

As Passed by the Senate

132nd General Assembly

Regular Session

2017-2018

S. B. No. 131

Senator Dolan

Cosponsors: Senators Terhar, Peterson, Manning, Beagle, Eklund, Bacon, Balderson, Brown, Coley, Gardner, Hackett, Hite, Hoagland, Hottinger, Huffman, Kunze, Lehner, Obhof, O'Brien, Oelslager, Schiavoni, Sykes, Tavares, Thomas, Uecker, Wilson

A BILL

To amend section 122.17 of the Revised Code to 1
provide that compensation paid to certain home- 2
based employees may be counted for purposes of 3
an employer qualifying for and complying with 4
the terms of a Job Creation Tax Credit. 5

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

Section 1. That section 122.17 of the Revised Code be 6
amended to read as follows: 7

Sec. 122.17. (A) As used in this section: 8

(1) "Payroll" means the total taxable income paid by the 9
employer during the employer's taxable year, or during the 10
calendar year that includes the employer's tax period, to each 11
employee or each home-based employee employed in the project to 12
the extent such payroll is not used to determine the credit 13
under section 122.171 of the Revised Code. "Payroll" excludes 14
amounts paid before the day the taxpayer becomes eligible for 15
the credit and retirement or other benefits paid or contributed 16

by the employer to or on behalf of employees. 17

(2) "Baseline payroll" means Ohio employee payroll, except 18
that the applicable measurement period is the twelve months 19
immediately preceding the date the tax credit authority approves 20
the taxpayer's application or the date the tax credit authority 21
receives the recommendation described in division (C) (2) (a) of 22
this section, whichever occurs first, multiplied by the sum of 23
one plus an annual pay increase factor to be determined by the 24
tax credit authority. 25

(3) "Ohio employee payroll" means the amount of 26
compensation used to determine the withholding obligations in 27
division (A) of section 5747.06 of the Revised Code and paid by 28
the employer during the employer's taxable year, or during the 29
calendar year that includes the employer's tax period, ~~to each~~ 30
the following: 31

(a) An employee employed in the project who is a resident 32
of this state, as defined in section 5747.01 of the Revised 33
Code, to each including a qualifying work-from-home employee not 34
designated as a home-based employee by an applicant under 35
division (C) (1) of this section; 36

(b) An employee employed at the project ~~site location~~ who 37
is not a resident and whose compensation is not exempt from the 38
tax imposed under section 5747.02 of the Revised Code pursuant 39
to a reciprocity agreement with another state under division (A) 40
(3) of section 5747.05 of the Revised Code, ~~or to each;~~ 41

(c) A home-based employee employed in the project, to the 42
extent such . 43

"Ohio employee payroll" excludes any such compensation to 44
the extent it is not used to determine the credit under section 45

122.171 of the Revised Code. ~~"Ohio employee payroll", and~~ 46
excludes amounts paid before the day the taxpayer becomes 47
eligible for the credit under this section. 48

(4) "Excess payroll" means Ohio employee payroll minus 49
baseline payroll. 50

(5) "Home-based employee" means an employee whose services 51
are performed primarily from the employee's residence in this 52
state exclusively for the benefit of the project and whose rate 53
of pay is at least one hundred thirty-one per cent of the 54
federal minimum wage under 29 U.S.C. 206. 55

(6) "Full-time equivalent employees" means the quotient 56
obtained by dividing the total number of hours for which 57
employees were compensated for employment in the project by two 58
thousand eighty. "Full-time equivalent employees" excludes hours 59
that are counted for a credit under section 122.171 of the 60
Revised Code. 61

(7) "Metric evaluation date" means the date by which the 62
taxpayer must meet all of the commitments included in the 63
agreement. 64

(8) "Qualifying work-from-home employee" means an employee 65
who is a resident of this state and whose services are 66
supervised from the employer's project location and performed 67
primarily from a residence of the employee located in this 68
state. 69

(9) "Resident" or "resident of this state" means an 70
individual who is a resident as defined in section 5747.01 of 71
the Revised Code. 72

(B) The tax credit authority may make grants under this 73
section to foster job creation in this state. Such a grant shall 74

take the form of a refundable credit allowed against the tax 75
imposed by section 5725.18, 5726.02, 5729.03, 5733.06, 5736.02, 76
or 5747.02 or levied under Chapter 5751. of the Revised Code. 77
The credit shall be claimed for the taxable years or tax periods 78
specified in the taxpayer's agreement with the tax credit 79
authority under division (D) of this section. With respect to 80
taxes imposed under section 5726.02, 5733.06, or 5747.02 or 81
Chapter 5751. of the Revised Code, the credit shall be claimed 82
in the order required under section 5726.98, 5733.98, 5747.98, 83
or 5751.98 of the Revised Code. The amount of the credit 84
available for a taxable year or for a calendar year that 85
includes a tax period equals the excess payroll for that year 86
multiplied by the percentage specified in the agreement with the 87
tax credit authority. 88

