

As Introduced

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S. B. No. 259

Senators Skindell, Tavares

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A B I L L

To amend section 5747.08 of the Revised Code to 1
require that same-sex married couples who file a 2
joint federal income tax return must file a joint 3
state tax return. 4

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

Section 1. That section 5747.08 of the Revised Code be 5
amended 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 precludes such an investor from filing the annual 67
return under this section, utilizing the refundable credit equal 68
to the investor's proportionate share of the tax paid by the 69
pass-through entity on behalf of the investor under division (J) 70
of this section, and making the payment of taxes imposed under 71
section 5747.02 of the Revised Code. Nothing in division (D) of 72
this section shall be construed to provide to such an investor or 73
pass-through entity any additional deduction or credit, other than 74
the credit provided by division (J) of this section, solely on 75
account of the entity's filing a return in accordance with this 76
section. Such a pass-through entity also shall make the filing and 77
payment of estimated taxes on behalf of the pass-through entity 78
investors other than an investor that is a person subject to the 79
tax imposed under section 5733.06 of the Revised Code. 80

(2) For the purposes of this section, "business credits" 81
means the credits listed in section 5747.98 of the Revised Code 82
excluding the following credits: 83

(a) The retirement credit under division (B) of section 84

5747.055 of the Revised Code;	85
(b) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;	86 87
(c) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;	88 89
(d) The dependent care credit under section 5747.054 of the Revised Code;	90 91
(e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	92 93
(f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	94 95
(g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	96 97
(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	98 99
(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	100 101
(j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	102 103
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	104 105
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	106 107
(m) The low-income credit under section 5747.056 of the Revised Code;	108 109
(n) The earned income tax credit under section 5747.71 of the Revised Code.	110 111
(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is	112 113

made by the pass-through entity. Unless the tax commissioner 114
provides otherwise, this election, once made, is binding and 115
irrevocable for the taxable year for which the election is made. 116
Nothing in this division shall be construed to provide for any 117
deduction or credit that would not be allowable if a nonresident 118
pass-through entity investor were to file an annual return. 119

(4) If a pass-through entity makes the election provided for 120
under division (D) of this section, the pass-through entity shall 121
be liable for any additional taxes, interest, interest penalty, or 122
penalties imposed by this chapter if the tax commissioner finds 123
that the single return does not reflect the correct tax due by the 124
pass-through entity investors covered by that return. Nothing in 125
this division shall be construed to limit or alter the liability, 126
if any, imposed on pass-through entity investors for unpaid or 127
underpaid taxes, interest, interest penalty, or penalties as a 128
result of the pass-through entity's making the election provided 129
for under division (D) of this section. For the purposes of 130
division (D) of this section, "correct tax due" means the tax that 131
would have been paid by the pass-through entity had the single 132
return been filed in a manner reflecting the commissioner's 133
findings. Nothing in division (D) of this section shall be 134
construed to make or hold a pass-through entity liable for tax 135
attributable to a pass-through entity investor's income from a 136
source other than the pass-through entity electing to file the 137
single return. 138

(E) If ~~a husband and wife~~ two individuals file a joint 139
federal income tax return for a taxable year, they shall file a 140
joint return under this section for that taxable year, and their 141
liabilities ~~are~~ shall be joint and several, ~~but, if the federal~~ 142
~~income tax liability of either spouse is determined on a separate.~~ 143
If two individuals do not file a joint federal income tax return 144
for a taxable year, they shall not file ~~separate returns~~ a joint 145

return under this section- 146

~~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~~ for that taxable year unless either one is not required to file a federal income tax return but they could have filed a joint federal return if both had been required to file a federal return, in which case the two individuals may elect to file separate or joint returns, ~~and, pursuant~~ under this section. Pursuant to that election, their liabilities ~~are~~ shall be 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.

