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Representatives Becker, Leland

**Cosponsors: Representatives Vitale, Retherford, Keller, Duffey, Thompson,
Brinkman, Hambley, Henne, Dean, Roegner, Hood, Riedel, Goodman, Schaffer,
Butler, Wiggam, Koehler, Slaby, Conditt, Brenner, Sweeney, Boggs, Zeltwanger,
Miller, Young**

A BILL

To amend section 5747.08 of the Revised Code to
allow married couples to elect to file either
separate state tax returns or a joint state
return, irrespective of their federal filing
status.

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

Section 1. That section 5747.08 of the Revised Code be
amended 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 17
imposed pursuant to Chapter 5748. of the Revised Code. 18

(A) If an individual is deceased, any return or notice 19
required of that individual under this chapter shall be made and 20
filed by that decedent's executor, administrator, or other 21
person charged with the property of that decedent. 22

(B) If an individual is unable to make a return or notice 23
required by this chapter, the return or notice required of that 24
individual shall be made and filed by the individual's duly 25
authorized agent, guardian, conservator, fiduciary, or other 26
person charged with the care of the person or property of that 27
individual. 28

(C) Returns or notices required of an estate or a trust 29
shall be made and filed by the fiduciary of the estate or trust. 30

(D) (1) (a) Except as otherwise provided in division (D) (1) 31
(b) of this section, any pass-through entity may file a single 32
return on behalf of one or more of the entity's investors other 33
than an investor that is a person subject to the tax imposed 34
under section 5733.06 of the Revised Code. The single return 35
shall set forth the name, address, and social security number or 36
other identifying number of each of those pass-through entity 37
investors and shall indicate the distributive share of each of 38
those pass-through entity investor's income taxable in this 39
state in accordance with sections 5747.20 to 5747.231 of the 40
Revised Code. Such pass-through entity investors for whom the 41
pass-through entity elects to file a single return are not 42
entitled to the exemption or credit provided for by sections 43
5747.02 and 5747.022 of the Revised Code; shall calculate the 44
tax before business credits at the highest rate of tax set forth 45
in section 5747.02 of the Revised Code for the taxable year for 46

which the return is filed; and are entitled to only their 47
distributive share of the business credits as defined in 48
division (D) (2) of this section. A single check drawn by the 49
pass-through entity shall accompany the return in full payment 50
of the tax due, as shown on the single return, for such 51
investors, other than investors who are persons subject to the 52
tax imposed under section 5733.06 of the Revised Code. 53

(b) (i) A pass-through entity shall not include in such a 54
single return any investor that is a trust to the extent that 55
any direct or indirect current, future, or contingent 56
beneficiary of the trust is a person subject to the tax imposed 57
under section 5733.06 of the Revised Code. 58

(ii) A pass-through entity shall not include in such a 59
single return any investor that is itself a pass-through entity 60
to the extent that any direct or indirect investor in the second 61
pass-through entity is a person subject to the tax imposed under 62
section 5733.06 of the Revised Code. 63

(c) Nothing in division (D) of this section precludes the 64
tax commissioner from requiring such investors to file the 65
return and make the payment of taxes and related interest, 66
penalty, and interest penalty required by this section or 67
section 5747.02, 5747.09, or 5747.15 of the Revised Code. 68
Nothing in division (D) of this section precludes such an 69
investor from filing the annual return under this section, 70
utilizing the refundable credit equal to the investor's 71
proportionate share of the tax paid by the pass-through entity 72
on behalf of the investor under division (I) of this section, 73
and making the payment of taxes imposed under section 5747.02 of 74
the Revised Code. Nothing in division (D) of this section shall 75
be construed to provide to such an investor or pass-through 76

entity any additional deduction or credit, other than the credit 77
provided by division (I) of this section, solely on account of 78
the entity's filing a return in accordance with this section. 79
Such a pass-through entity also shall make the filing and 80
payment of estimated taxes on behalf of the pass-through entity 81
investors other than an investor that is a person subject to the 82
tax imposed under section 5733.06 of the Revised Code. 83

(2) For the purposes of this section, "business credits" 84
means the credits listed in section 5747.98 of the Revised Code 85
excluding the following credits: 86

(a) The retirement income credit under division (B) of 87
section 5747.055 of the Revised Code; 88

