

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 269**

**Representatives Smith, K., LaTourette  
Cosponsors: Representatives Reece, Antonio, Stinziano, Clyde, Brown,  
Lepore-Hagan, Ramos, Derickson**

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**A BILL**

To amend section 5747.98 and to enact sections 1  
122.851 and 5747.67 of the Revised Code to 2  
authorize a refundable income tax credit for 3  
individual investors in a sound recording 4  
production company equal to a portion of the 5  
company's costs for a recording production or 6  
recording infrastructure project in Ohio. 7

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

**Section 1.** That section 5747.98 be amended and sections 8  
122.851 and 5747.67 of the Revised Code be enacted to read as 9  
follows: 10

**Sec. 122.851.** (A) As used in this section: 11

(1) "Eligible expenditures" means actual production- 12  
related costs in this state by a sound recording company for a 13  
tax credit-eligible production or actual capital costs in this 14  
state by a sound recording company for a tax credit-eligible 15  
project. 16

(2) "Expenditure in this state" means the cost of either 17

<u>of the following:</u>	18
<u>(a) Acquiring tangible personal property or services in</u>	19
<u>this state that are subject to tax levied under section 5739.02</u>	20
<u>or 5741.02 of the Revised Code;</u>	21
<u>(b) Compensation for services performed within the state</u>	22
<u>subject to the tax levied under section 5747.02 of the Revised</u>	23
<u>Code.</u>	24
<u>(3) "Sound recording" means a recording of a music,</u>	25
<u>poetry, or spoken performance recorded, in whole or in part, in</u>	26
<u>this state. "Sound recording" does not include the audio</u>	27
<u>portions of dialogue or words spoken and recorded as part of</u>	28
<u>television news coverage or athletic events.</u>	29
<u>(4) "Sound recording production company" means a sole</u>	30
<u>proprietorship or a pass-through entity engaged in the</u>	31
<u>production of sound recordings.</u>	32
<u>(5) "Tax credit-eligible production" means the production</u>	33
<u>of a sound recording, or a series of such productions occurring</u>	34
<u>over a twelve-month period, certified by the director of</u>	35
<u>development services under division (B) of this section as</u>	36
<u>eligible for the tax credit authorized under section 5747.67 of</u>	37
<u>the Revised Code.</u>	38
<u>(6) "Tax credit-eligible project" means a capital project</u>	39
<u>to construct or improve infrastructure for creating sound</u>	40
<u>recording productions certified by the director of development</u>	41
<u>services under division (B) of this section as eligible for the</u>	42
<u>tax credit authorized under section 5747.67 of the Revised Code.</u>	43
<u>(7) "Investor" means an individual who owns a sound</u>	44
<u>production company that is a sole proprietorship or an</u>	45
<u>individual who owns a proportionate or distributive share of a</u>	46

sound recording production company that is a pass-through 47  
entity. 48

(8) "Pass-through entity" has the same meaning as in 49  
section 5733.04 of the Revised Code, but does not include a sole 50  
proprietorship. 51

(9) "Capital costs of a tax credit-eligible project" means 52  
expenditures directly related to a tax credit-eligible project, 53  
including land and land acquisition costs, construction costs, 54  
design fees, furniture, fixtures, and equipment purchased 55  
subject to a sale agreement or capital lease, but does not 56  
include general administrative costs or insurance. 57

(10) "Production-related costs" means expenditures 58  
directly related to a tax credit-eligible production. 59

(B) (1) The director of development services may certify a 60  
sound recording production or sound recording infrastructure 61  
project as a tax credit-eligible production or tax credit- 62  
eligible project, respectively. A sound recording production 63  
company shall apply for certification of a sound recording 64  
production or a sound recording capital infrastructure project 65  
as a tax credit-eligible production or tax credit-eligible 66  
project, respectively, in the form and manner prescribed by the 67  
director. 68

(a) An application to certify a tax credit-eligible 69  
production shall include all of the following: 70

(i) The production's distribution plan; 71

(ii) The production's preliminary budget, including 72  
estimated eligible expenditures; 73

(iii) A description of the type of sound to be recorded; 74

<u>(iv) A list of the production's principal creative</u>	75
<u>elements, including performing artists and producers;</u>	76
<u>(v) The location, including street address, of the</u>	77
<u>recording studio or other location where production will occur;</u>	78
<u>(vi) A statement that the production will qualify as a tax</u>	79
<u>credit-eligible production;</u>	80
<u>(vii) The production's estimated start and completion</u>	81
<u>dates;</u>	82
<u>(viii) Any other information required by the director.</u>	83
<u>(b) An application to certify a tax credit-eligible</u>	84
<u>project shall include all of the following:</u>	85
<u>(i) A detailed description of the project, including the</u>	86
<u>project's location;</u>	87
<u>(ii) The project's preliminary budget, including eligible</u>	88
<u>expenditures;</u>	89
<u>(iii) A statement that the project will qualify as a tax</u>	90
<u>credit-eligible sound recording infrastructure project;</u>	91
<u>(iv) The project's estimated start and completion dates;</u>	92
<u>(v) Any other information required by the director.</u>	93
<u>(2) Upon receipt of a complete application, the director</u>	94
<u>of development services may certify the sound recording</u>	95
<u>production or sound recording infrastructure project as a tax</u>	96
<u>credit-eligible production or tax credit-eligible project,</u>	97
<u>respectively. If the director receives an application that is</u>	98
<u>incomplete, the director may request that the applicant provide</u>	99
<u>any omitted information or reject the application. Within one</u>	100
<u>hundred eighty days after receiving a complete application, the</u>	101

