

**As Introduced**

**126th General Assembly  
Regular Session  
2005-2006**

**H. B. No. 40**

**Representatives Schaffer, McGregor, Latta, Faber, Hoops, Taylor, Hartnett,  
Willamowski, Gilb, Allen, Buehrer**

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**A B I L L**

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 82

section 5747.05 of the Revised Code;	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
<u>(m) The credit for instructional material under section 5747.71 of the Revised Code.</u>	102 103
(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.	104 105 106 107 108 109 110 111

(4) If a pass-through entity makes the election provided for 112  
under division (D) of this section, the pass-through entity shall 113  
be liable for any additional taxes, interest, interest penalty, or 114  
penalties imposed by this chapter if the commissioner finds that 115  
the single return does not reflect the correct tax due by the 116  
pass-through entity investors covered by that return. Nothing in 117  
this division shall be construed to limit or alter the liability, 118  
if any, imposed on pass-through entity investors for unpaid or 119  
underpaid taxes, interest, interest penalty, or penalties as a 120  
result of the pass-through entity's making the election provided 121  
for under division (D) of this section. For the purposes of 122  
division (D) of this section, "correct tax due" means the tax that 123  
would have been paid by the pass-through entity had the single 124  
return been filed in a manner reflecting the commissioner's 125  
findings. Nothing in division (D) of this section shall be 126  
construed to make or hold a pass-through entity liable for tax 127  
attributable to a pass-through entity investor's income from a 128  
source other than the pass-through entity electing to file the 129  
single return. 130

(E) If a husband and wife file a joint federal income tax 131  
return for a taxable year, they shall file a joint return under 132  
this section for that taxable year, and their liabilities are 133  
joint and several, but, if the federal income tax liability of 134  
either spouse is determined on a separate federal income tax 135  
return, they shall file separate returns under this section. 136

If either spouse is not required to file a federal income tax 137  
return and either or both are required to file a return pursuant 138  
to this chapter, they may elect to file separate or joint returns, 139  
and, pursuant to that election, their liabilities are separate or 140  
joint and several. If a husband and wife file separate returns 141  
pursuant to this chapter, each must claim the taxpayer's own 142  
exemption, but not both, as authorized under section 5747.02 of 143

the Revised Code on the taxpayer's own return. 144

(F) Each return or notice required to be filed under this 145  
section shall contain the signature of the taxpayer or the 146  
taxpayer's duly authorized agent and of the person who prepared 147  
the return for the taxpayer, and shall include the taxpayer's 148  
social security number. Each return shall be verified by a 149  
declaration under the penalties of perjury. The tax commissioner 150  
shall prescribe the form that the signature and declaration shall 151  
take. 152

(G) Each return or notice required to be filed under this 153  
section shall be made and filed as required by section 5747.04 of 154  
the Revised Code, on or before the fifteenth day of April of each 155  
year, on forms that the tax commissioner shall prescribe, together 156  
with remittance made payable to the treasurer of state in the 157  
combined amount of the state and all school district income taxes 158  
shown to be due on the form, unless the combined amount shown to 159  
be due is one dollar or less, in which case that amount need not 160  
be remitted. 161

Upon good cause shown, the commissioner may extend the period 162  
for filing any notice or return required to be filed under this 163  
section and may adopt rules relating to extensions. If the 164  
extension results in an extension of time for the payment of any 165  
state or school district income tax liability with respect to 166  
which the return is filed, the taxpayer shall pay at the time the 167  
tax liability is paid an amount of interest computed at the rate 168  
per annum prescribed by section 5703.47 of the Revised Code on 169  
that liability from the time that payment is due without extension 170  
to the time of actual payment. Except as provided in section 171  
5747.132 of the Revised Code, in addition to all other interest 172  
charges and penalties, all taxes imposed under this chapter or 173  
Chapter 5748. of the Revised Code and remaining unpaid after they 174  
become due, except combined amounts due of one dollar or less, 175

bear interest at the rate per annum prescribed by section 5703.47 176  
of the Revised Code until paid or until the day an assessment is 177  
issued under section 5747.13 of the Revised Code, whichever occurs 178  
first. 179

If the commissioner considers it necessary in order to ensure 180  
the payment of the tax imposed by section 5747.02 of the Revised 181  
Code or any tax imposed under Chapter 5748. of the Revised Code, 182  
the commissioner may require returns and payments to be made 183  
otherwise than as provided in this section. 184

(H) If any report, claim, statement, or other document 185  
required to be filed, or any payment required to be made, within a 186  
prescribed period or on or before a prescribed date under this 187  
chapter is delivered after that period or that date by United 188  
States mail to the agency, officer, or office with which the 189  
report, claim, statement, or other document is required to be 190  
filed, or to which the payment is required to be made, the date of 191  
the postmark stamped on the cover in which the report, claim, 192  
statement, or other document, or payment is mailed shall be deemed 193  
to be the date of delivery or the date of payment. 194

If a payment is required to be made by electronic funds 195  
transfer pursuant to section 5747.072 of the Revised Code, the 196  
payment is considered to be made when the payment is received by 197  
the treasurer of state or credited to an account designated by the 198  
treasurer of state for the receipt of tax payments. 199

"The date of the postmark" means, in the event there is more 200  
than one date on the cover, the earliest date imprinted on the 201  
cover by the United States postal service. 202

(I) The amounts withheld by the employer pursuant to section 203  
5747.06 of the Revised Code shall be allowed to the recipient of 204  
the compensation as credits against payment of the appropriate 205  
taxes imposed on the recipient by section 5747.02 and under 206

Chapter 5748. of the Revised Code.

