

**As Introduced**

**130th General Assembly  
Regular Session  
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**H. B. No. 396**

**Representative Becker**

**Cosponsors: Representatives Hood, Stebelton**

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**A B I L L**

To amend section 5747.08 of the Revised Code to allow 1  
married couples to elect to file either separate 2  
state tax returns or a joint state return, 3  
irrespective of their federal filing status, and 4  
to declare an emergency. 5

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

**Section 1.** That section 5747.08 of the Revised Code be 6  
amended to read as follows: 7

**Sec. 5747.08.** An annual return with respect to the tax 8  
imposed by section 5747.02 of the Revised Code and each tax 9  
imposed under Chapter 5748. of the Revised Code shall be made by 10  
every taxpayer for any taxable year for which the taxpayer is 11  
liable for the tax imposed by that section or under that chapter, 12  
unless the total credits allowed under divisions (E), (F), and (G) 13  
of section 5747.05 of the Revised Code for the year are equal to 14  
or exceed the tax imposed by section 5747.02 of the Revised Code, 15  
in which case no return shall be required unless the taxpayer is 16  
liable for a tax imposed pursuant to Chapter 5748. of the Revised 17  
Code. 18

(A) If an individual is deceased, any return or notice 19

required of that individual under this chapter shall be made and 20  
filed by that decedent's executor, administrator, or other person 21  
charged with the property of that decedent. 22

(B) If an individual is unable to make a return or notice 23  
required by this chapter, the return or notice required of that 24  
individual shall be made and filed by the individual's duly 25  
authorized agent, guardian, conservator, fiduciary, or other 26  
person charged with the care of the person or property of that 27  
individual. 28

(C) Returns or notices required of an estate or a trust shall 29  
be made and filed by the fiduciary of the estate or trust. 30

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 31  
of this section, any pass-through entity may file a single return 32  
on behalf of one or more of the entity's investors other than an 33  
investor that is a person subject to the tax imposed under section 34  
5733.06 of the Revised Code. The single return shall set forth the 35  
name, address, and social security number or other identifying 36  
number of each of those pass-through entity investors and shall 37  
indicate the distributive share of each of those pass-through 38  
entity investor's income taxable in this state in accordance with 39  
sections 5747.20 to 5747.231 of the Revised Code. Such 40  
pass-through entity investors for whom the pass-through entity 41  
elects to file a single return are not entitled to the exemption 42  
or credit provided for by sections 5747.02 and 5747.022 of the 43  
Revised Code; shall calculate the tax before business credits at 44  
the highest rate of tax set forth in section 5747.02 of the 45  
Revised Code for the taxable year for which the return is filed; 46  
and are entitled to only their distributive share of the business 47  
credits as defined in division (D)(2) of this section. A single 48  
check drawn by the pass-through entity shall accompany the return 49  
in full payment of the tax due, as shown on the single return, for 50  
such investors, other than investors who are persons subject to 51

the tax imposed under section 5733.06 of the Revised Code. 52

(b)(i) A pass-through entity shall not include in such a 53  
single return any investor that is a trust to the extent that any 54  
direct or indirect current, future, or contingent beneficiary of 55  
the trust is a person subject to the tax imposed under section 56  
5733.06 of the Revised Code. 57

(ii) A pass-through entity shall not include in such a single 58  
return any investor that is itself a pass-through entity to the 59  
extent that any direct or indirect investor in the second 60  
pass-through entity is a person subject to the tax imposed under 61  
section 5733.06 of the Revised Code. 62

(c) Nothing in division (D) of this section precludes the tax 63  
commissioner from requiring such investors to file the return and 64  
make the payment of taxes and related interest, penalty, and 65  
interest penalty required by this section or section 5747.02, 66  
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 67  
of this section precludes such an investor from filing the annual 68  
return under this section, utilizing the refundable credit equal 69  
to the investor's proportionate share of the tax paid by the 70  
pass-through entity on behalf of the investor under division (J) 71  
of this section, and making the payment of taxes imposed under 72  
section 5747.02 of the Revised Code. Nothing in division (D) of 73  
this section shall be construed to provide to such an investor or 74  
pass-through entity any additional deduction or credit, other than 75  
the credit provided by division (J) of this section, solely on 76  
account of the entity's filing a return in accordance with this 77  
section. Such a pass-through entity also shall make the filing and 78  
payment of estimated taxes on behalf of the pass-through entity 79  
investors other than an investor that is a person subject to the 80  
tax imposed under section 5733.06 of the Revised Code. 81

