As Introduced

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H. B. No. 498

Representative Fraizer

Cosponsors: Representatives Carfagna, Ginter, Hambley, Kent, Lipps

A BILL

To amend sections 5747.08 and 5747.98 and to enact section 5747.85 of the Revised Code to authorize a refundable income tax credit for disability-related home expenses.

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

Section 1. That sections 5747.08 and 5747.98 be amended and section 5747.85 of the Revised Code be enacted to read as follows:

Sec. 5747.08. An annual return with respect to the tax imposed by section 5747.02 of the Revised Code and each tax imposed under Chapter 5748. of the Revised Code shall be made by every taxpayer for any taxable year for which the taxpayer is liable for the tax imposed by that section or under that chapter, unless the total credits allowed under division (E) of section 5747.05 and divisions (F) and (G) of section 5747.055 of the Revised Code for the year are equal to or exceed the tax imposed by section 5747.02 of the Revised Code, in which case no return shall be required unless the taxpayer is liable for a tax imposed pursuant to Chapter 5748. of the Revised Code.

(A) If an individual is deceased, any return or notice required of that individual under this chapter shall be made and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(B) If an individual is unable to make a return or notice required by this chapter, the return or notice required of that individual shall be made and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(C) Returns or notices required of an estate or a trust shall be made and filed by the fiduciary of the estate or trust.

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) of this section, any pass-through entity may file a single return on behalf of one or more of the entity's investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code. The single return shall set forth the name, address, and social security number or other identifying number of each of those pass-through entity investors and shall indicate the distributive share of each of those pass-through entity investor's income taxable in this state in accordance with sections 5747.20 to 5747.231 of the Revised Code. Such pass-through entity investors for whom the pass-through entity elects to file a single return are not entitled to the exemption or credit provided for by sections 5747.02 and 5747.022 of the Revised Code; shall calculate the tax before business credits at the highest rate of tax set forth in section 5747.02 of the Revised Code for the taxable year for which the return is filed; and are entitled to only their distributive share of the business credits as defined in division (D)(2) of this section. A single check drawn by the pass-through entity shall accompany the return in full payment of the tax due, as shown on the single return, for such investors, other than investors who are persons subject to the tax imposed under section 5733.06 of the Revised Code.

(b)(i) A pass-through entity shall not include in such a single return any investor that is a trust to the extent that any direct or indirect current, future, or contingent beneficiary of the trust is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(ii) A pass-through entity shall not include in such a single return any investor that is itself a pass-through entity to the extent that any direct or indirect investor in the second pass-through entity is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(c) Nothing in division (D) of this section precludes the tax commissioner from requiring such investors to file the return and make the payment of taxes and related interest, penalty, and interest penalty required by this section or section 5747.02, 5747.09, or 5747.15 of the Revised Code. Nothing in division (D) of this section precludes such an investor from filing the annual return under this section, utilizing the refundable credit equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor under division (I) of this section, and making the payment of taxes imposed under section 5747.02 of the Revised Code. Nothing in division (D) of this section shall be construed to provide to such an investor or pass-through entity any additional deduction or credit, other than the credit provided by division (I) of this section, solely on account of the entity's filing a return in accordance with this section. Such a pass-through entity also shall make the filing and payment of estimated taxes on behalf of the pass-through entity investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code.

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

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

(b) The senior citizen credit under division (F) of section 5747.055 of the Revised Code;

(c) The lump sum distribution credit under division (G) of section 5747.055 of the Revised Code;

(d) The dependent care credit under section 5747.054 of the Revised Code;

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

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

(g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;

(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;

(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

(j) The joint filing credit under division (E) of section

5747.05 of the Revised Code;

(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;

(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

(m) The earned income tax credit under section 5747.71 of the Revised Code;

(n) The lead abatement credit under section 5747.26 of the Revised Code;

(o) The credit for disability-related home expenses under section 5747.85 of the Revised Code.

(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.

(4) If a pass-through entity makes the election provided for under division (D) of this section, the pass-through entity shall be liable for any additional taxes, interest, interest penalty, or penalties imposed by this chapter if the tax commissioner finds that the single return does not reflect the correct tax due by the pass-through entity investors covered by that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass-through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass-through

entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section, "correct tax due" means the tax that would have been paid by the pass-through entity had the single return been filed in a manner reflecting the commissioner's findings. Nothing in division (D) of this section shall be construed to make or hold a pass-through entity liable for tax attributable to a pass-through entity investor's income from a source other than the pass-through entity electing to file the single return.

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

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 may elect to file separate or joint returns, and, pursuant to that election, their liabilities are 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 which the return is filed, the taxpayer shall pay at the time the tax liability is paid an amount of interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that liability from the time that payment is due without extension to the time of actual payment. Except as provided in section 5747.132 of the Revised Code, in addition to all other interest charges and penalties, all taxes imposed under this chapter or Chapter 5748. of the Revised Code and remaining unpaid after they become due, except combined amounts due of one dollar or less, bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code until paid or until the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

If the commissioner considers it necessary in order to ensure the payment of the tax imposed by section 5747.02 of the Revised Code or any tax imposed under Chapter 5748. of the

Revised Code, the commissioner may require returns and payments to be made otherwise than as provided in this section.