director shall approve or reject the application, and notify the 102  
applicant of the director's decision. The director also shall 103  
notify the tax commissioner and investor of each production or 104  
project the director certifies as a tax credit-eligible 105  
production or tax credit-eligible sound recording infrastructure 106  
project. 107

The director shall reject an application if the applicant 108  
is a person, or any person owned, affiliated, or controlled, in 109  
whole or in part, by any person that either owes debt that has 110  
been certified to the attorney general under section 131.02 of 111  
the Revised Code or has declared bankruptcy under which an 112  
obligation of the person to pay or repay public funds or moneys 113  
was discharged as a part of such bankruptcy. The rejection of an 114  
application under this division does not prohibit an applicant 115  
from filing another application under this section for the same 116  
production or project. 117

(3) In making the director's determination under division 118  
(B)(2) of this section, the director shall consider each of the 119  
following factors: 120

(a) The impact of the production or project on the 121  
encouragement and development in this state of a strong capital 122  
and infrastructure base in order to achieve a more independent, 123  
self-supporting music and sound recording industry; 124

(b) The impact of the production or project on the 125  
employment of residents of this state; 126

(c) The impact of the production or project on the overall 127  
economy of this state; 128

(d) If the application is for a tax credit-eligible 129  
project, the availability of similar infrastructure facilities 130

located within fifty miles of the proposed project. 131

(C) A sound recording production company whose sound 132  
recording production or sound recording capital infrastructure 133  
project is certified under division (B) of this section as a tax 134  
credit-eligible production or tax credit-eligible project, after 135  
such production or project is completed, may apply to the 136  
director of development services to receive a refundable credit 137  
against the tax imposed under section 5747.02 of the Revised 138  
Code, which may be claimed by the company's investor or 139  
investors. The director in consultation with the tax 140  
commissioner shall prescribe the form and manner of the 141  
application under this division and the information or 142  
documentation required to be submitted with the application. 143

In addition to the application, the company shall report 144  
the eligible expenditures related to that production or project, 145  
which the director may require to be prepared by a certified 146  
public accountant. Before awarding a certificate under division 147  
(C) of this section, the director may inspect the books, 148  
accounts, records, and memoranda of a sound recording production 149  
company to audit the accuracy of that report. The amount of 150  
credit awarded to investors shall be proportionately reduced by 151  
the cost to the director of any such audit. Upon receiving and 152  
examining the report, the director may disallow any reported 153  
eligible expenditure the director determines is not an eligible 154  
expenditure. If the director disallows an expenditure, the 155  
director shall issue a written notice to the sound recording 156  
production company stating that the expenditure is disallowed 157  
and the reason for the disallowance. Upon examination of the 158  
report and disallowance of any expenditure, the director shall 159  
determine eligible expenditures for the purpose of calculating 160  
the amount of the credit. 161

Subject to the aggregate credit limit in division (D) of 162  
this section, upon receipt of an application under this 163  
division, the director shall issue a certificate to each 164  
applicable investor showing the amount of the credit the 165  
investor may claim under section 5747.67 of the Revised Code. 166  
The director shall calculate that credit as follows: 167

(1) The amount of the credit equals twenty-five per cent 168  
of eligible expenditures in excess of five thousand dollars, 169  
multiplied by the investor's proportionate or distributive share 170  
of the sound production company if that company is a pass- 171  
through entity. 172

(2) The amount of credit awarded to all investors for a 173  
production or project shall not exceed fifty thousand dollars. 174  
If the amount of the credit, as calculated under division (C) (1) 175  
of this section, would exceed fifty thousand dollars, the 176  
director shall reduce the amount of credit awarded to each 177  
investor proportionately so that the total amount so awarded to 178  
all such investors equals fifty thousand dollars. 179

(3) No credit shall be awarded on the basis of any portion 180  
of an eligible expenditure that is also an eligible production 181  
expenditure that forms the basis of a credit awarded under 182  
section 122.85 of the Revised Code. 183

(4) No credit shall be awarded for taxable years beginning 184  
on or after January 1, 2020. 185

