

As Introduced

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H. B. No. 10

Representative Sears

Cosponsors: Representatives Adams, J., Adams, R., Wachtmann

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A B I L L

To amend sections 5747.98 and 5751.98 and to enact 1
sections 3746.241, 5747.78, and 5751.54 of the 2
Revised Code to authorize refundable tax credits 3
through 2017 for the completion of a voluntary 4
action to remediate a contaminated site and for 5
the return of such sites to productive use, and to 6
exempt persons through 2017 who have been issued 7
covenants not to sue under the Voluntary Action 8
Program from certain fees and penalties for one 9
year after the issuance of such a covenant. 10

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

Section 1. That sections 5747.98 and 5751.98 be amended and 11
sections 3746.241, 5747.78, and 5751.54 of the Revised Code be 12
enacted to read as follows: 13

Sec. 3746.241. A person to which a covenant not to sue is 14
issued under section 3746.12 of the Revised Code concerning a 15
voluntary action that is initiated not later than December 31, 16
2017, is exempt from any fees or civil or administrative penalties 17
that are authorized to be levied or imposed under any 18
environmental law with respect to the property that is the subject 19

of the covenant not to sue for a period of one year after the 20
issuance of the covenant. The director of environmental protection 21
shall adopt rules in accordance with Chapter 119. of the Revised 22
Code that are necessary to implement this section. 23

For purposes of this section, a voluntary action is initiated 24
upon the commencement of a phase I property assessment under this 25
chapter. 26

As used in this section, "environmental law" means this 27
chapter or Chapter 3704., 3734., 3745., 3750., 3751., 3752., 28
6109., or 6111. of the Revised Code or a rule adopted under any of 29
those chapters. 30

Sec. 5747.78. (A) As used in this section: 31

(1) "Voluntary action," "remedial activities," "property," 32
and "covenant not to sue" have the same meanings as in section 33
3746.01 of the Revised Code. 34

(2) "Remediation expenditures" means expenditures that are 35
made directly to conduct remedial activities on property that is 36
the subject of a voluntary action for which a covenant not to sue 37
has been issued under Chapter 3746. of the Revised Code. 38
"Remediation expenditures" does not include expenditures for 39
remedial activities derived from grants or other transfers of 40
money from governmental entities to a taxpayer for which there is 41
no repayment obligation. 42

(3) "Pass-through entity" includes a sole proprietorship. 43

(4) Property is used for a "productive use" if it is used by 44
any person to conduct a trade or business or if a certificate of 45
occupancy has been issued for the property by the local authority 46
having jurisdiction to issue such a certificate and the property 47
is suitable for the conduct of a trade or business. For the 48
purposes of this division, the use of property to conduct a trade 49

or business includes a pass-through entity leasing the property to 50
lessees for commercial, industrial, or residential purposes. 51

(5) A voluntary action is "initiated" upon commencement of a 52
phase I property assessment under Chapter 3746. of the Revised 53
Code. 54

(B) There is allowed a refundable credit against the tax 55
imposed by section 5747.02 of the Revised Code for a taxpayer that 56
is an equity owner of a pass-through entity to which a covenant 57
not to sue has been issued under Chapter 3746. of the Revised Code 58
on or after the effective date of this section. The credit equals 59
the taxpayer's distributive or proportionate share of twenty-five 60
per cent of the remediation expenditures paid or incurred by the 61
entity. 62

The credit shall be claimed for the taxpayer's taxable year 63
that ends in the pass-through entity's taxable year in which the 64
covenant not to sue was issued to the entity by the director of 65
environmental protection. The credit may not be claimed for any 66
remediation expenditures paid or incurred for a voluntary action 67
initiated after December 31, 2017. 68

A taxpayer may claim a credit under this division for each 69
voluntary action for which a separate covenant not to sue was 70
issued to a pass-through entity of which the taxpayer is an equity 71
owner. 72

(C) There is allowed an additional refundable credit against 73
the tax imposed by section 5747.02 of the Revised Code for a 74
taxpayer that qualifies for the credit under division (B) of this 75
section if the property that was the subject of the covenant not 76
to sue is used for a productive use. The credit equals the sum of 77
twenty-five per cent of the remediation expenditures paid or 78
incurred by the pass-through entity to which the covenant was 79
issued. A credit may be claimed under this division regardless of 80

whether a credit was claimed under division (B) of this section. 81

The credit shall be claimed for the taxpayer's taxable year 82
that ends in the pass-through entity's taxable year in which the 83
property is first used for a productive use after the covenant not 84
to sue was issued. The credit may not be claimed for any 85
remediation expenditures paid or incurred for a voluntary action 86
initiated after December 31, 2017. 87

