

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 399

Representatives Smith, K., Callender

Cosponsors: Representatives Boyd, Galonski, O'Brien

A BILL

To amend section 5747.98 and to enact sections 1
122.851 and 5747.67 of the Revised Code to 2
temporarily authorize a refundable income tax 3
credit for investing in a sound recording 4
production company. 5

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

Section 1. That section 5747.98 be amended and sections 6
122.851 and 5747.67 of the Revised Code be enacted to read as 7
follows: 8

Sec. 122.851. (A) As used in this section: 9

(1) "Eligible expenditures" means actual production- 10
related costs in this state by a sound recording company for a 11
tax credit-eligible production or actual capital costs in this 12
state by a sound recording company for a tax credit-eligible 13
project. 14

(2) "Expenditure in this state" means the cost of either 15
of the following: 16

(a) Acquiring tangible personal property or services in 17

this state that are subject to tax levied under section 5739.02 18
or 5741.02 of the Revised Code; 19

(b) Compensation for services performed within the state 20
subject to the tax levied under section 5747.02 of the Revised 21
Code. 22

(3) "Sound recording" means a recording of a music, 23
poetry, or spoken performance recorded, in whole or in part, in 24
this state. "Sound recording" does not include the audio 25
portions of dialogue or words spoken and recorded as part of 26
television news coverage or athletic events. 27

(4) "Sound recording production company" means a sole 28
proprietorship or a pass-through entity engaged in the 29
production of sound recordings. 30

(5) "Tax credit-eligible production" means the production 31
of a sound recording, or a series of such productions occurring 32
over a twelve-month period, certified by the director of 33
development services under division (B) of this section as 34
eligible for the tax credit authorized under section 5747.67 of 35
the Revised Code. 36

(6) "Tax credit-eligible project" means a capital project 37
to construct or improve infrastructure for creating sound 38
recording productions certified by the director of development 39
services under division (B) of this section as eligible for the 40
tax credit authorized under section 5747.67 of the Revised Code. 41

(7) "Investor" means an individual who owns a sound 42
production company that is a sole proprietorship or an 43
individual who owns a proportionate or distributive share of a 44
sound recording production company that is a pass-through 45
entity. 46

(8) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code, but does not include a sole proprietorship. 47
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(9) "Capital costs of a tax credit-eligible project" means expenditures directly related to a tax credit-eligible project, including land and land acquisition costs, construction costs, design fees, furniture, fixtures, and equipment purchased subject to a sale agreement or capital lease, but does not include general administrative costs or insurance. 50
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(10) "Production-related costs" means expenditures directly related to a tax credit-eligible production. 56
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(B) (1) The director of development services may certify a sound recording production or sound recording infrastructure project as a tax credit-eligible production or tax credit-eligible project, respectively. A sound recording production company shall apply for certification of a sound recording production or a sound recording capital infrastructure project as a tax credit-eligible production or tax credit-eligible project, respectively, in the form and manner prescribed by the director. 58
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(a) An application to certify a tax credit-eligible production shall include all of the following: 67
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(i) The production's distribution plan; 69

(ii) The production's preliminary budget, including estimated eligible expenditures; 70
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(iii) A description of the type of sound to be recorded; 72

(iv) A list of the production's principal creative elements, including performing artists and producers; 73
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<u>(v) The location, including street address, of the</u>	75
<u>recording studio or other location where production will occur;</u>	76
<u>(vi) A statement that the production will qualify as a tax</u>	77
<u>credit-eligible production;</u>	78
<u>(vii) The production's estimated start and completion</u>	79
<u>dates;</u>	80
<u>(viii) Any other information required by the director.</u>	81
<u>(b) An application to certify a tax credit-eligible</u>	82
<u>project shall include all of the following:</u>	83
<u>(i) A detailed description of the project, including the</u>	84
<u>project's location;</u>	85
<u>(ii) The project's preliminary budget, including eligible</u>	86
<u>expenditures;</u>	87
<u>(iii) A statement that the project will qualify as a tax</u>	88
<u>credit-eligible sound recording infrastructure project;</u>	89
<u>(iv) The project's estimated start and completion dates;</u>	90
<u>(v) Any other information required by the director.</u>	91
<u>(2) Upon receipt of a complete application, the director</u>	92
<u>of development services may certify the sound recording</u>	93
<u>production or sound recording infrastructure project as a tax</u>	94
<u>credit-eligible production or tax credit-eligible project,</u>	95
<u>respectively. If the director receives an application that is</u>	96
<u>incomplete, the director may request that the applicant provide</u>	97
<u>any omitted information or reject the application. Within one</u>	98
<u>hundred eighty days after receiving a complete application, the</u>	99
<u>director shall approve or reject the application, and notify the</u>	100
<u>applicant of the director's decision. The director also shall</u>	101

notify the tax commissioner and investor of each production or 102
project the director certifies as a tax credit-eligible 103
production or tax credit-eligible sound recording infrastructure 104
project. 105

