As Introduced

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S. B. No. 187

Senators Smith, Schaffer

To amend sections 107.036 and 5747.98 and to enact sections 122.853 and 5747.68 of the Revised Code to temporarily authorize a refundable income tax credit for investing in a sound recording production company.

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

Section 1. That sections 107.036 and 5747.98 be amended and sections 122.853 and 5747.68 of the Revised Code be enacted to read as follows:

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

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

(1) The job creation tax credit under section 122.17 of

the Revised Code;

(2) The job retention tax credit under section 122.171 of the Revised Code;

(3) The historic preservation tax credit under section 149.311 of the Revised Code;

(4) The motion picture and broadway theatrical production tax credit under section 122.85 of the Revised Code;

(5) The new markets tax credit under section 5725.33 of the Revised Code;

(6) The research and development credit under section 166.21 of the Revised Code;

(7) The small business investment credit under section 122.86 of the Revised Code;

(8) The rural growth investment credit under section 122.152 of the Revised Code;

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

(10) The transformational mixed use development credit under section 122.09 of the Revised Code;

(11) The sound recording production credit under section 122.853 of the Revised Code.

Sec. 122.853. (A) As used in this section:

(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 project.

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

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

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

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

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

(5) "Tax credit-eligible production" means the production of a sound recording, or a series of such productions occurring over a twelve-month period, certified by the director of development under division (B) of this section as eligible for the tax credit authorized under section 5747.68 of the Revised Code.

(6) "Tax credit-eligible project" means a capital project to construct or improve infrastructure for creating sound recording productions certified by the director of development under division (B) of this section as eligible for the tax credit authorized under section 5747.68 of the Revised Code.

(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.

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

(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.

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

(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.

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

(i) The production's distribution plan;

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

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

(iv) A list of the production's principal creative elements, including performing artists and producers;

(v) The location, including street address, of the recording studio or other location where production will occur;

(vi) A statement that the production will qualify as a tax credit-eligible production;

(vii) The production's estimated start and completion dates;

(viii) Any other information required by the director.

(b) An application to certify a tax credit-eligible project shall include all of the following:

(i) A detailed description of the project, including the project's location;

(ii) The project's preliminary budget, including eligible expenditures;

(iii) A statement that the project will qualify as a tax credit-eligible sound recording infrastructure project;

(iv) The project's estimated start and completion dates;

(v) Any other information required by the director.

(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 days after receiving a complete application, the director shall

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

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

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

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

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

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

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

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

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

Subject to the aggregate credit limit in division (D) of

this section, upon receipt of an application under this division, the director shall issue a certificate to each applicable investor showing the amount of the credit the investor may claim under section 5747.68 of the Revised Code. The director shall calculate that credit as follows:

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

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

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

(4) No credit shall be awarded for taxable years beginning on or after January 1, 2029.

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

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

(F) On or before the thirty-first day of October each even-numbered year, beginning with 2026 and ending with 2030, the director of development shall prepare a report evaluating the effect of the credit authorized under this section and submit that report to the chair and ranking minority member of the house of representatives and senate standing committees dealing primarily with issues of taxation. The report shall include the overall effect of such credits, the amount of such credit certificates issued, the number of new jobs created and payroll subject to the tax under section 5747.02 of the Revised Code created as a result of the credits, the economic effect of the credits on the sound recording industry, the amount of new sounds recording infrastructure that has been developed in the state, and any other factors that describe the effect of the credits.

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

(H) As a condition for a sound recording production

company's investors being awarded a credit certificate, the director of development may require a tax credit-eligible production to display the state's name or logo, as prescribed by the director.

Sec. 5747.68. (A) Any term used in this section has the same meaning as in section 122.853 of the Revised Code.

(B) There is allowed a refundable credit against the tax imposed by section 5747.02 of the Revised Code for any individual who, on the last day of the individual's taxable year, holds a tax credit certificate issued under section 122.853 of the Revised Code. The credit shall be claimed for the taxable year that includes the date the certificate was issued. The credit amount equals the amount stated in the certificate. The credit shall be claimed in the order required under section 5747.98 of the Revised Code. If the credit amount exceeds the tax otherwise due under section 5747.02 of the Revised Code after deducting all other credits in that order, the excess shall be refunded.

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:

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;

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;

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

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

The campaign contribution credit under section 5747.29 of the Revised Code;

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

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

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

The nonrefundable credit for education expenses under section 5747.72 of the Revised Code;

The nonrefundable credit for donations to scholarship granting organizations under section 5747.73 of the Revised Code;

The nonrefundable credit for tuition paid to a nonchartered nonpublic school under section 5747.75 of the Revised Code;

The nonrefundable vocational job credit under section 5747.057 of the Revised Code;

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

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

The credit for beginning farmers who participate in a

financial management program under division (B) of section 5747.77 of the Revised Code;

The credit for commercial vehicle operator training expenses under section 5747.82 of the Revised Code;

The nonrefundable welcome home Ohio (WHO) program credit under section 122.633 of the Revised Code;

The credit for selling or renting agricultural assets to beginning farmers under division (A) of section 5747.77 of the Revised Code;

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

The small business investment credit under section 5747.81 of the Revised Code;

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

The opportunity zone investment credit under section 5747.86 of the Revised Code;

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

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

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

The nonrefundable Ohio low-income housing tax credit under section 5747.83 of the Revised Code;

The nonrefundable affordable single-family home credit under section 5747.84 of the Revised Code;

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

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

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

The refundable credit for film and theater capital improvement projects under section 5747.67 of the Revised Code;

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

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

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

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;

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

<u>The refundable credit for sound recording production under section 5747.68 of the Revised Code;</u>

The refundable credit under section 5747.39 of the Revised Code for taxes levied under section 5747.38 of the Revised Code paid by an electing pass-through entity.

(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 107.036 and 5747.98 of the Revised Code are hereby repealed.