

AN ACT

To amend section 5747.11 of the Revised Code to expressly authorize the issuance of an income tax refund in the name of a deceased taxpayer's fiduciary.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 5747.11 of the Revised Code be amended to read as follows:

Sec. 5747.11. (A) The tax commissioner shall refund to employers, qualifying entities, or taxpayers subject to a tax imposed under section 5733.41, 5747.02, or 5747.41, or Chapter 5748. of the Revised Code the amount of any overpayment of such tax.

(B)(1) Except as otherwise provided under divisions (D) and (E) of this section, applications for refund shall be filed with the tax commissioner, on the form prescribed by the commissioner, within four years from the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (B)(3)(b) of section 5747.05, division (E) of section 5747.10, division (A) of section 5747.13, or division (C) of section 5747.45 of the Revised Code.

On filing of the refund application, the commissioner shall determine the amount of refund due and, if that amount exceeds one dollar, certify such amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. Payment shall be made as provided in division (C) of section 126.35 of the Revised Code.

(2) If an individual taxpayer is deceased, a refund may be issued in the name of the decedent and of the executor, administrator, or other person charged with the decedent's property, upon the request of that person. Such a request shall include any documentation, including a copy of the taxpayer's death certificate and any fiduciary or court documents, that the tax commissioner considers necessary to prove that the person making the request is qualified to receive the refund. If the request is for a refund that was previously issued in only the decedent's name, the person making the request must also provide the previously issued payment to the commissioner.

(C)(1) Interest shall be allowed and paid at the rate per annum prescribed by section 5703.47 of the Revised Code on amounts refunded with respect to the tax imposed under section 5747.02 or Chapter 5748. of the Revised Code from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the return is filed, whichever is later, no interest shall be allowed on such overpayment. If the overpayment results from the carryback of a net operating loss or net capital loss to a previous taxable year, the overpayment is deemed not to have been made prior to the filing date, including any extension thereof, for the taxable year in which the net operating loss or net capital loss arises. For purposes of the payment of interest on overpayments, no amount of tax, for any taxable year, shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing such return.

(2) Interest shall be allowed at the rate per annum prescribed by section 5703.47 of the Revised Code on amounts refunded with respect to the taxes imposed under sections 5733.41 and 5747.41 of the Revised Code. The interest shall run from whichever of the following days is the latest until the day the refund is paid: the day the illegal, erroneous, or excessive payment was made; the ninetieth day after the final day the annual report was required to be filed under section 5747.42 of the Revised Code; or the ninetieth day after the day that report was filed.

(D) "Ninety days" shall be substituted for "four years" in division (B) of this section if the taxpayer satisfies both of the following conditions:

(1) The taxpayer has applied for a refund based in whole or in part upon section 5747.059 of the Revised Code;

(2) The taxpayer asserts that either the imposition or collection of the tax imposed or charged by this chapter or any portion of such tax violates the Constitution of the United States or the Constitution of Ohio.

(E)(1) Division (E)(2) of this section applies only if all of the following conditions are satisfied:

(a) A qualifying entity pays an amount of the tax imposed by section 5733.41 or 5747.41 of the Revised Code;

(b) The taxpayer is a qualifying investor as to that qualifying entity;

(c) The taxpayer did not claim the credit provided for in section 5747.059 of the Revised Code as to the tax described in division (E)(1)(a) of this section;

(d) The four-year period described in division (B) of this section has ended as to the taxable year for which the taxpayer otherwise would have claimed that credit.

(2) A taxpayer shall file an application for refund pursuant to division (E) of this section within one year after the date the payment described in division (E)(1)(a) of this section is made. An application filed under division (E)(2) of this section shall claim refund only of overpayments resulting from the taxpayer's failure to claim the credit described in division (E)(1)(c) of this section. Nothing in division (E) of this section shall be construed to relieve a taxpayer from complying with division (A)(15) of section 5747.01 of the Revised Code.

SECTION 2. That existing section 5747.11 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

S. B. No. 231

134th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____