

As Introduced

135th General Assembly
Regular Session
2023-2024

S. B. No. 171

Senators Smith, Rulli

A BILL

To amend sections 107.036 and 5747.98 and to enact 1
sections 122.852 and 5747.67 of the Revised Code 2
to 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 sections 107.036 and 5747.98 be amended 6
and sections 122.852 and 5747.67 of the Revised Code be enacted 7
to read as follows: 8

Sec. 107.036. (A) For each business incentive tax credit, 9
the main operating appropriations act shall contain a detailed 10
estimate of the total amount of credits that may be authorized 11
in each year, an estimate of the amount of credits expected to 12
be claimed in each year, and an estimate of the amount of 13
credits expected to remain outstanding at the end of the 14
biennium. The governor shall include such estimates in the state 15
budget submitted to the general assembly pursuant to section 16
107.03 of the Revised Code. 17

(B) As used in this section, "business incentive tax 18
credit" means all of the following: 19

(1) The job creation tax credit under section 122.17 of the Revised Code;	20 21
(2) The job retention tax credit under section 122.171 of the Revised Code;	22 23
(3) The historic preservation tax credit under section 149.311 of the Revised Code;	24 25
(4) The motion picture and Broadway theatrical production tax credit under section 122.85 of the Revised Code;	26 27
(5) The new markets tax credit under section 5725.33 of the Revised Code;	28 29
(6) The research and development credit under section 166.21 of the Revised Code;	30 31
(7) The small business investment credit under section 122.86 of the Revised Code;	32 33
(8) The rural growth investment credit under section 122.152 of the Revised Code;	34 35
(9) The opportunity zone investment credit under section 122.84 of the Revised Code;	36 37
(10) The transformational mixed use development credit under section 122.09 of the Revised Code;	38 39
<u>(11) The sound recording production credit under section 122.852 of the Revised Code.</u>	40 41
<u>Sec. 122.852. (A) As used in this section:</u>	42
<u>(1) "Eligible expenditures" means actual production-related costs in this state by a sound recording company for a tax credit-eligible production or actual capital costs in this state by a sound recording company for a tax credit-eligible</u>	43 44 45 46

project. 47

(2) "Expenditure in this state" means the cost of either 48
of the following: 49

(a) Acquiring tangible personal property or services in 50
this state that are subject to tax levied under section 5739.02 51
or 5741.02 of the Revised Code; 52

(b) Compensation for services performed within the state 53
subject to the tax levied under section 5747.02 of the Revised 54
Code. 55

(3) "Sound recording" means a recording of a music, 56
poetry, or spoken performance recorded, in whole or in part, in 57
this state. "Sound recording" does not include the audio 58
portions of dialogue or words spoken and recorded as part of 59
television news coverage or athletic events. 60

(4) "Sound recording production company" means a sole 61
proprietorship or a pass-through entity engaged in the 62
production of sound recordings. 63

(5) "Tax credit-eligible production" means the production 64
of a sound recording, or a series of such productions occurring 65
over a twelve-month period, certified by the director of 66
development under division (B) of this section as eligible for 67
the tax credit authorized under section 5747.67 of the Revised 68
Code. 69

(6) "Tax credit-eligible project" means a capital project 70
to construct or improve infrastructure for creating sound 71
recording productions certified by the director of development 72
under division (B) of this section as eligible for the tax 73
credit authorized under section 5747.67 of the Revised Code. 74

(7) "Investor" means an individual who owns a sound production company that is a sole proprietorship or an individual who owns a proportionate or distributive share of a sound recording production company that is a pass-through entity. 75
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(8) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code, but does not include a sole proprietorship. 80
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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. 83
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(10) "Production-related costs" means expenditures directly related to a tax credit-eligible production. 89
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(B) (1) The director of development 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. 91
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(a) An application to certify a tax credit-eligible production shall include all of the following: 99
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(i) The production's distribution plan; 101