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

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

(I) If a pass-through entity elects to file a single return under division (D) of this section and if any investor is required to file the annual 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 or any other investor elects to file the annual return, 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 purpose 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.

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

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

(L) A taxpayer claiming the deduction under division (A)(31) of section 5747.01 of the Revised Code for a taxable year shall indicate on the taxpayer's return the north American industry classification system code of each business or professional activity from which the taxpayer's business income was derived. The tax commissioner shall provide space on the return for this purpose and shall prescribe, by rule adopted in accordance with Chapter 119. of the Revised Code, the manner by which such a taxpayer shall determine the taxpayer's proper classification codes and business or professional activities from which the taxpayer derives business income.

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

Sec. 5747.85. (A) As used in this section:

(1) "Activity of daily living" has the same meaning as in section 7702B of the Internal Revenue Code.

(2) "Qualifying taxpayer" means a taxpayer who, or whose spouse or dependent, is either over fifty-nine years of age on the last day of the taxpayer's taxable year or permanently disabled with documentation from a licensed health care provider certifying that they require assistance for at least one activity of daily living.

(3) "Disability-related home expenses" means any expenses incurred for the purpose of facilitating activities of daily living within or about a taxpayer's residence and increasing the amount of time the taxpayer or taxpayer's spouse or dependent may continue to inhabit the residence before needing to relocate to an assisted living facility. Disability-related home expenses include the following:

(a) Modifications to the taxpayer's existing residence, provided that the modification is designed to improve accessibility and provide universal visitability in accordance with guidelines established by the department of aging. Modifications may include, but are not limited to, the installation of wheelchair ramps, bathtub bars, and zero-step entrances.

(b) Expenses related to respite care, adult day care, hiring a home aide or personal care attendant, or assistive technology necessary for the care of the taxpayer or taxpayer's spouse or dependent.

"Disability-related home expenses" does not include general household maintenance expenses, such as expenses related to painting, plumbing, electrical repairs, or exterior maintenance.

(4) "Licensed health care professional" means any of the following:

(a) A physician authorized under Chapter 4731. of the Revised Code to practice medicine or osteopathic medicine;

(b) A registered nurse, advanced practice registered nurse, or licensed practical nurse licensed under Chapter 4723. of the Revised Code;

(c) A physician assistant licensed under Chapter 4730. of the Revised Code.

(B) Subject to division (C) of this section, there is hereby allowed a refundable credit against the aggregate tax liability under section 5747.02 of the Revised Code for a qualifying taxpayer who, or whose spouse, pays or incurs the costs of disability-related home expenses during the taxable year. The amount of the credit shall equal the cost of the disability-related home expenses but shall not exceed five thousand dollars.

The credit allowed by this section shall be claimed in the order prescribed by section 5747.98 of the Revised Code. If the amount of the credit exceeds the tax otherwise due for the taxable year after allowing for other credits preceding the credit in the order prescribed by that section, the excess shall be refunded to the taxpayer.

(C) To receive a credit under this section, a taxpayer shall submit an application to the department of aging. The department shall prescribe the form of the application. Upon receipt of an application, the department shall approve the application if each of the following apply:

(1) Granting the credit would not cause the total amount of credits approved under this section for the calendar year to exceed ten million dollars.

(2) The department has not previously approved a credit application by the same taxpayer.

(3) The credit application does not relate to a transaction between a taxpayer and a member of the taxpayer's family or between a pass-through entity and a person that holds, directly or indirectly, an ownership interest in the entity. As used in this division, "family" has the same meaning as in section 5747.011 of the Revised Code.

After the department either approves or rejects the application, the department shall provide notice to the taxpayer in the form of a certificate sent by mail.

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

(1) Either the retirement income credit under division (B)

of section 5747.055 of the Revised Code or the lump sum retirement income credits under divisions (C), (D), and (E) of that section;

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

(3) The dependent care credit under section 5747.054 of the Revised Code;

(4) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;

(5) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

(6) The joint filing credit under division (G) of section 5747.05 of the Revised Code;

(7) The earned income credit under section 5747.71 of the Revised Code;

(8) The credit for adoption of a minor child under section 5747.37 of the Revised Code;

(9) The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;

(10) The enterprise zone credit under section 5709.66 of the Revised Code;

(11) The ethanol plant investment credit under section 5747.75 of the Revised Code;

(12) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;

(13) The small business investment credit under section

5747.81 of the Revised Code;

(14) The nonrefundable lead abatement credit under section 5747.26 of the Revised Code;

(15) The opportunity zone investment credit under section 122.84 of the Revised Code;

(16) The enterprise zone credits under section 5709.65 of the Revised Code;

(17) The research and development credit under section 5747.331 of the Revised Code;

(18) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;

(19) The nonresident credit under division (A) of section 5747.05 of the Revised Code;

(20) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

(21) The refundable motion picture and broadway theatrical production credit under section 5747.66 of the Revised Code;

(22) The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;

(23) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;

(24) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;

(25) 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;

(26) The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;

(27) The refundable credit for disability-related home expenses under section 5747.85 of the Revised Code.

(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 Code, 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.

Section 2. That existing sections 5747.08 and 5747.98 of the Revised Code are hereby repealed.

Section 3. The amendment or enactment by this act of sections 5747.08, 5747.85, and 5747.98 of the Revised Code shall apply to taxable years beginning on or after January 1, 2021.