Upon good cause shown, the commissioner may extend the period for filing any notice or return required to be filed under this section and may adopt rules relating to extensions. If the extension results in an extension of time for the payment of any

state or school district income tax liability with respect to 178
which the return is filed, the taxpayer shall pay at the time the 179
tax liability is paid an amount of interest computed at the rate 180
per annum prescribed by section 5703.47 of the Revised Code on 181
that liability from the time that payment is due without extension 182
to the time of actual payment. Except as provided in section 183
5747.132 of the Revised Code, in addition to all other interest 184
charges and penalties, all taxes imposed under this chapter or 185
Chapter 5748. of the Revised Code and remaining unpaid after they 186
become due, except combined amounts due of one dollar or less, 187
bear interest at the rate per annum prescribed by section 5703.47 188
of the Revised Code until paid or until the day an assessment is 189
issued under section 5747.13 of the Revised Code, whichever occurs 190
first. 191

If the commissioner considers it necessary in order to ensure 192
the payment of the tax imposed by section 5747.02 of the Revised 193
Code or any tax imposed under Chapter 5748. of the Revised Code, 194
the commissioner may require returns and payments to be made 195
otherwise than as provided in this section. 196

To the extent that any provision in this division conflicts 197
with any provision in section 5747.026 of the Revised Code, the 198
provision in that section prevails. 199

(H) If any report, claim, statement, or other document 200
required to be filed, or any payment required to be made, within a 201
prescribed period or on or before a prescribed date under this 202
chapter is delivered after that period or that date by United 203
States mail to the agency, officer, or office with which the 204
report, claim, statement, or other document is required to be 205
filed, or to which the payment is required to be made, the date of 206
the postmark stamped on the cover in which the report, claim, 207
statement, or other document, or payment is mailed shall be deemed 208
to be the date of delivery or the date of payment. 209

If a payment is required to be made by electronic funds 210
transfer pursuant to section 5747.072 of the Revised Code, the 211
payment is considered to be made when the payment is received by 212
the treasurer of state or credited to an account designated by the 213
treasurer of state for the receipt of tax payments. 214

"The date of the postmark" means, in the event there is more 215
than one date on the cover, the earliest date imprinted on the 216
cover by the United States postal service. 217

(I) The amounts withheld by an employer pursuant to section 218
5747.06 of the Revised Code, a casino operator pursuant to section 219
5747.063 of the Revised Code, or a lottery sales agent pursuant to 220
section 5747.064 of the Revised Code shall be allowed to the 221
recipient of the compensation casino winnings, or lottery prize 222
award as credits against payment of the appropriate taxes imposed 223
on the recipient by section 5747.02 and under Chapter 5748. of the 224
Revised Code. 225

(J) If a pass-through entity elects to file a single return 226
under division (D) of this section and if any investor is required 227
to file the annual return and make the payment of taxes required 228
by this chapter on account of the investor's other income that is 229
not included in a single return filed by a pass-through entity or 230
any other investor elects to file the annual return, the investor 231
is entitled to a refundable credit equal to the investor's 232
proportionate share of the tax paid by the pass-through entity on 233
behalf of the investor. The investor shall claim the credit for 234
the investor's taxable year in which or with which ends the 235
taxable year of the pass-through entity. Nothing in this chapter 236
shall be construed to allow any credit provided in this chapter to 237
be claimed more than once. For the purpose of computing any 238
interest, penalty, or interest penalty, the investor shall be 239
deemed to have paid the refundable credit provided by this 240
division on the day that the pass-through entity paid the 241

estimated tax or the tax giving rise to the credit. 242

(K) The tax commissioner shall ensure that each return 243
required to be filed under this section includes a box that the 244
taxpayer may check to authorize a paid tax preparer who prepared 245
the return to communicate with the department of taxation about 246
matters pertaining to the return. The return or instructions 247
accompanying the return shall indicate that by checking the box 248
the taxpayer authorizes the department of taxation to contact the 249
preparer concerning questions that arise during the processing of 250
the return and authorizes the preparer only to provide the 251
department with information that is missing from the return, to 252
contact the department for information about the processing of the 253
return or the status of the taxpayer's refund or payments, and to 254
respond to notices about mathematical errors, offsets, or return 255
preparation that the taxpayer has received from the department and 256
has shown to the preparer. 257

(L) The tax commissioner shall permit individual taxpayers to 258
instruct the department of taxation to cause any refund of 259
overpaid taxes to be deposited directly into a checking account, 260
savings account, or an individual retirement account or individual 261
retirement annuity, or preexisting college savings plan or program 262
account offered by the Ohio tuition trust authority under Chapter 263
3334. of the Revised Code, as designated by the taxpayer, when the 264
taxpayer files the annual return required by this section 265
electronically. 266

(M) The tax commissioner may adopt rules to administer this 267
section. 268

Section 2. That existing section 5747.08 of the Revised Code 269
is hereby repealed. 270