(2) For the purposes of this section, "business credits" 82  
means the credits listed in section 5747.98 of the Revised Code 83

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|--|------------|
| excluding the following credits:   | 84         |
| (a) The retirement credit under division (B) of section 5747.055 of the Revised Code;                          | 85<br>86   |
| (b) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;                       | 87<br>88   |
| (c) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;                | 89<br>90   |
| (d) The dependent care credit under section 5747.054 of the Revised Code;                                      | 91<br>92   |
| (e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;          | 93<br>94   |
| (f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;          | 95<br>96   |
| (g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;          | 97<br>98   |
| (h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;       | 99<br>100  |
| (i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;                    | 101<br>102 |
| (j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;                         | 103<br>104 |
| (k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;                          | 105<br>106 |
| (l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code; | 107<br>108 |
| (m) The low-income credit under section 5747.056 of the Revised Code;  | 109<br>110 |
| (n) The earned income tax credit under section 5747.71 of the Revised Code.                                    | 111<br>112 |

(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.

(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 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.

(E) If a husband and wife file a joint federal income tax return for a taxable year, they ~~shall~~ may elect to file a joint return or separate returns under this section for that taxable year, and, pursuant to that election, their liabilities are separate if they file separate returns or joint and several, ~~but~~,

if they file a joint return. If the federal income tax liability 145  
of either spouse is determined on a separate federal income tax 146  
return, ~~they shall file separate returns under this section.~~ 147

~~If~~ or if either spouse is not required to file a federal 148  
income tax return and either or both are required to file a return 149  
pursuant to this chapter, they may elect to file separate or joint 150  
returns, and, pursuant to that election, their liabilities are 151  
separate or joint and several. If a husband and wife file separate 152  
returns pursuant to this chapter, each must claim the taxpayer's 153  
own exemption, but not both, as authorized under section 5747.02 154  
of the Revised Code on the taxpayer's own return. 155

(F) Each return or notice required to be filed under this 156  
section shall contain the signature of the taxpayer or the 157  
taxpayer's duly authorized agent and of the person who prepared 158  
the return for the taxpayer, and shall include the taxpayer's 159  
social security number. Each return shall be verified by a 160  
declaration under the penalties of perjury. The tax commissioner 161  
shall prescribe the form that the signature and declaration shall 162  
take. 163

(G) Each return or notice required to be filed under this 164  
section shall be made and filed as required by section 5747.04 of 165  
the Revised Code, on or before the fifteenth day of April of each 166  
year, on forms that the tax commissioner shall prescribe, together 167  
with remittance made payable to the treasurer of state in the 168  
combined amount of the state and all school district income taxes 169  
shown to be due on the form. 170

Upon good cause shown, the commissioner may extend the period 171  
for filing any notice or return required to be filed under this 172  
section and may adopt rules relating to extensions. If the 173  
extension results in an extension of time for the payment of any 174  
state or school district income tax liability with respect to 175  
which the return is filed, the taxpayer shall pay at the time the 176

tax liability is paid an amount of interest computed at the rate 177  
per annum prescribed by section 5703.47 of the Revised Code on 178  
that liability from the time that payment is due without extension 179  
to the time of actual payment. Except as provided in section 180  
5747.132 of the Revised Code, in addition to all other interest 181  
charges and penalties, all taxes imposed under this chapter or 182  
Chapter 5748. of the Revised Code and remaining unpaid after they 183  
become due, except combined amounts due of one dollar or less, 184  
bear interest at the rate per annum prescribed by section 5703.47 185  
of the Revised Code until paid or until the day an assessment is 186  
issued under section 5747.13 of the Revised Code, whichever occurs 187  
first. 188

