

**As Reported by the Senate Ways and Means Committee**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 131**

**Senator Dolan**

**Cosponsors: Senators Terhar, Peterson, Manning, Beagle, Eklund**

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**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 106

form of the application. After receipt of an application, the 107  
authority may enter into an agreement with the taxpayer for a 108  
credit under this section if it determines all of the following: 109

(a) The taxpayer's project will increase payroll; 110

(b) The taxpayer's project is economically sound and will 111  
benefit the people of this state by increasing opportunities for 112  
employment and strengthening the economy of this state; 113

(c) Receiving the tax credit is a major factor in the 114  
taxpayer's decision to go forward with the project. 115

(2) (a) A taxpayer that chooses to begin the project prior 116  
to receiving the determination of the authority may, upon 117  
submitting the taxpayer's application to the authority, request 118  
that the chief investment officer of the nonprofit corporation 119  
formed under section 187.01 of the Revised Code and the director 120  
review the taxpayer's application and recommend to the authority 121  
that the taxpayer's application be considered. As soon as 122  
possible after receiving such a request, the chief investment 123  
officer and the director shall review the taxpayer's application 124  
and, if they determine that the application warrants 125  
consideration by the authority, make that recommendation to the 126  
authority not later than six months after the application is 127  
received by the authority. 128

(b) The authority shall consider any taxpayer's 129  
application for which it receives a recommendation under 130  
division (C) (2) (a) of this section. If the authority determines 131  
that the taxpayer does not meet all of the criteria set forth in 132  
division (C) (1) of this section, the authority and the 133  
development services agency shall proceed in accordance with 134  
rules adopted by the director pursuant to division (I) of this 135

section.	136
(D) An agreement under this section shall include all of	137
the following:	138
(1) A detailed description of the project that is the	139
subject of the agreement;	140
(2) (a) The term of the tax credit, which, except as	141
provided in division (D) (2) (b) of this section, shall not exceed	142
fifteen years, and the first taxable year, or first calendar	143
year that includes a tax period, for which the credit may be	144
claimed;	145
(b) If the tax credit is computed on the basis of home-	146
based employees, the term of the credit shall expire on or	147
before the last day of the taxable or calendar year ending	148
before the beginning of the seventh year after September 6,	149
2012, the effective date of H.B. 327 of the 129th general	150
assembly.	151
(3) A requirement that the taxpayer shall maintain	152
operations at the project location for at least the greater of	153
seven years or the term of the credit plus three years;	154
(4) The percentage, as determined by the tax credit	155
authority, of excess payroll that will be allowed as the amount	156
of the credit for each taxable year or for each calendar year	157
that includes a tax period;	158
(5) The pay increase factor to be applied to the	159
taxpayer's baseline payroll;	160
(6) A requirement that the taxpayer annually shall report	161
to the director of development services full-time equivalent	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 463



Code is hereby repealed. 464

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