(ii) The production's preliminary budget, including estimated eligible expenditures; 102
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<u>(iii) A description of the type of sound to be recorded;</u>	104
<u>(iv) A list of the production's principal creative elements, including performing artists and producers;</u>	105 106
<u>(v) The location, including street address, of the recording studio or other location where production will occur;</u>	107 108
<u>(vi) A statement that the production will qualify as a tax credit-eligible production;</u>	109 110
<u>(vii) The production's estimated start and completion dates;</u>	111 112
<u>(viii) Any other information required by the director.</u>	113
<u>(b) An application to certify a tax credit-eligible project shall include all of the following:</u>	114 115
<u>(i) A detailed description of the project, including the project's location;</u>	116 117
<u>(ii) The project's preliminary budget, including eligible expenditures;</u>	118 119
<u>(iii) A statement that the project will qualify as a tax credit-eligible sound recording infrastructure project;</u>	120 121
<u>(iv) The project's estimated start and completion dates;</u>	122
<u>(v) Any other information required by the director.</u>	123
<u>(2) Upon receipt of a complete application, the director of development may certify the sound recording production or sound recording infrastructure project as a tax credit-eligible production or tax credit-eligible project, respectively. If the director receives an application that is incomplete, the director may request that the applicant provide any omitted information or reject the application. Within one hundred eighty</u>	124 125 126 127 128 129 130

days after receiving a complete application, the director shall 131
approve or reject the application, and notify the applicant of 132
the director's decision. The director also shall notify the tax 133
commissioner and investor of each production or project the 134
director certifies as a tax credit-eligible production or tax 135
credit-eligible sound recording infrastructure project. 136

The director shall reject an application if the applicant 137
is a person, or any person owned, affiliated, or controlled, in 138
whole or in part, by any person that either owes debt that has 139
been certified to the attorney general under section 131.02 of 140
the Revised Code or has declared bankruptcy under which an 141
obligation of the person to pay or repay public funds or moneys 142
was discharged as a part of such bankruptcy. The rejection of an 143
application under this division does not prohibit an applicant 144
from filing another application under this section for the same 145
production or project. 146

(3) In making the director's determination under division 147
(B)(2) of this section, the director shall consider each of the 148
following factors: 149

(a) The impact of the production or project on the 150
encouragement and development in this state of a strong capital 151
and infrastructure base in order to achieve a more independent, 152
self-supporting music and sound recording industry; 153

(b) The impact of the production or project on the 154
employment of residents of this state; 155

(c) The impact of the production or project on the overall 156
economy of this state; 157

(d) If the application is for a tax credit-eligible 158
project, the availability of similar infrastructure facilities 159

located within fifty miles of the proposed project. 160

(C) A sound recording production company whose sound 161
recording production or sound recording capital infrastructure 162
project is certified under division (B) of this section as a tax 163
credit-eligible production or tax credit-eligible project, after 164
such production or project is completed, may apply to the 165
director of development to receive a refundable credit against 166
the tax imposed under section 5747.02 of the Revised Code, which 167
may be claimed by the company's investor or investors. The 168
director, in consultation with the commissioner, shall prescribe 169
the form and manner of the application under this division and 170
the information or documentation required to be submitted with 171
the application. 172

In addition to the application, the company shall report 173
the eligible expenditures related to that production or project, 174
which the director may require to be prepared by a certified 175
public accountant. Before awarding a certificate under this 176
division, the director may inspect the books, accounts, records, 177
and memoranda of a sound recording production company to audit 178
the accuracy of that report. The amount of credit awarded to 179
investors shall be proportionately reduced by the cost to the 180
director of any such audit. Upon receiving and examining the 181
report, the director may disallow any reported eligible 182
expenditure the director determines is not an eligible 183
expenditure. If the director disallows an expenditure, the 184
director shall issue a written notice to the sound recording 185
production company stating that the expenditure is disallowed 186
and the reason for the disallowance. Upon examination of the 187
report and disallowance of any expenditure, the director shall 188
determine eligible expenditures for the purpose of calculating 189
the amount of the credit. 190

Subject to the aggregate credit limit in division (D) of 191
this section, upon receipt of an application under this 192
division, the director shall issue a certificate to each 193
applicable investor showing the amount of the credit the 194
investor may claim under section 5747.67 of the Revised Code. 195
The director shall calculate that credit as follows: 196