(b) The senior citizen credit under division (F) of 89
section 5747.055 of the Revised Code; 90

(c) The lump sum distribution credit under division (G) of 91
section 5747.055 of the Revised Code; 92

(d) The dependent care credit under section 5747.054 of 93
the Revised Code; 94

(e) The lump sum retirement income credit under division 95
(C) of section 5747.055 of the Revised Code; 96

(f) The lump sum retirement income credit under division 97
(D) of section 5747.055 of the Revised Code; 98

(g) The lump sum retirement income credit under division 99
(E) of section 5747.055 of the Revised Code; 100

(h) The credit for displaced workers who pay for job 101
training under section 5747.27 of the Revised Code; 102

(i) The twenty-dollar personal exemption credit under 103

section 5747.022 of the Revised Code; 104

(j) The joint filing credit under division (E) of section 105
5747.05 of the Revised Code; 106

(k) The nonresident credit under division (A) of section 107
5747.05 of the Revised Code; 108

(l) The credit for a resident's out-of-state income under 109
division (B) of section 5747.05 of the Revised Code; 110

(m) The low-income credit under section 5747.056 of the 111
Revised Code; 112

(n) The earned income tax credit under section 5747.71 of 113
the Revised Code. 114

(3) The election provided for under division (D) of this 115
section applies only to the taxable year for which the election 116
is made by the pass-through entity. Unless the tax commissioner 117
provides otherwise, this election, once made, is binding and 118
irrevocable for the taxable year for which the election is made. 119
Nothing in this division shall be construed to provide for any 120
deduction or credit that would not be allowable if a nonresident 121
pass-through entity investor were to file an annual return. 122

(4) If a pass-through entity makes the election provided 123
for under division (D) of this section, the pass-through entity 124
shall be liable for any additional taxes, interest, interest 125
penalty, or penalties imposed by this chapter if the tax 126
commissioner finds that the single return does not reflect the 127
correct tax due by the pass-through entity investors covered by 128
that return. Nothing in this division shall be construed to 129
limit or alter the liability, if any, imposed on pass-through 130
entity investors for unpaid or underpaid taxes, interest, 131
interest penalty, or penalties as a result of the pass-through 132

entity's making the election provided for under division (D) of 133
this section. For the purposes of division (D) of this section, 134
"correct tax due" means the tax that would have been paid by the 135
pass-through entity had the single return been filed in a manner 136
reflecting the commissioner's findings. Nothing in division (D) 137
of this section shall be construed to make or hold a pass- 138
through entity liable for tax attributable to a pass-through 139
entity investor's income from a source other than the pass- 140
through entity electing to file the single return. 141

(E) If a husband and wife file a joint federal income tax 142
return for a taxable year, they ~~shall~~ may elect to file a joint 143
return or separate returns under this section for that taxable 144
year, and, pursuant to that election, their liabilities are 145
separate if they file separate returns or joint and several, 146
~~but, if they file a joint return. If the federal income tax~~ 147
liability of either spouse is determined on a separate federal 148
income tax return, ~~they shall file separate returns under this~~ 149
~~section.~~ 150

~~If or if~~ either spouse is not required to file a federal 151
income tax return and either or both are required to file a 152
return pursuant to this chapter, they may elect to file separate 153
or joint returns, and, pursuant to that election, their 154
liabilities are separate or joint and several. If a husband and 155
wife file separate returns pursuant to this chapter, each must 156
claim the taxpayer's own exemption, but not both, as authorized 157
under section 5747.02 of the Revised Code on the taxpayer's own 158
return. 159

(F) Each return or notice required to be filed under this 160
section shall contain the signature of the taxpayer or the 161
taxpayer's duly authorized agent and of the person who prepared 162

the return for the taxpayer, and shall include the taxpayer's 163
social security number. Each return shall be verified by a 164
declaration under the penalties of perjury. The tax commissioner 165
shall prescribe the form that the signature and declaration 166
shall take. 167

(G) Each return or notice required to be filed under this 168
section shall be made and filed as required by section 5747.04 169
of the Revised Code, on or before the fifteenth day of April of 170
each year, on forms that the tax commissioner shall prescribe, 171
together with remittance made payable to the treasurer of state 172
in the combined amount of the state and all school district 173
income taxes shown to be due on the form. 174