(C) (1) A taxpayer or potential taxpayer who proposes a 89
project to create new jobs in this state may apply to the tax 90
credit authority to enter into an agreement for a tax credit 91
under this section. 92

An application shall not propose to include both home- 93
based employees and employees who are not home-based employees 94
in the computation of Ohio employee payroll for the purposes of 95
the same tax credit agreement, except that a qualifying work- 96
from-home employee shall not be considered to be a home-based 97
employee unless so designated by the applicant. If a taxpayer or 98
potential taxpayer employs both home-based employees and 99
employees who are not home-based employees in a project, the 100
taxpayer shall submit separate applications for separate tax 101
credit agreements for the project, one of which shall include 102
home-based employees in the computation of Ohio employee payroll 103
and one of which shall include all other employees in the 104
computation of Ohio employee payroll. 105

The director of development services shall prescribe the form of the application. After receipt of an application, the authority may enter into an agreement with the taxpayer for a credit under this section if it determines all of the following:

(a) The taxpayer's project will increase payroll;

(b) The taxpayer's project is economically sound and will benefit the people of this state by increasing opportunities for employment and strengthening the economy of this state;

(c) Receiving the tax credit is a major factor in the taxpayer's decision to go forward with the project.

(2) (a) A taxpayer that chooses to begin the project prior to receiving the determination of the authority may, upon submitting the taxpayer's application to the authority, request that the chief investment officer of the nonprofit corporation formed under section 187.01 of the Revised Code and the director review the taxpayer's application and recommend to the authority that the taxpayer's application be considered. As soon as possible after receiving such a request, the chief investment officer and the director shall review the taxpayer's application and, if they determine that the application warrants consideration by the authority, make that recommendation to the authority not later than six months after the application is received by the authority.

(b) The authority shall consider any taxpayer's application for which it receives a recommendation under division (C) (2) (a) of this section. If the authority determines that the taxpayer does not meet all of the criteria set forth in division (C) (1) of this section, the authority and the development services agency shall proceed in accordance with

rules adopted by the director pursuant to division (I) of this section.	135 136
(D) An agreement under this section shall include all of the following:	137 138
(1) A detailed description of the project that is the subject of the agreement;	139 140
(2) (a) The term of the tax credit, which, except as provided in division (D) (2) (b) of this section, shall not exceed fifteen years, and the first taxable year, or first calendar year that includes a tax period, for which the credit may be claimed;	141 142 143 144 145
(b) If the tax credit is computed on the basis of home-based employees, the term of the credit shall expire on or before the last day of the taxable or calendar year ending before the beginning of the seventh year after September 6, 2012, the effective date of H.B. 327 of the 129th general assembly.	146 147 148 149 150 151
(3) A requirement that the taxpayer shall maintain operations at the project location for at least the greater of seven years or the term of the credit plus three years;	152 153 154
(4) The percentage, as determined by the tax credit authority, of excess payroll that will be allowed as the amount of the credit for each taxable year or for each calendar year that includes a tax period;	155 156 157 158
(5) The pay increase factor to be applied to the taxpayer's baseline payroll;	159 160
(6) A requirement that the taxpayer annually shall report to the director of development services full-time equivalent	161 162

employees, payroll, Ohio employee payroll, investment, the 163
provision of health care benefits and tuition reimbursement if 164
required in the agreement, and other information the director 165
needs to perform the director's duties under this section; 166

(7) A requirement that the director of development 167
services annually review the information reported under division 168
(D) (6) of this section and verify compliance with the agreement; 169
if the taxpayer is in compliance, a requirement that the 170
director issue a certificate to the taxpayer stating that the 171
information has been verified and identifying the amount of the 172
credit that may be claimed for the taxable or calendar year; 173

(8) A provision providing that the taxpayer may not 174
relocate a substantial number of employment positions from 175
elsewhere in this state to the project location unless the 176
director of development services determines that the legislative 177
authority of the county, township, or municipal corporation from 178
which the employment positions would be relocated has been 179
notified by the taxpayer of the relocation. 180

For purposes of this section, the movement of an 181
employment position from one political subdivision to another 182
political subdivision shall be considered a relocation of an 183
employment position unless the employment position in the first 184
political subdivision is replaced. The movement of a qualifying 185
work-from-home employee to a different residence located in this 186
state or to the project location shall not be considered a 187
relocation of an employment position. 188