(1) The amount of the credit equals twenty-five per cent 197
of eligible expenditures in excess of ten thousand dollars, 198
multiplied by the investor's proportionate or distributive share 199
of the sound production company if that company is a pass- 200
through entity. 201

(2) The amount of credit awarded to all investors for a 202
production or project shall not exceed seventy-five thousand 203
dollars. If the amount of the credit, as calculated under 204
division (C)(1) of this section, would exceed seventy-five 205
thousand dollars, the director shall reduce the amount of credit 206
awarded to each investor proportionately so that the total 207
amount so awarded to all such investors equals seventy-five 208
thousand dollars. 209

(3) No credit shall be awarded on the basis of any portion 210
of an eligible expenditure that is also an eligible production 211
expenditure that forms the basis of a credit awarded under 212
section 122.85 of the Revised Code. 213

(4) No credit shall be awarded for taxable years beginning 214
on or after January 1, 2027. 215

(D) The aggregate amount of credits certified for all 216
investors under division (C) of this section for any fiscal year 217
shall not exceed one million dollars. The director shall award 218
credit certificates for tax credit-eligible productions or tax 219

credit-eligible projects on a first-come, first-served basis. 220

(E) The director of development shall transmit a copy of 221
each certificate to the tax commissioner. The director in 222
consultation with the commissioner shall adopt rules in 223
accordance with Chapter 119. of the Revised Code necessary for 224
the administration of the credit authorized in this section. 225
Notwithstanding any provision of section 121.95 of the Revised 226
Code to the contrary, a regulatory restriction contained in a 227
rule adopted under this section is not subject to sections 228
121.95 to 121.953 of the Revised Code. 229

(F) On or before the thirty-first day of October each 230
even-numbered year, beginning with 2024 and ending with 2028, 231
the director of development shall prepare a report evaluating 232
the effect of the credit authorized under this section and 233
submit that report to the chair and ranking minority member of 234
the house of representatives and senate standing committees 235
dealing primarily with issues of taxation. The report shall 236
include the overall effect of such credits, the amount of such 237
credit certificates issued, the number of new jobs created and 238
payroll subject to the tax under section 5747.02 of the Revised 239
Code created as a result of the credits, the economic effect of 240
the credits on the sound recording industry, the amount of new 241
sounds recording infrastructure that has been developed in the 242
state, and any other factors that describe the effect of the 243
credits. 244

(G) The tax commissioner may assess an investor under 245
section 5747.13 of the Revised Code for any amount of credit 246
claimed by the investor but later determined by the commissioner 247
or the director of development to be disallowed under this 248
section, subject to the time limitations in that section. 249

(H) As a condition for a sound recording production 250
company's investors being awarded a credit certificate, the 251
director of development may require a tax credit-eligible 252
production to display the state's name or logo, as prescribed by 253
the director. 254

Sec. 5747.67. (A) Any term used in this section has the 255
same meaning as in section 122.852 of the Revised Code. 256

(B) There is allowed a refundable credit against the tax 257
imposed by section 5747.02 of the Revised Code for any 258
individual who, on the last day of the individual's taxable 259
year, holds a tax credit certificate issued under section 260
122.852 of the Revised Code. The credit shall be claimed for the 261
taxable year that includes the date the certificate was issued. 262
The credit amount equals the amount stated in the certificate. 263
The credit shall be claimed in the order required under section 264
5747.98 of the Revised Code. If the credit amount exceeds the 265
tax otherwise due under section 5747.02 of the Revised Code 266
after deducting all other credits in that order, the excess 267
shall be refunded. 268

Sec. 5747.98. (A) To provide a uniform procedure for 269
calculating a taxpayer's aggregate tax liability under section 270
5747.02 of the Revised Code, a taxpayer shall claim any credits 271
to which the taxpayer is entitled in the following order: 272

Either the retirement income credit under division (B) of 273
section 5747.055 of the Revised Code or the lump sum retirement 274
income credits under divisions (C), (D), and (E) of that 275
section; 276

