

AN ACT

To amend section 122.17 of the Revised Code to authorize employers who meet certain wage and other requirements to receive a job creation tax credit for the employment of home-based employees and to require the Director of Development to issue a report on the credit after six years.

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

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

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

(1) "Income tax revenue" means the total amount withheld under section 5747.06 of the Revised Code by the taxpayer during the taxable year, or during the calendar year that includes the tax period, from the compensation of each employee or each home-based employee employed in the project to the extent the employee's withholdings are not used to determine the credit under section 122.171 of the Revised Code. "Income tax revenue" excludes amounts withheld before the day the taxpayer becomes eligible for the credit.

(2) "Baseline income tax revenue" means income tax revenue except that the applicable withholding period is the twelve months immediately preceding the date the tax credit authority approves the taxpayer's application multiplied by the sum of one plus an annual pay increase factor to be determined by the tax credit authority. If the taxpayer becomes eligible for the credit after the first day of the taxpayer's taxable year or after the first day of the calendar year that includes the tax period, the taxpayer's baseline income tax revenue for the first such taxable or calendar year of credit eligibility shall be reduced in proportion to the number of days during the taxable or calendar year for which the taxpayer was not eligible for the credit. For subsequent taxable or calendar years, "baseline income tax revenue" equals the unreduced baseline income tax revenue for the preceding taxable or calendar year multiplied by the sum of one plus the pay increase factor.

(3) "Excess income tax revenue" means income tax revenue minus baseline income tax revenue.

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

(B) The tax credit authority may make grants under this section to foster job creation in this state. Such a grant shall take the form of a refundable credit allowed against the tax imposed by section 5725.18, 5729.03, 5733.06, or 5747.02 or levied under Chapter 5751. of the Revised Code. The credit shall be claimed for the taxable years or tax periods specified in the taxpayer's agreement with the tax credit authority under division (D) of this section. With respect to taxes imposed under section 5733.06 or 5747.02 or Chapter 5751. of the Revised Code, the credit shall be claimed in the order required under section 5733.98, 5747.98, or 5751.98 of the Revised Code. The amount of the credit available for a taxable year or for a calendar year that includes a tax period equals the excess income tax revenue for that year multiplied by the percentage specified in the agreement with the tax credit authority. Any credit granted under this section against the tax imposed by section 5733.06 or 5747.02 of the Revised Code, to the extent not fully utilized against such tax for taxable years ending prior to 2008, shall automatically be converted without any action taken by the tax credit authority to a credit against the tax levied under Chapter 5751. of the Revised Code for tax periods beginning on or after July 1, 2008, provided that the person to whom the credit was granted is subject to such tax. The converted credit shall apply to those calendar years in which the remaining taxable years specified in the agreement end.

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

An application shall not propose to include both home-based employees and employees who are not home-based employees in the computation of income tax revenue for the purposes of the same tax credit agreement. If a taxpayer or potential taxpayer employs both home-based employees and employees who are not home-based employees in a project, the taxpayer shall submit separate applications for separate tax credit agreements for the project, one of which shall include home-based employees in the computation of income tax revenue and one of which shall include all other employees in the computation of income tax revenue.

The director of development 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:

(1) The taxpayer's project will increase payroll and income tax revenue;

(2) 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;

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

(D) An agreement under this section shall include all of the following:

(1) A detailed description of the project that is the subject of the agreement;

(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;

(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 the effective date of H.B. 327 of the 129th general assembly;

(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;

(4) The percentage, as determined by the tax credit authority, of excess income tax revenue that will be allowed as the amount of the credit for each taxable year or for each calendar year that includes a tax period;

(5) The pay increase factor to be applied to the taxpayer's baseline income tax revenue;

(6) A requirement that the taxpayer annually shall report to the director of development employment, tax withholding, investment, the provision of health care benefits and tuition reimbursement if required in the agreement, and other information the director needs to perform the director's duties under this section;

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

(8) A provision providing that the taxpayer may not relocate a

substantial number of employment positions from elsewhere in this state to the project location unless the director of development determines that the legislative authority of the county, township, or municipal corporation from which the employment positions would be relocated has been notified by the taxpayer of the relocation.

For purposes of this section, the movement of an employment position from one political subdivision to another political subdivision shall be considered a relocation of an employment position unless the employment position in the first political subdivision is replaced.

(9) If the tax credit is computed on the basis of home-based employees, that the tax credit may not be claimed by the taxpayer until the taxable year or tax period in which the taxpayer employs at least two hundred employees more than the number of employees the taxpayer employed on June 30, 2011.

(E) If a taxpayer fails to meet or comply with any condition or requirement set forth in a tax credit agreement, the tax credit authority may amend the agreement to reduce the percentage or term of the tax credit. The reduction of the percentage or term may take effect in the current taxable or calendar year.

(F) Projects that consist solely of point-of-final-purchase retail facilities are not eligible for a tax credit under this section. If a project consists of both point-of-final-purchase retail facilities and nonretail facilities, only the portion of the project consisting of the nonretail facilities is eligible for a tax credit and only the excess income tax revenue from the nonretail facilities shall be considered when computing the amount of the tax credit. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility is not eligible for a tax credit. Catalog distribution centers are not considered point-of-final-purchase retail facilities for the purposes of this division, and are eligible for tax credits under this section.