If the commissioner considers it necessary in order to ensure 189  
the payment of the tax imposed by section 5747.02 of the Revised 190  
Code or any tax imposed under Chapter 5748. of the Revised Code, 191  
the commissioner may require returns and payments to be made 192  
otherwise than as provided in this section. 193

To the extent that any provision in this division conflicts 194  
with any provision in section 5747.026 of the Revised Code, the 195  
provision in that section prevails. 196

(H) If any report, claim, statement, or other document 197  
required to be filed, or any payment required to be made, within a 198  
prescribed period or on or before a prescribed date under this 199  
chapter is delivered after that period or that date by United 200  
States mail to the agency, officer, or office with which the 201  
report, claim, statement, or other document is required to be 202  
filed, or to which the payment is required to be made, the date of 203  
the postmark stamped on the cover in which the report, claim, 204  
statement, or other document, or payment is mailed shall be deemed 205  
to be the date of delivery or the date of payment. 206

If a payment is required to be made by electronic funds 207  
transfer pursuant to section 5747.072 of the Revised Code, the 208

payment is considered to be made when the payment is received by 209  
the treasurer of state or credited to an account designated by the 210  
treasurer of state for the receipt of tax payments. 211

"The date of the postmark" means, in the event there is more 212  
than one date on the cover, the earliest date imprinted on the 213  
cover by the United States postal service. 214

(I) The amounts withheld by an employer pursuant to section 215  
5747.06 of the Revised Code, a casino operator pursuant to section 216  
5747.063 of the Revised Code, or a lottery sales agent pursuant to 217  
section 5747.064 of the Revised Code shall be allowed to the 218  
recipient of the compensation casino winnings, or lottery prize 219  
award as credits against payment of the appropriate taxes imposed 220  
on the recipient by section 5747.02 and under Chapter 5748. of the 221  
Revised Code. 222

(J) If a pass-through entity elects to file a single return 223  
under division (D) of this section and if any investor is required 224  
to file the annual return and make the payment of taxes required 225  
by this chapter on account of the investor's other income that is 226  
not included in a single return filed by a pass-through entity or 227  
any other investor elects to file the annual return, the investor 228  
is entitled to a refundable credit equal to the investor's 229  
proportionate share of the tax paid by the pass-through entity on 230  
behalf of the investor. The investor shall claim the credit for 231  
the investor's taxable year in which or with which ends the 232  
taxable year of the pass-through entity. Nothing in this chapter 233  
shall be construed to allow any credit provided in this chapter to 234  
be claimed more than once. For the purpose of computing any 235  
interest, penalty, or interest penalty, the investor shall be 236  
deemed to have paid the refundable credit provided by this 237  
division on the day that the pass-through entity paid the 238  
estimated tax or the tax giving rise to the credit. 239

(K) The tax commissioner shall ensure that each return 240



required to be filed under this section includes a box that the taxpayer may check to authorize a paid tax preparer who prepared the return to communicate with the department of taxation about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the department of taxation to contact the preparer concerning questions that arise during the processing of the return and authorizes the preparer only to provide the department with information that is missing from the return, to contact the department for information about the processing of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the department and has shown to the preparer.

(L) The tax commissioner shall permit individual taxpayers to instruct the department of taxation to cause any refund of overpaid taxes to be deposited directly into a checking account, savings account, or an individual retirement account or individual retirement annuity, or preexisting college savings plan or program account offered by the Ohio tuition trust authority under Chapter 3334. of the Revised Code, as designated by the taxpayer, when the taxpayer files the annual return required by this section electronically.

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

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

**Section 3.** The amendment by this act of section 5747.08 of the Revised Code applies to taxable years beginning in 2013 or thereafter.

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|---|-----|
| Section 4. This act is hereby declared an emergency measure     | 271 |
| necessary for the immediate preservation of the public peace,   | 272 |
| health, and safety. The reason for such necessity is to enable  | 273 |
| taxpayers to take advantage of the changes made in the act when | 274 |
| filing their income tax returns for the 2013 taxable year.      | 275 |
| Therefore, this act takes immediate effect.                     | 276 |