The director shall reject an application if the applicant 106
is a person, or any person owned, affiliated, or controlled, in 107
whole or in part, by any person that either owes debt that has 108
been certified to the attorney general under section 131.02 of 109
the Revised Code or has declared bankruptcy under which an 110
obligation of the person to pay or repay public funds or moneys 111
was discharged as a part of such bankruptcy. The rejection of an 112
application under this division does not prohibit an applicant 113
from filing another application under this section for the same 114
production or project. 115

(3) In making the director's determination under division 116
(B)(2) of this section, the director shall consider each of the 117
following factors: 118

(a) The impact of the production or project on the 119
encouragement and development in this state of a strong capital 120
and infrastructure base in order to achieve a more independent, 121
self-supporting music and sound recording industry; 122

(b) The impact of the production or project on the 123
employment of residents of this state; 124

(c) The impact of the production or project on the overall 125
economy of this state; 126

(d) If the application is for a tax credit-eligible 127
project, the availability of similar infrastructure facilities 128
located within fifty miles of the proposed project. 129

(C) A sound recording production company whose sound 130

recording production or sound recording capital infrastructure 131
project is certified under division (B) of this section as a tax 132
credit-eligible production or tax credit-eligible project, after 133
such production or project is completed, may apply to the 134
director of development services to receive a refundable credit 135
against the tax imposed under section 5747.02 of the Revised 136
Code, which may be claimed by the company's investor or 137
investors. The director, in consultation with the commissioner, 138
shall prescribe the form and manner of the application under 139
this division and the information or documentation required to 140
be submitted with the application. 141

In addition to the application, the company shall report 142
the eligible expenditures related to that production or project, 143
which the director may require to be prepared by a certified 144
public accountant. Before awarding a certificate under this 145
division, the director may inspect the books, accounts, records, 146
and memoranda of a sound recording production company to audit 147
the accuracy of that report. The amount of credit awarded to 148
investors shall be proportionately reduced by the cost to the 149
director of any such audit. Upon receiving and examining the 150
report, the director may disallow any reported eligible 151
expenditure the director determines is not an eligible 152
expenditure. If the director disallows an expenditure, the 153
director shall issue a written notice to the sound recording 154
production company stating that the expenditure is disallowed 155
and the reason for the disallowance. Upon examination of the 156
report and disallowance of any expenditure, the director shall 157
determine eligible expenditures for the purpose of calculating 158
the amount of the credit. 159

Subject to the aggregate credit limit in division (D) of 160
this section, upon receipt of an application under this 161

division, the director shall issue a certificate to each 162
applicable investor showing the amount of the credit the 163
investor may claim under section 5747.67 of the Revised Code. 164
The director shall calculate that credit as follows: 165

(1) The amount of the credit equals twenty-five per cent 166
of eligible expenditures in excess of ten thousand dollars, 167
multiplied by the investor's proportionate or distributive share 168
of the sound production company if that company is a pass- 169
through entity. 170

(2) The amount of credit awarded to all investors for a 171
production or project shall not exceed seventy-five thousand 172
dollars. If the amount of the credit, as calculated under 173
division (C) (1) of this section, would exceed seventy-five 174
thousand dollars, the director shall reduce the amount of credit 175
awarded to each investor proportionately so that the total 176
amount so awarded to all such investors equals seventy-five 177
thousand dollars. 178

(3) No credit shall be awarded on the basis of any portion 179
of an eligible expenditure that is also an eligible production 180
expenditure that forms the basis of a credit awarded under 181
section 122.85 of the Revised Code. 182

(4) No credit shall be awarded for taxable years beginning 183
on or after January 1, 2024. 184

(D) The aggregate amount of credits certified for all 185
investors under division (C) of this section for any fiscal year 186
shall not exceed one million dollars. The director shall award 187
credit certificates for tax credit-eligible productions or tax 188
credit-eligible projects on a first-come, first-served basis. 189

(E) The director of development services shall transmit a 190

copy of each certificate to the tax commissioner. The director 191
in consultation with the commissioner shall adopt rules in 192
accordance with Chapter 119. of the Revised Code necessary for 193
the administration of the credit authorized in this section. 194