Either the senior citizen credit under division (F) of 277
section 5747.055 of the Revised Code or the lump sum 278

distribution credit under division (G) of that section;	279
The dependent care credit under section 5747.054 of the Revised Code;	280 281
The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	282 283
The campaign contribution credit under section 5747.29 of the Revised Code;	284 285
The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	286 287
The joint filing credit under division (G) of section 5747.05 of the Revised Code;	288 289
The earned income credit under section 5747.71 of the Revised Code;	290 291
The nonrefundable credit for education expenses under section 5747.72 of the Revised Code;	292 293
The nonrefundable credit for donations to scholarship granting organizations under section 5747.73 of the Revised Code;	294 295 296
The nonrefundable credit for tuition paid to a nonchartered nonpublic school under section 5747.75 of the Revised Code;	297 298 299
The nonrefundable vocational job credit under section 5747.057 of the Revised Code;	300 301
The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;	302 303
The enterprise zone credit under section 5709.66 of the Revised Code;	304 305

The credit for beginning farmers who participate in a financial management program under division (B) of section 5747.77 of the Revised Code;	306 307 308
The credit for commercial vehicle operator training expenses under section 5747.82 of the Revised Code;	309 310
The credit for selling or renting agricultural assets to beginning farmers under division (A) of section 5747.77 of the Revised Code;	311 312 313
The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	314 315
The small business investment credit under section 5747.81 of the Revised Code;	316 317
The nonrefundable lead abatement credit under section 5747.26 of the Revised Code;	318 319
The opportunity zone investment credit under section 122.84 of the Revised Code;	320 321
The enterprise zone credits under section 5709.65 of the Revised Code;	322 323
The research and development credit under section 5747.331 of the Revised Code;	324 325
The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	326 327
The nonresident credit under division (A) of section 5747.05 of the Revised Code;	328 329
The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	330 331
The refundable motion picture and Broadway theatrical	332

production credit under section 5747.66 of the Revised Code;	333
The refundable jobs creation credit or job retention	334
credit under division (A) of section 5747.058 of the Revised	335
Code;	336
The refundable credit for taxes paid by a qualifying	337
entity granted under section 5747.059 of the Revised Code;	338
The refundable credits for taxes paid by a qualifying	339
pass-through entity granted under division (I) of section	340
5747.08 of the Revised Code;	341
The refundable credit under section 5747.80 of the Revised	342
Code for losses on loans made to the Ohio venture capital	343
program under sections 150.01 to 150.10 of the Revised Code;	344
The refundable credit for rehabilitating a historic	345
building under section 5747.76 of the Revised Code;	346
The refundable credit under section 5747.39 of the Revised	347
Code for taxes levied under section 5747.38 of the Revised Code	348
paid by an electing pass-through entity;	349
<u>The refundable credit for sound recording production under</u>	350
<u>section 5747.67 of the Revised Code.</u>	351
(B) For any credit, except the refundable credits	352
enumerated in this section and the credit granted under division	353
(H) of section 5747.08 of the Revised Code, the amount of the	354
credit for a taxable year shall not exceed the taxpayer's	355
aggregate amount of tax due under section 5747.02 of the Revised	356
Code, after allowing for any other credit that precedes it in	357
the order required under this section. Any excess amount of a	358
particular credit may be carried forward if authorized under the	359
section creating that credit. Nothing in this chapter shall be	360

construed to allow a taxpayer to claim, directly or indirectly, 361
a credit more than once for a taxable year. 362

Section 2. That existing sections 107.036 and 5747.98 of 363
the Revised Code are hereby repealed. 364

Section 3. Section 5747.98 of the Revised Code is 365
presented in this act as a composite of the section as amended 366
by both H.B. 45 and H.B. 66 of the 134th General Assembly. The 367
General Assembly, applying the principle stated in division (B) 368
of section 1.52 of the Revised Code that amendments are to be 369
harmonized if reasonably capable of simultaneous operation, 370
finds that the composite is the resulting version of the section 371
in effect prior to the effective date of the section as 372
presented in this act. 373