

**As Reported by the House Economic and Small Business
Development Committee**

**129th General Assembly
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Sub. H. B. No. 327

Representative Gonzales

Cosponsors: Representatives Baker, Brenner, Stebelton, Buchy

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A B I L L

To amend section 122.17 of the Revised Code to 1
authorize employers who meet certain wage and 2
other requirements to receive a job creation tax 3
credit for the employment of home-based employees 4
and to require the Director of Development to 5
issue a report on the credit after six years. 6

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

Section 1. That section 122.17 of the Revised Code be amended 7
to read as follows: 8

Sec. 122.17. (A) As used in this section: 9

(1) "Income tax revenue" means the total amount withheld 10
under section 5747.06 of the Revised Code by the taxpayer during 11
the taxable year, or during the calendar year that includes the 12
tax period, from the compensation of each employee or each 13
home-based employee employed in the project to the extent the 14
employee's withholdings are not used to determine the credit under 15
section 122.171 of the Revised Code. "Income tax revenue" excludes 16
amounts withheld before the day the taxpayer becomes eligible for 17
the credit. 18

(2) "Baseline income tax revenue" means income tax revenue 19
except that the applicable withholding period is the twelve months 20
immediately preceding the date the tax credit authority approves 21
the taxpayer's application multiplied by the sum of one plus an 22
annual pay increase factor to be determined by the tax credit 23
authority. If the taxpayer becomes eligible for the credit after 24
the first day of the taxpayer's taxable year or after the first 25
day of the calendar year that includes the tax period, the 26
taxpayer's baseline income tax revenue for the first such taxable 27
or calendar year of credit eligibility shall be reduced in 28
proportion to the number of days during the taxable or calendar 29
year for which the taxpayer was not eligible for the credit. For 30
subsequent taxable or calendar years, "baseline income tax 31
revenue" equals the unreduced baseline income tax revenue for the 32
preceding taxable or calendar year multiplied by the sum of one 33
plus the pay increase factor. 34

(3) "Excess income tax revenue" means income tax revenue 35
minus baseline income tax revenue. 36

(4) "Home-based employee" means an employee whose services 37
are performed primarily from the employee's residence in this 38
state exclusively for the benefit of the project and whose rate of 39
pay is at least one hundred thirty-one per cent of the federal 40
minimum wage under 29 U.S.C. 206. 41

(B) The tax credit authority may make grants under this 42
section to foster job creation in this state. Such a grant shall 43
take the form of a refundable credit allowed against the tax 44
imposed by section 5725.18, 5729.03, 5733.06, or 5747.02 or levied 45
under Chapter 5751. of the Revised Code. The credit shall be 46
claimed for the taxable years or tax periods specified in the 47
taxpayer's agreement with the tax credit authority under division 48
(D) of this section. With respect to taxes imposed under section 49
5733.06 or 5747.02 or Chapter 5751. of the Revised Code, the 50

credit shall be claimed in the order required under section 51
5733.98, 5747.98, or 5751.98 of the Revised Code. The amount of 52
the credit available for a taxable year or for a calendar year 53
that includes a tax period equals the excess income tax revenue 54
for that year multiplied by the percentage specified in the 55
agreement with the tax credit authority. Any credit granted under 56
this section against the tax imposed by section 5733.06 or 5747.02 57
of the Revised Code, to the extent not fully utilized against such 58
tax for taxable years ending prior to 2008, shall automatically be 59
converted without any action taken by the tax credit authority to 60
a credit against the tax levied under Chapter 5751. of the Revised 61
Code for tax periods beginning on or after July 1, 2008, provided 62
that the person to whom the credit was granted is subject to such 63
tax. The converted credit shall apply to those calendar years in 64
which the remaining taxable years specified in the agreement end. 65

(C) A taxpayer or potential taxpayer who proposes a project 66
to create new jobs in this state may apply to the tax credit 67
authority to enter into an agreement for a tax credit under this 68
section. ~~The~~ 69

An application shall not propose to include both home-based 70
employees and employees who are not home-based employees in the 71
computation of income tax revenue for the purposes of the same tax 72
credit agreement. If a taxpayer or potential taxpayer employs both 73
home-based employees and employees who are not home-based 74
employees in a project, the taxpayer shall submit separate 75
applications for separate tax credit agreements for the project, 76
one of which shall include home-based employees in the computation 77
of income tax revenue and one of which shall include all other 78
employees in the computation of income tax revenue. 79