(G) Financial statements and other information submitted to the department of development or the tax credit authority by an applicant or recipient of a tax credit under this section, and any information taken for any purpose from such statements or information, are not public records subject to section 149.43 of the Revised Code. However, the chairperson of the authority may make use of the statements and other information for purposes of issuing public reports or in connection with court proceedings concerning tax credit agreements under this section. Upon the request of the tax commissioner or, if the applicant or recipient is an insurance company, upon the request of the superintendent of insurance, the chairperson of the

authority shall provide to the commissioner or superintendent any statement or information submitted by an applicant or recipient of a tax credit in connection with the credit. The commissioner or superintendent shall preserve the confidentiality of the statement or information.

(H) A taxpayer claiming a credit under this section shall submit to the tax commissioner or, if the taxpayer is an insurance company, to the superintendent of insurance, a copy of the director of development's certificate of verification under division (D)(7) of this section with the taxpayer's tax report or return for the taxable year or for the calendar year that includes the tax period. Failure to submit a copy of the certificate with the report or return does not invalidate a claim for a credit if the taxpayer submits a copy of the certificate to the commissioner or superintendent within sixty days after the commissioner or superintendent requests it.

(I) The director of development, after consultation with the tax commissioner and the superintendent of insurance and in accordance with Chapter 119. of the Revised Code, shall adopt rules necessary to implement this section. The rules may provide for recipients of tax credits under this section to be charged fees to cover administrative costs of the tax credit program. The fees collected shall be credited to the tax incentive programs operating fund created in section 122.174 of the Revised Code. At the time the director gives public notice under division (A) of section 119.03 of the Revised Code of the adoption of the rules, the director shall submit copies of the proposed rules to the chairpersons of the standing committees on economic development in the senate and the house of representatives.

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

(K) If the director of development determines that a taxpayer who has received a credit under this section is not complying with the requirement under division (D)(3) of this section, the director shall notify the tax credit authority of the noncompliance. After receiving such a notice, and after

giving the taxpayer an opportunity to explain the noncompliance, the tax credit authority may require the taxpayer to refund to this state a portion of the credit in accordance with the following:

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

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

In determining the portion of the tax credit to be refunded to this state, the tax credit authority shall consider the effect of market conditions on the taxpayer's project and whether the taxpayer continues to maintain other operations in this state. After making the determination, the authority shall certify the amount to be refunded to the tax commissioner or superintendent of insurance, as appropriate. If the amount is certified to the commissioner, the commissioner shall make an assessment for that amount against the taxpayer under Chapter 5733., 5747., or 5751. of the Revised Code. If the amount is certified to the superintendent, the superintendent shall make an assessment for that amount against the taxpayer under Chapter 5725. or 5729. of the Revised Code. The time limitations on assessments under those chapters do not apply to an assessment under this division, but the commissioner or superintendent, as appropriate, shall make the assessment within one year after the date the authority certifies to the commissioner or superintendent the amount to be refunded.

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

(M) There is hereby created the tax credit authority, which consists of the director of development and four other members appointed as follows: the governor, the president of the senate, and the speaker of the house of representatives each shall appoint one member who shall be a specialist in economic development; the governor also shall appoint a member who is a

specialist in taxation. Of the initial appointees, the members appointed by the governor shall serve a term of two years; the members appointed by the president of the senate and the speaker of the house of representatives shall serve a term of four years. Thereafter, terms of office shall be for four years. Initial appointments to the authority shall be made within thirty days after January 13, 1993. Each member shall serve on the authority until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Members may be reappointed to the authority. Members of the authority shall receive their necessary and actual expenses while engaged in the business of the authority. The director of development shall serve as chairperson of the authority, and the members annually shall elect a vice-chairperson from among themselves. Three members of the authority constitute a quorum to transact and vote on the business of the authority. The majority vote of the membership of the authority is necessary to approve any such business, including the election of the vice-chairperson.

The director of development may appoint a professional employee of the department of development to serve as the director's substitute at a meeting of the authority. The director shall make the appointment in writing. In the absence of the director from a meeting of the authority, the appointed substitute shall serve as chairperson. In the absence of both the director and the director's substitute from a meeting, the vice-chairperson shall serve as chairperson.

(N) For purposes of the credits granted by this section against the taxes imposed under sections 5725.18 and 5729.03 of the Revised Code, "taxable year" means the period covered by the taxpayer's annual statement to the superintendent of insurance.

(O) On or before the first day of January of each of the six calendar years following the year in which H.B. 327 of the 129th general assembly becomes effective, each taxpayer subject to an agreement with the tax credit authority under this section on the basis of home-based employees shall report the number of home-based employees and other employees employed by the taxpayer in this state to the department of development.

(P) On or before the first day of January of the seventh calendar year following the year in which H.B. 327 of the 129th general assembly became effective, the director of development shall submit a report to the governor, the president of the senate, and the speaker of the house of representatives on the effect of agreements entered into under this section in which the

taxpayer included home-based employees in the computation of income tax revenue. The report shall include information on the number of such agreements that were entered into in the preceding six years, a description of the projects that were the subjects of such agreements, and an analysis of nationwide home-based employment trends, including the number of home-based jobs created from July 1, 2011, through June 30, 2017, and a description of any home-based employment tax incentives provided by other states during that time.

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

SECTION 2. That existing section 122.17 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 327

129th 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 _____