(9) If the tax credit is computed on the basis of home- 189
based employees, that the tax credit may not be claimed by the 190
taxpayer until the taxable year or tax period in which the 191
taxpayer employs at least two hundred employees more than the 192

number of employees the taxpayer employed on June 30, 2011.	193
(E) If a taxpayer fails to meet or comply with any	194
condition or requirement set forth in a tax credit agreement,	195
the tax credit authority may amend the agreement to reduce the	196
percentage or term of the tax credit. The reduction of the	197
percentage or term may take effect in the current taxable or	198
calendar year.	199
(F) Projects that consist solely of point-of-final-	200
purchase retail facilities are not eligible for a tax credit	201
under this section. If a project consists of both point-of-	202
final-purchase retail facilities and nonretail facilities, only	203
the portion of the project consisting of the nonretail	204
facilities is eligible for a tax credit and only the excess	205
payroll from the nonretail facilities shall be considered when	206
computing the amount of the tax credit. If a warehouse facility	207
is part of a point-of-final-purchase retail facility and	208
supplies only that facility, the warehouse facility is not	209
eligible for a tax credit. Catalog distribution centers are not	210
considered point-of-final-purchase retail facilities for the	211
purposes of this division, and are eligible for tax credits	212
under this section.	213
(G) Financial statements and other information submitted	214
to the development services agency or the tax credit authority	215
by an applicant or recipient of a tax credit under this section,	216
and any information taken for any purpose from such statements	217
or information, are not public records subject to section 149.43	218
of the Revised Code. However, the chairperson of the authority	219
may make use of the statements and other information for	220
purposes of issuing public reports or in connection with court	221
proceedings concerning tax credit agreements under this section.	222

Upon the request of the tax commissioner or, if the applicant or 223
recipient is an insurance company, upon the request of the 224
superintendent of insurance, the chairperson of the authority 225
shall provide to the commissioner or superintendent any 226
statement or information submitted by an applicant or recipient 227
of a tax credit in connection with the credit. The commissioner 228
or superintendent shall preserve the confidentiality of the 229
statement or information. 230

(H) A taxpayer claiming a credit under this section shall 231
submit to the tax commissioner or, if the taxpayer is an 232
insurance company, to the superintendent of insurance, a copy of 233
the director of development services' certificate of 234
verification under division (D) (7) of this section with the 235
taxpayer's tax report or return for the taxable year or for the 236
calendar year that includes the tax period. Failure to submit a 237
copy of the certificate with the report or return does not 238
invalidate a claim for a credit if the taxpayer submits a copy 239
of the certificate to the commissioner or superintendent within 240
thirty days after the commissioner or superintendent requests 241
it. 242

(I) The director of development services, after 243
consultation with the tax commissioner and the superintendent of 244
insurance and in accordance with Chapter 119. of the Revised 245
Code, shall adopt rules necessary to implement this section, 246
including rules that establish a procedure to be followed by the 247
tax credit authority and the development services agency in the 248
event the authority considers a taxpayer's application for which 249
it receives a recommendation under division (C) (2) (a) of this 250
section but does not approve it. The rules may provide for 251
recipients of tax credits under this section to be charged fees 252
to cover administrative costs of the tax credit program. For 253

purposes of these rules, a qualifying work-from-home employee 254
shall be considered to be an employee employed at the 255
applicant's project location. The fees collected shall be 256
credited to the business assistance fund created in section 257
122.174 of the Revised Code. At the time the director gives 258
public notice under division (A) of section 119.03 of the 259
Revised Code of the adoption of the rules, the director shall 260
submit copies of the proposed rules to the chairpersons of the 261
standing committees on economic development in the senate and 262
the house of representatives. 263

(J) For the purposes of this section, a taxpayer may 264
include a partnership, a corporation that has made an election 265
under subchapter S of chapter one of subtitle A of the Internal 266
Revenue Code, or any other business entity through which income 267
flows as a distributive share to its owners. A partnership, S- 268
corporation, or other such business entity may elect to pass the 269
credit received under this section through to the persons to 270
whom the income or profit of the partnership, S-corporation, or 271
other entity is distributed. The election shall be made on the 272
annual report required under division (D)(6) of this section. 273
The election applies to and is irrevocable for the credit for 274
which the report is submitted. If the election is made, the 275
credit shall be apportioned among those persons in the same 276
proportions as those in which the income or profit is 277
distributed. 278