(D) The aggregate amount of credits certified for all 186  
investors under division (C) of this section for any fiscal year 187  
shall not exceed three million dollars. The director shall award 188  
credit certificates under that division for tax credit-eligible 189  
productions or tax credit-eligible projects on a first-come, 190

first-served basis. 191

(E) The director of development services shall transmit a 192  
copy of each certificate issued under division (C) of this 193  
section to the tax commissioner. The director in consultation 194  
with the tax commissioner shall adopt rules in accordance with 195  
Chapter 119. of the Revised Code necessary for the 196  
administration of the credit authorized in this section. 197

(F) On or before the thirty-first day of October each 198  
even-numbered year, beginning in 2016, the director of 199  
development services shall prepare a report evaluating the 200  
effect of the credit authorized under this section and submit 201  
that report to the chair and ranking minority member of the 202  
house of representatives and senate standing committees dealing 203  
primarily with issues of taxation. The report shall include the 204  
overall effect of credits awarded under this section, the amount 205  
of such credit certificates issued, the number of new jobs 206  
created and payroll subject to the tax under section 5747.02 of 207  
the Revised Code created as a result of the credits, the 208  
economic effect of the credits on the sound recording industry, 209  
the amount of new sounds recording infrastructure that has been 210  
developed in the state, and any other factors that describe the 211  
effect of the credits. 212

(G) The tax commissioner may assess an investor under 213  
section 5747.13 of the Revised Code for any amount of credit 214  
claimed by the investor but later determined by the commissioner 215  
or the director of development services to be disallowed under 216  
this section, subject to the time limitations in that section. 217

(H) As a condition for a sound recording production 218  
company's investors being awarded a certificate under division 219  
(C) of this section, the director of development services may 220



require a tax credit-eligible production to display the state's 221  
name or logo, as prescribed by the director. 222

**Sec. 5747.67.** (A) Any term used in this section has the 223  
same meaning as in section 122.851 of the Revised Code. 224

(B) There is allowed a refundable credit against the tax 225  
imposed by section 5747.02 of the Revised Code for any 226  
individual who, on the last day of the individual's taxable 227  
year, holds a tax credit certificate issued under division (C) 228  
of section 122.851 of the Revised Code. The credit shall be 229  
claimed for the taxable year that includes the date the 230  
certificate was issued by the director of development services 231  
under that division. The credit amount equals the amount stated 232  
in the certificate. The credit shall be claimed in the order 233  
required under section 5747.98 of the Revised Code. If the 234  
credit amount exceeds the tax otherwise due under section 235  
5747.02 of the Revised Code after deducting all other credits in 236  
that order, the excess shall be refunded. 237

**Sec. 5747.98.** (A) To provide a uniform procedure for 238  
calculating the amount of tax due under section 5747.02 of the 239  
Revised Code, a taxpayer shall claim any credits to which the 240  
taxpayer is entitled in the following order: 241

(1) The retirement income credit under division (B) of 242  
section 5747.055 of the Revised Code; 243

(2) The senior citizen credit under division (C) of 244  
section 5747.05 of the Revised Code; 245

(3) The lump sum distribution credit under division (D) of 246  
section 5747.05 of the Revised Code; 247

(4) The dependent care credit under section 5747.054 of 248  
the Revised Code; 249

(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	250 251
(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	252 253
(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	254 255
(8) The low-income credit under section 5747.056 of the Revised Code;	256 257
(9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	258 259
(10) The campaign contribution credit under section 5747.29 of the Revised Code;	260 261
(11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	262 263
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	264 265
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	266 267
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	268 269
(15) The earned income credit under section 5747.71 of the Revised Code;	270 271
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	272 273
(17) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	274 275

(18) The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;	276 277
(19) The credit for selling alternative fuel under section 5747.77 of the Revised Code;	278 279
(20) 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;	280 281 282
(21) The job training credit under section 5747.39 of the Revised Code;	283 284
(22) The enterprise zone credit under section 5709.66 of the Revised Code;	285 286
(23) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	287 288
(24) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	289 290
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	291 292
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	293 294
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	295 296
(28) The small business investment credit under section 5747.81 of the Revised Code;	297 298
(29) The enterprise zone credits under section 5709.65 of the Revised Code;	299 300
(30) The research and development credit under section 5747.331 of the Revised Code;	301 302

(31) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	303 304
(32) The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	305 306
(33) The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;	307 308 309
(34) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	310 311
(35) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;	312 313 314
(36) The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;	315 316 317 318
(37) The refundable motion picture production credit under section 5747.66 of the Revised Code;	319 320
(38) The refundable credit for financial institution taxes paid by a pass-through entity granted under section 5747.65 of the Revised Code;	321 322 323
<u>(39) The refundable sound recording production credit under section 5747.67 of the Revised Code.</u>	324 325
(B) For any credit, except the refundable credits enumerated in this section and the credit granted under division (H) 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	326 327 328 329 330

required under this section. Any excess amount of a particular 331  
credit may be carried forward if authorized under the section 332  
creating that credit. Nothing in this chapter shall be construed 333  
to allow a taxpayer to claim, directly or indirectly, a credit 334  
more than once for a taxable year. 335

**Section 2.** That existing section 5747.98 of the Revised 336  
Code is hereby repealed. 337