A taxpayer may claim a credit under this division for each 88
property that is the subject of a voluntary action for which a 89
separate covenant not to sue was issued to a pass-through entity 90
of which the taxpayer is an equity owner. A taxpayer may not claim 91
the credit allowed under this division more than once for each 92
property for which a covenant not to sue was issued. 93

(D) The credits allowed by this section shall be claimed in 94
the order prescribed by section 5747.98 of the Revised Code. If 95
the amount of the credits exceeds the amount of tax otherwise due 96
after deducting all other credits claimed in that order, the 97
excess shall be refunded to the taxpayer. 98

(E) A credit may not be claimed under this section on the 99
basis of a voluntary action on the basis of which a credit was 100
claimed under section 5751.54 of the Revised Code. 101

Sec. 5747.98. (A) To provide a uniform procedure for 102
calculating the amount of tax due under section 5747.02 of the 103
Revised Code, a taxpayer shall claim any credits to which the 104
taxpayer is entitled in the following order: 105

(1) The retirement income credit under division (B) of 106
section 5747.055 of the Revised Code; 107

(2) The senior citizen credit under division (C) of section 108
5747.05 of the Revised Code; 109

(3) The lump sum distribution credit under division (D) of 110

section 5747.05 of the Revised Code;	111
(4) The dependent care credit under section 5747.054 of the Revised Code;	112 113
(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	114 115
(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	116 117
(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	118 119
(8) The low-income credit under section 5747.056 of the Revised Code;	120 121
(9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	122 123
(10) The campaign contribution credit under section 5747.29 of the Revised Code;	124 125
(11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	126 127
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	128 129
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	130 131
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	132 133
(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	134 135
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	136 137
(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	138 139

(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	140 141
(19) The job retention credit under division (B) of section 5747.058 of the Revised Code;	142 143
(20) The credit for selling alternative fuel under section 5747.77 of the Revised Code;	144 145
(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;	146 147 148
(22) The job training credit under section 5747.39 of the Revised Code;	149 150
(23) The enterprise zone credit under section 5709.66 of the Revised Code;	151 152
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	153 154
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	155 156
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	157 158
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	159 160
(28) The export sales credit under section 5747.057 of the Revised Code;	161 162
(29) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	163 164
(30) The enterprise zone credits under section 5709.65 of the Revised Code;	165 166
(31) The research and development credit under section 5747.331 of the Revised Code;	167 168

(32) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	169 170
(33) The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	171 172
(34) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;	173 174
(35) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	175 176
(36) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code;	177 178 179
(37) The refundable credit for tax withheld under division (B)(1) of section 5747.062 of the Revised Code;	180 181
(38) The refundable credit for tax withheld under section 5747.063 of the Revised Code;	182 183
(39) 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;	184 185 186
(40) The refundable motion picture production credit under section 5747.66 of the Revised Code;	187 188
<u>(41) The refundable credits for voluntary actions authorized under section 5747.78 of the Revised Code.</u>	189 190
(B) For any credit, except the refundable credits enumerated in this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due 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	191 192 193 194 195 196 197 198

claim, directly or indirectly, a credit more than once for a 199
taxable year. 200

Sec. 5751.54. (A) As used in this section: 201

(1) "Voluntary action," "remedial activities," "property," 202
and "covenant not to sue" have the same meanings as in section 203
3746.01 of the Revised Code. 204

(2) "Remediation expenditures" means expenditures that are 205
made directly to conduct remedial activities on property that is 206
the subject of a voluntary action for which a covenant not to sue 207
has been issued under Chapter 3746. of the Revised Code. 208
"Remediation expenditures" does not include expenditures for 209
remedial activities derived from grants or other transfers of 210
money from governmental entities for which there is no repayment 211
obligation. 212

(3) Property is used for a "productive use" if it is used by 213
any person to conduct a trade or business or if a certificate of 214
occupancy has been issued for the property by the local authority 215
having jurisdiction to issue such a certificate and the property 216
is suitable for the conduct of a trade or business. For the 217
purposes of this division, the use of property to conduct a trade 218
or business includes a taxpayer leasing the property to lessees 219
for commercial, industrial, or residential purposes. 220