(K) (1) If the director of development services determines 279
that a taxpayer who has received a credit under this section is 280
not complying with the requirements of the agreement, the 281
director shall notify the tax credit authority of the 282
noncompliance. After receiving such a notice, and after giving 283
the taxpayer an opportunity to explain the noncompliance, the 284

tax credit authority may require the taxpayer to refund to this 285
state a portion of the credit in accordance with the following: 286

(a) If the taxpayer fails to comply with the requirement 287
under division (D) (3) of this section, an amount determined in 288
accordance with the following: 289

(i) If the taxpayer maintained operations at the project 290
location for a period less than or equal to the term of the 291
credit, an amount not exceeding one hundred per cent of the sum 292
of any credits allowed and received under this section; 293

(ii) If the taxpayer maintained operations at the project 294
location for a period longer than the term of the credit, but 295
less than the greater of seven years or the term of the credit 296
plus three years, an amount not exceeding seventy-five per cent 297
of the sum of any credits allowed and received under this 298
section. 299

(b) If, on the metric evaluation date, the taxpayer fails 300
to substantially meet the job creation, payroll, or investment 301
requirements included in the agreement, an amount determined at 302
the discretion of the authority; 303

(c) If the taxpayer fails to substantially maintain the 304
number of new full-time equivalent employees or amount of 305
payroll required under the agreement at any time during the term 306
of the agreement after the metric evaluation date, an amount 307
determined at the discretion of the authority. 308

(2) If a taxpayer files for bankruptcy and fails as 309
described in division (K) (1) (a), (b), or (c) of this section, 310
the director may immediately commence an action to recoup an 311
amount not exceeding one hundred per cent of the sum of any 312
credits received by the taxpayer under this section. 313

(3) In determining the portion of the tax credit to be 314
refunded to this state, the tax credit authority shall consider 315
the effect of market conditions on the taxpayer's project and 316
whether the taxpayer continues to maintain other operations in 317
this state. After making the determination, the authority shall 318
certify the amount to be refunded to the tax commissioner or 319
superintendent of insurance, as appropriate. If the amount is 320
certified to the commissioner, the commissioner shall make an 321
assessment for that amount against the taxpayer under Chapter 322
5726., 5733., 5736., 5747., or 5751. of the Revised Code. If the 323
amount is certified to the superintendent, the superintendent 324
shall make an assessment for that amount against the taxpayer 325
under Chapter 5725. or 5729. of the Revised Code. The time 326
limitations on assessments under those chapters do not apply to 327
an assessment under this division, but the commissioner or 328
superintendent, as appropriate, shall make the assessment within 329
one year after the date the authority certifies to the 330
commissioner or superintendent the amount to be refunded. 331

(L) On or before the first day of August each year, the 332
director of development services shall submit a report to the 333
governor, the president of the senate, and the speaker of the 334
house of representatives on the tax credit program under this 335
section. The report shall include information on the number of 336
agreements that were entered into under this section during the 337
preceding calendar year, a description of the project that is 338
the subject of each such agreement, and an update on the status 339
of projects under agreements entered into before the preceding 340
calendar year. 341

(M) There is hereby created the tax credit authority, 342
which consists of the director of development services and four 343
other members appointed as follows: the governor, the president 344

of the senate, and the speaker of the house of representatives 345
each shall appoint one member who shall be a specialist in 346
economic development; the governor also shall appoint a member 347
who is a specialist in taxation. Terms of office shall be for 348
four years. Each member shall serve on the authority until the 349
end of the term for which the member was appointed. Vacancies 350
shall be filled in the same manner provided for original 351
appointments. Any member appointed to fill a vacancy occurring 352
prior to the expiration of the term for which the member's 353
predecessor was appointed shall hold office for the remainder of 354
that term. Members may be reappointed to the authority. Members 355
of the authority shall receive their necessary and actual 356
expenses while engaged in the business of the authority. The 357
director of development services shall serve as chairperson of 358
the authority, and the members annually shall elect a vice- 359
chairperson from among themselves. Three members of the 360
authority constitute a quorum to transact and vote on the 361
business of the authority. The majority vote of the membership 362
of the authority is necessary to approve any such business, 363
including the election of the vice-chairperson. 364

The director of development services may appoint a 365
professional employee of the development services agency to 366
serve as the director's substitute at a meeting of the 367
authority. The director shall make the appointment in writing. 368
In the absence of the director from a meeting of the authority, 369
the appointed substitute shall serve as chairperson. In the 370
absence of both the director and the director's substitute from 371
a meeting, the vice-chairperson shall serve as chairperson. 372

