised Code; 281

(4) The dependent care credit under section 5747.054 of the 282
Revised Code; 283

(5) The lump sum retirement income credit under division (C) 284
of section 5747.055 of the Revised Code; 285

(6) The lump sum retirement income credit under division (D) 286
of section 5747.055 of the Revised Code; 287

(7) The lump sum retirement income credit under division (E) 288
of section 5747.055 of the Revised Code; 289

(8) The low-income credit under section 5747.056 of the 290
Revised Code; 291

(9) The credit for displaced workers who pay for job training 292
under section 5747.27 of the Revised Code; 293

(10) The campaign contribution credit under section 5747.29 294
of the Revised Code; 295

(11) The twenty-dollar personal exemption credit under 296
section 5747.022 of the Revised Code; 297

(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	298 299
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	300 301
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	302 303
(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	304 305
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	306 307
(17) <u>The credit for instructional material under section 5747.71 of the Revised Code;</u>	308 309
<u>(18)</u> The credit for adoption of a minor child under section 5747.37 of the Revised Code;	310 311
(18) <u>(19)</u> The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	312 313
(19) <u>(20)</u> The job retention credit under division (B) of section 5747.058 of the Revised Code;	314 315
(20) <u>(21)</u> The credit for selling alternative fuel under section 5747.77 of the Revised Code;	316 317
(21) <u>(22)</u> 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;	318 319 320
(22) <u>(23)</u> The job training credit under section 5747.39 of the Revised Code;	321 322
(23) <u>(24)</u> The enterprise zone credit under section 5709.66 of the Revised Code;	323 324
(24) <u>(25)</u> The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	325 326

(25) <u>(26)</u> The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	327 328
(26) <u>(27)</u> The ethanol plant investment credit under section 5747.75 of the Revised Code;	329 330
(27) <u>(28)</u> The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	331 332
(28) <u>(29)</u> The export sales credit under section 5747.057 of the Revised Code;	333 334
(29) <u>(30)</u> The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	335 336 337
(30) <u>(31)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	338 339
(31) <u>(32)</u> The research and development credit under section 5747.331 of the Revised Code;	340 341
(32) <u>(33)</u> The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	342 343
(33) <u>(34)</u> The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	344 345
(34) <u>(35)</u> The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;	346 347
(35) <u>(36)</u> The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	348 349
(36) <u>(37)</u> The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code;	350 351 352
(37) <u>(38)</u> The refundable credit for tax withheld under division (B)(1) of section 5747.062 of the Revised Code;	353 354
(38) <u>(39)</u> The refundable credit under section 5747.80 of the	355

Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code. 356
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(B) For any credit, except the refundable credits enumerated in ~~divisions (A)(33) to (38)~~ 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. 358
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Section 2. That existing sections 5747.08 and 5747.98 of the Revised Code are hereby repealed. 369
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Section 3. That the amendment of sections 5747.08 and 5747.98 and the enactment of section 5747.71 of the Revised Code apply to taxable years beginning on or after January 1, 2009. 371
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