(F) On or before the thirty-first day of October each 195
even-numbered year, beginning in 2022, the director of 196
development services shall prepare a report evaluating the 197
effect of the credit authorized under this section and submit 198
that report to the chair and ranking minority member of the 199
house of representatives and senate standing committees dealing 200
primarily with issues of taxation. The report shall include the 201
overall effect of such credits, the amount of such credit 202
certificates issued, the number of new jobs created and payroll 203
subject to the tax under section 5747.02 of the Revised Code 204
created as a result of the credits, the economic effect of the 205
credits on the sound recording industry, the amount of new 206
sounds recording infrastructure that has been developed in the 207
state, and any other factors that describe the effect of the 208
credits. 209

(G) The tax commissioner may assess an investor under 210
section 5747.13 of the Revised Code for any amount of credit 211
claimed by the investor but later determined by the commissioner 212
or the director of development services to be disallowed under 213
this section, subject to the time limitations in that section. 214

(H) As a condition for a sound recording production 215
company's investors being awarded a credit certificate, the 216
director of development services may require a tax credit- 217
eligible production to display the state's name or logo, as 218
prescribed by the director. 219

Sec. 5747.67. (A) Any term used in this section has the 220

same meaning as in section 122.851 of the Revised Code. 221

(B) There is allowed a refundable credit against the tax 222
imposed by section 5747.02 of the Revised Code for any 223
individual who, on the last day of the individual's taxable 224
year, holds a tax credit certificate issued under section 225
122.851 of the Revised Code. The credit shall be claimed for the 226
taxable year that includes the date the certificate was issued. 227
The credit amount equals the amount stated in the certificate. 228
The credit shall be claimed in the order required under section 229
5747.98 of the Revised Code. If the credit amount exceeds the 230
tax otherwise due under section 5747.02 of the Revised Code 231
after deducting all other credits in that order, the excess 232
shall be refunded. 233

Sec. 5747.98. (A) To provide a uniform procedure for 234
calculating a taxpayer's aggregate tax liability under section 235
5747.02 of the Revised Code, a taxpayer shall claim any credits 236
to which the taxpayer is entitled in the following order: 237

Either the retirement income credit under division (B) of 238
section 5747.055 of the Revised Code or the lump sum retirement 239
income credits under divisions (C), (D), and (E) of that 240
section; 241

Either the senior citizen credit under division (F) of 242
section 5747.055 of the Revised Code or the lump sum 243
distribution credit under division (G) of that section; 244

The dependent care credit under section 5747.054 of the 245
Revised Code; 246

The credit for displaced workers who pay for job training 247
under section 5747.27 of the Revised Code; 248

The campaign contribution credit under section 5747.29 of 249

the Revised Code;	250
The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	251 252
The joint filing credit under division (G) of section 5747.05 of the Revised Code;	253 254
The earned income credit under section 5747.71 of the Revised Code;	255 256
The credit for adoption of a minor child under section 5747.37 of the Revised Code;	257 258
The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;	259 260
The enterprise zone credit under section 5709.66 of the Revised Code;	261 262
The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	263 264
The small business investment credit under section 5747.81 of the Revised Code;	265 266
The nonrefundable lead abatement credit under section 5747.26 of the Revised Code;	267 268
The opportunity zone investment credit under section 122.84 of the Revised Code;	269 270
The enterprise zone credits under section 5709.65 of the Revised Code;	271 272
The research and development credit under section 5747.331 of the Revised Code;	273 274
The credit for rehabilitating a historic building under	275

section 5747.76 of the Revised Code;	276
The nonresident credit under division (A) of section 5747.05 of the Revised Code;	277 278
The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	279 280
The refundable motion picture and Broadway theatrical production credit under section 5747.66 of the Revised Code;	281 282
The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;	283 284 285
The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	286 287
The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;	288 289 290
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;	291 292 293
The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code.	294 295
<u>The refundable credit for sound recording production under section 5747.67 of the Revised Code.</u>	296 297
(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 taxpayer's aggregate amount of tax due under section 5747.02 of the Revised	298 299 300 301 302

Code, after allowing for any other credit that precedes it in 303
the order required under this section. Any excess amount of a 304
particular credit may be carried forward if authorized under the 305
section creating that credit. Nothing in this chapter shall be 306
construed to allow a taxpayer to claim, directly or indirectly, 307
a credit more than once for a taxable year. 308

Section 2. That existing section 5747.98 of the Revised 309
Code is hereby repealed. 310