(N) For purposes of the credits granted by this section 373
against the taxes imposed under sections 5725.18 and 5729.03 of 374
the Revised Code, "taxable year" means the period covered by the 375

taxpayer's annual statement to the superintendent of insurance. 376

(O) On or before the first day of March of each of the 377
five calendar years beginning with 2014, each taxpayer subject 378
to an agreement with the tax credit authority under this section 379
on the basis of home-based employees shall report the number of 380
home-based employees and other employees employed by the 381
taxpayer in this state to the development services agency. 382

(P) On or before the first day of January of 2019, the 383
director of development services shall submit a report to the 384
governor, the president of the senate, and the speaker of the 385
house of representatives on the effect of agreements entered 386
into under this section in which the taxpayer included home- 387
based employees in the computation of income tax revenue, as 388
that term was defined in this section prior to the amendment of 389
this section by H.B. 64 of the 131st general assembly. The 390
report shall include information on the number of such 391
agreements that were entered into in the preceding six years, a 392
description of the projects that were the subjects of such 393
agreements, and an analysis of nationwide home-based employment 394
trends, including the number of home-based jobs created from 395
July 1, 2011, through June 30, 2017, and a description of any 396
home-based employment tax incentives provided by other states 397
during that time. 398

(Q) The director of development services may require any 399
agreement entered into under this section for a tax credit 400
computed on the basis of home-based employees to contain a 401
provision that the taxpayer makes available health care benefits 402
and tuition reimbursement to all employees. 403

(R) Original agreements approved by the tax credit 404
authority under this section in 2014 or 2015 before ~~the~~ 405

~~effective date of this division~~ September 29, 2015, may be 406
revised at the request of the taxpayer to conform with the 407
amendments to this section and sections 5733.0610, 5736.50, 408
5747.058, and 5751.50 of the Revised Code by H.B. 64 of the 409
131st general assembly, upon mutual agreement of the taxpayer 410
and the development services agency, and approval by the tax 411
credit authority. 412

(S) (1) As used in division (S) of this section: 413

(a) "Eligible agreement" means an agreement approved by 414
the tax credit authority under this section on or before 415
December 31, 2013. 416

(b) "Reporting period" means a period corresponding to the 417
annual report required under division (D) (6) of this section. 418

(c) "Income tax revenue" has the same meaning as under 419
this section as it existed before September 29, 2015, the 420
effective date of the amendment of this section by H.B. 64 of 421
the 131st general assembly. 422

(2) In calendar year 2016 and thereafter, the tax credit 423
authority shall annually determine a withholding adjustment 424
factor to be used in the computation of income tax revenue for 425
eligible agreements. The withholding adjustment factor shall be 426
a numerical percentage that equals the percentage that employer 427
income tax withholding rates have been increased or decreased as 428
a result of changes in the income tax rates prescribed by 429
section 5747.02 of the Revised Code by amendment of that section 430
taking effect on or after June 29, 2013. 431

(3) Except as provided in division (S) (4) of this section, 432
for reporting periods ending in 2015 and thereafter for 433
taxpayers subject to eligible agreements, the tax credit 434

authority shall adjust the income tax revenue reported on the 435
taxpayer's annual report by multiplying the withholding 436
adjustment factor by the taxpayer's income tax revenue and doing 437
one of the following: 438

(a) If the income tax rates prescribed by section 5747.02 439
of the Revised Code have decreased by amendment of that section 440
taking effect on or after June 29, 2013, add the product to the 441
taxpayer's income tax revenue. 442

(b) If the income tax rates prescribed by section 5747.02 443
of the Revised Code have increased by amendment of that section 444
taking effect on or after June 29, 2013, subtract the product 445
from the taxpayer's income tax revenue. 446

(4) Division (S) (3) of this section shall not apply unless 447
all of the following apply for the reporting period with respect 448
to the eligible agreement: 449

(a) The taxpayer has achieved one hundred per cent of the 450
new employment commitment identified in the agreement. 451

(b) If applicable, the taxpayer has achieved one hundred 452
per cent of the new payroll commitment identified in the 453
agreement. 454

(c) If applicable, the taxpayer has achieved one hundred 455
per cent of the investment commitment identified in the 456
agreement. 457

(5) Failure by a taxpayer to have achieved any of the 458
applicable commitments described in divisions (S) (4) (a) to (c) 459
of this section in a reporting period does not disqualify the 460
taxpayer for the adjustment under division (S) of this section 461
for an ensuing reporting period. 462

Section 2. That existing section 122.17 of the Revised Code is hereby repealed. 463
464

Section 3. The amendment by this act of section 122.17 of the Revised Code applies to applications submitted under 465
division (C) (1) of that section on or after the effective date 466
of this act. 467
468