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

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

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

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(2) "Teacher" means a classroom teacher in grades kindergarten through twelve who holds an educator license under Chapter 3319. of the Revised Code, or a person who instructs a

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child at home and who is qualified to do so for the purposes of 238  
division (A)(2) of section 3321.04 of the Revised Code and rules 239  
prescribed by the state board of education. 240

(3) "Classroom" includes the place in which a child receives 241  
instruction at home pursuant to an excuse from school attendance 242  
under division (A)(2) of section 3321.04 of the Revised Code and 243  
rules prescribed by the state board of education. 244

(B) There is hereby allowed a nonrefundable credit against 245  
the tax imposed by section 5747.02 of the Revised Code for amounts 246  
spent by a teacher during the taxable year on instructional 247  
material used in the teacher's classroom. The amount of the credit 248  
shall not exceed one hundred dollars. The credit shall be claimed 249  
in the order required under section 5747.98 of the Revised Code. 250

**Sec. 5747.98.** (A) To provide a uniform procedure for 251  
calculating the amount of tax due under section 5747.02 of the 252  
Revised Code, a taxpayer shall claim any credits to which the 253  
taxpayer is entitled in the following order: 254

(1) The retirement income credit under division (B) of 255  
section 5747.055 of the Revised Code; 256

(2) The senior citizen credit under division (C) of section 257  
5747.05 of the Revised Code; 258

(3) The lump sum distribution credit under division (D) of 259  
section 5747.05 of the Revised Code; 260

(4) The dependent care credit under section 5747.054 of the 261  
Revised Code; 262

(5) The lump sum retirement income credit under division (C) 263  
of section 5747.055 of the Revised Code; 264

(6) The lump sum retirement income credit under division (D) 265  
of section 5747.055 of the Revised Code; 266

(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	267 268
(8) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	269 270
(9) The campaign contribution credit under section 5747.29 of the Revised Code;	271 272
(10) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	273 274
(11) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	275 276
(12) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	277 278
(13) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	279 280
(14) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	281 282
(15) The credit for employers that reimburse employee child day-care expenses under section 5747.36 of the Revised Code;	283 284
(16) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	285 286
(17) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	287 288
(18) <u>The credit for instructional material under section 5747.71 of the Revised Code;</u>	289 290
<u>(19)</u> The job retention credit under division (B) of section 5747.058 of the Revised Code;	291 292
<del>(19)</del> <u>(20)</u> The credit for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a nonrefundable credit under	293 294 295

section 150.07 of the Revised Code;	296
<del>(20)</del> <u>(21)</u> The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;	297 298 299
<del>(21)</del> <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;	300 301 302
<del>(22)</del> <u>(23)</u> The job training credit under section 5747.39 of the Revised Code;	303 304
<del>(23)</del> <u>(24)</u> The enterprise zone credit under section 5709.66 of the Revised Code;	305 306
<del>(24)</del> <u>(25)</u> The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	307 308
<del>(25)</del> <u>(26)</u> The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	309 310
<del>(26)</del> <u>(27)</u> The ethanol plant investment credit under section 5747.75 of the Revised Code;	311 312
<del>(27)</del> <u>(28)</u> The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	313 314
<del>(28)</del> <u>(29)</u> The export sales credit under section 5747.057 of the Revised Code;	315 316
<del>(29)</del> <u>(30)</u> The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	317 318 319
<del>(30)</del> <u>(31)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	320 321
<del>(31)</del> <u>(32)</u> The research and development credit under section 5747.331 of the Revised Code;	322 323
<del>(32)</del> <u>(33)</u> The refundable jobs creation credit under division	324

(A) of section 5747.058 of the Revised Code;	325
<del>(33)</del> <u>(34)</u> The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	326 327
<del>(34)</del> <u>(35)</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;	328 329 330
<del>(35)</del> <u>(36)</u> The refundable credit for tax withheld under division (B)(1) of section 5747.062 of the Revised Code;	331 332
<del>(36)</del> <u>(37)</u> The credit for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a refundable credit under section 150.07 of the Revised Code.	333 334 335 336
(B) For any credit, except the credits enumerated in divisions (A) <del>(32)</del> <u>(33)</u> to <del>(36)</del> <u>(37)</u> 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.	337 338 339 340 341 342 343 344 345 346
<b>Section 2.</b> That existing sections 5747.08 and 5747.98 of the Revised Code are hereby repealed.	347 348
<b>Section 3.</b> Section 5747.71 of the Revised Code, as enacted by this act, applies to taxable years beginning on or after January 1, 2005.	349 350 351