Upon good cause shown, the commissioner may extend the 175
period for filing any notice or return required to be filed 176
under this section and may adopt rules relating to extensions. 177
If the extension results in an extension of time for the payment 178
of any state or school district income tax liability with 179
respect to which the return is filed, the taxpayer shall pay at 180
the time the tax liability is paid an amount of interest 181
computed at the rate per annum prescribed by section 5703.47 of 182
the Revised Code on that liability from the time that payment is 183
due without extension to the time of actual payment. Except as 184
provided in section 5747.132 of the Revised Code, in addition to 185
all other interest charges and penalties, all taxes imposed 186
under this chapter or Chapter 5748. of the Revised Code and 187
remaining unpaid after they become due, except combined amounts 188
due of one dollar or less, bear interest at the rate per annum 189
prescribed by section 5703.47 of the Revised Code until paid or 190
until the day an assessment is issued under section 5747.13 of 191
the Revised Code, whichever occurs first. 192

If the commissioner considers it necessary in order to 193
ensure the payment of the tax imposed by section 5747.02 of the 194
Revised Code or any tax imposed under Chapter 5748. of the 195
Revised Code, the commissioner may require returns and payments 196
to be made otherwise than as provided in this section. 197

To the extent that any provision in this division 198
conflicts with any provision in section 5747.026 of the Revised 199
Code, the provision in that section prevails. 200

(H) The amounts withheld by an employer pursuant to 201
section 5747.06 of the Revised Code, a casino operator pursuant 202
to section 5747.063 of the Revised Code, or a lottery sales 203
agent pursuant to section 5747.064 of the Revised Code shall be 204
allowed to the recipient of the compensation casino winnings, or 205
lottery prize award as credits against payment of the 206
appropriate taxes imposed on the recipient by section 5747.02 207
and under Chapter 5748. of the Revised Code. 208

(I) If a pass-through entity elects to file a single 209
return under division (D) of this section and if any investor is 210
required to file the annual return and make the payment of taxes 211
required by this chapter on account of the investor's other 212
income that is not included in a single return filed by a pass- 213
through entity or any other investor elects to file the annual 214
return, the investor is entitled to a refundable credit equal to 215
the investor's proportionate share of the tax paid by the pass- 216
through entity on behalf of the investor. The investor shall 217
claim the credit for the investor's taxable year in which or 218
with which ends the taxable year of the pass-through entity. 219
Nothing in this chapter shall be construed to allow any credit 220
provided in this chapter to be claimed more than once. For the 221
purpose of computing any interest, penalty, or interest penalty, 222

the investor shall be deemed to have paid the refundable credit 223
provided by this division on the day that the pass-through 224
entity paid the estimated tax or the tax giving rise to the 225
credit. 226

(J) The tax commissioner shall ensure that each return 227
required to be filed under this section includes a box that the 228
taxpayer may check to authorize a paid tax preparer who prepared 229
the return to communicate with the department of taxation about 230
matters pertaining to the return. The return or instructions 231
accompanying the return shall indicate that by checking the box 232
the taxpayer authorizes the department of taxation to contact 233
the preparer concerning questions that arise during the 234
processing of the return and authorizes the preparer only to 235
provide the department with information that is missing from the 236
return, to contact the department for information about the 237
processing of the return or the status of the taxpayer's refund 238
or payments, and to respond to notices about mathematical 239
errors, offsets, or return preparation that the taxpayer has 240
received from the department and has shown to the preparer. 241

(K) The tax commissioner shall permit individual taxpayers 242
to instruct the department of taxation to cause any refund of 243
overpaid taxes to be deposited directly into a checking account, 244
savings account, or an individual retirement account or 245
individual retirement annuity, or preexisting college savings 246
plan or program account offered by the Ohio tuition trust 247
authority under Chapter 3334. of the Revised Code, as designated 248
by the taxpayer, when the taxpayer files the annual return 249
required by this section electronically. 250

(L) The tax commissioner may adopt rules to administer 251
this section. 252

Section 2. That existing section 5747.08 of the Revised	253
Code is hereby repealed.	254
 Section 3. The amendment by this act of section 5747.08 of	255
the Revised Code applies to taxable years beginning in 2017 or	256
thereafter.	257