(4) A voluntary action is "initiated" upon commencement of a 221
phase I property assessment under Chapter 3746. of the Revised 222
Code. 223

(B) There is allowed a refundable credit against the tax 224
imposed by this chapter for a taxpayer to which a covenant not to 225
sue has been issued under Chapter 3746. of the Revised Code on or 226
after the effective date of this section. The credit equals 227
twenty-five per cent of the remediation expenditures paid or 228

incurred by the taxpayer. 229

If the taxpayer is a calendar year taxpayer, the credit shall 230
be claimed for the tax period that includes the day on which the 231
covenant not to sue was issued to the taxpayer by the director of 232
environmental protection. If the taxpayer is a calendar quarter 233
taxpayer, one-fourth of the credit amount shall be claimed for the 234
tax period that includes the day on which the covenant not to sue 235
was issued and one-fourth of the credit amount shall be claimed in 236
each of the three ensuing tax periods. 237

A taxpayer may claim a credit under this division for each 238
voluntary action for which a covenant not to sue was issued to the 239
taxpayer. The credit may not be claimed for any remediation 240
expenditures paid or incurred for a voluntary action initiated 241
after December 31, 2017. 242

(C) There is allowed an additional refundable credit against 243
the tax imposed by this chapter for a taxpayer that qualifies for 244
the credit under division (B) of this section if the property that 245
was the subject of the covenant not to sue is owned by the 246
taxpayer and the property is used for a productive use. The credit 247
equals twenty-five per cent of the remediation expenditures paid 248
or incurred by the taxpayer. A credit may be claimed under this 249
division regardless of whether a credit was claimed under division 250
(B) of this section. 251

If the taxpayer is a calendar year taxpayer, the credit shall 252
be claimed for the tax period in which the property is first used 253
for a productive use after the covenant not to sue was issued. If 254
the taxpayer is a calendar quarter taxpayer, one-fourth of the 255
credit amount shall be claimed for the tax period in which the 256
property is first used for a productive use after the covenant not 257
to sue was issued, and one-fourth of the credit amount shall be 258
claimed in each of the three ensuing tax periods. The credit may 259
not be claimed for any remediation expenditures paid or incurred 260

for a voluntary action initiated after December 31, 2017. 261

A taxpayer may claim a credit under this division for each 262
property that is the subject of a voluntary action for which a 263
separate covenant not to sue was issued. The credit may not be 264
claimed more than once for each property for which a covenant not 265
to sue was issued. 266

(D) The credits allowed by this section shall be claimed in 267
the order prescribed by section 5751.98 of the Revised Code. If 268
the amount of the credits exceeds the amount of tax otherwise due 269
after deducting all other credits claimed in that order, the 270
excess shall be refunded to the taxpayer. 271

(E) A credit may not be claimed under this section on the 272
basis of a voluntary action on the basis of which a credit was 273
claimed under section 5747.78 of the Revised Code. 274

Sec. 5751.98. (A) To provide a uniform procedure for 275
calculating the amount of tax due under this chapter, a taxpayer 276
shall claim any credits to which it is entitled in the following 277
order: 278

(1) The nonrefundable jobs retention credit under division 279
(B) of section 5751.50 of the Revised Code; 280

(2) The nonrefundable credit for qualified research expenses 281
under division (B) of section 5751.51 of the Revised Code; 282

(3) The nonrefundable credit for a borrower's qualified 283
research and development loan payments under division (B) of 284
section 5751.52 of the Revised Code; 285

(4) The nonrefundable credit for calendar years 2010 to 2029 286
for unused net operating losses under division (B) of section 287
5751.53 of the Revised Code; 288

(5) The refundable credit for calendar year 2030 for unused 289
net operating losses under division (C) of section 5751.53 of the 290

Revised Code;	291
(6) The refundable jobs creation credit under division (A) of section 5751.50 of the Revised Code;	292 293
<u>(7) The refundable credits for voluntary actions authorized under section 5751.54 of the Revised Code.</u>	294 295
(B) For any credit except the credit <u>refundable credits</u> enumerated in division (A) (4) of this section, the amount of the credit for a tax period shall not exceed the tax due 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 the credit.	296 297 298 299 300 301 302
Section 2. That existing sections 5747.98 and 5751.98 of the Revised Code are hereby repealed.	303 304