The director of development shall prescribe the form of the 80
application. After receipt of an application, the authority may 81
enter into an agreement with the taxpayer for a credit under this 82

section if it determines all of the following:	83
(1) The taxpayer's project will increase payroll and income tax revenue;	84 85
(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;	86 87 88
(3) Receiving the tax credit is a major factor in the taxpayer's decision to go forward with the project.	89 90
(D) An agreement under this section shall include all of the following:	91 92
(1) A detailed description of the project that is the subject of the agreement;	93 94
(2)(a) <u>The term of the tax credit, which, except as provided in division (D)(2)(b) of this section,</u> 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;	95 96 97 98
(b) <u>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;</u>	99 100 101 102 103
(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;	104 105 106
(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;	107 108 109 110
(5) The pay increase factor to be applied to the taxpayer's baseline income tax revenue;	111 112

(6) A requirement that the taxpayer annually shall report to 113
the director of development employment, tax withholding, 114
investment, the provision of health care benefits and tuition 115
reimbursement if required in the agreement, and other information 116
the director needs to perform the director's duties under this 117
section; 118

(7) A requirement that the director of development annually 119
review the information reported under division (D)(6) of this 120
section and verify compliance with the agreement; if the taxpayer 121
is in compliance, a requirement that the director issue a 122
certificate to the taxpayer stating that the information has been 123
verified and identifying the amount of the credit that may be 124
claimed for the taxable or calendar year; 125

(8) A provision providing that the taxpayer may not relocate 126
a substantial number of employment positions from elsewhere in 127
this state to the project location unless the director of 128
development determines that the legislative authority of the 129
county, township, or municipal corporation from which the 130
employment positions would be relocated has been notified by the 131
taxpayer of the relocation. 132

For purposes of this section, the movement of an employment 133
position from one political subdivision to another political 134
subdivision shall be considered a relocation of an employment 135
position unless the employment position in the first political 136
subdivision is replaced. 137

(9) If the tax credit is computed on the basis of home-based 138
employees, that the tax credit may not be claimed by the taxpayer 139
until the taxable year or tax period in which the taxpayer employs 140
at least two hundred employees more than the number of employees 141
the taxpayer employed on June 30, 2011. 142

(E) If a taxpayer fails to meet or comply with any condition 143

or requirement set forth in a tax credit agreement, the tax credit 144
authority may amend the agreement to reduce the percentage or term 145
of the tax credit. The reduction of the percentage or term may 146
take effect in the current taxable or calendar year. 147

(F) Projects that consist solely of point-of-final-purchase 148
retail facilities are not eligible for a tax credit under this 149
section. If a project consists of both point-of-final-purchase 150
retail facilities and nonretail facilities, only the portion of 151
the project consisting of the nonretail facilities is eligible for 152
a tax credit and only the excess income tax revenue from the 153
nonretail facilities shall be considered when computing the amount 154
of the tax credit. If a warehouse facility is part of a 155
point-of-final-purchase retail facility and supplies only that 156
facility, the warehouse facility is not eligible for a tax credit. 157
Catalog distribution centers are not considered 158
point-of-final-purchase retail facilities for the purposes of this 159
division, and are eligible for tax credits under this section. 160

(G) Financial statements and other information submitted to 161
the department of development or the tax credit authority by an 162
applicant or recipient of a tax credit under this section, and any 163
information taken for any purpose from such statements or 164
information, are not public records subject to section 149.43 of 165
the Revised Code. However, the chairperson of the authority may 166
make use of the statements and other information for purposes of 167
issuing public reports or in connection with court proceedings 168
concerning tax credit agreements under this section. Upon the 169
request of the tax commissioner or, if the applicant or recipient 170
is an insurance company, upon the request of the superintendent of 171
insurance, the chairperson of the authority shall provide to the 172
commissioner or superintendent any statement or information 173
submitted by an applicant or recipient of a tax credit in 174
connection with the credit. The commissioner or superintendent 175

shall preserve the confidentiality of the statement or 176
information. 177

(H) A taxpayer claiming a credit under this section shall 178
submit to the tax commissioner or, if the taxpayer is an insurance 179
company, to the superintendent of insurance, a copy of the 180
director of development's certificate of verification under 181
division (D)(7) of this section with the taxpayer's tax report or 182
return for the taxable year or for the calendar year that includes 183
the tax period. Failure to submit a copy of the certificate with 184
the report or return does not invalidate a claim for a credit if 185
the taxpayer submits a copy of the certificate to the commissioner 186
or superintendent within sixty days after the commissioner or 187
superintendent requests it. 188

(I) The director of development, after consultation with the 189
tax commissioner and the superintendent of insurance and in 190
accordance with Chapter 119. of the Revised Code, shall adopt 191
rules necessary to implement this section. The rules may provide 192
for recipients of tax credits under this section to be charged 193
fees to cover administrative costs of the tax credit program. The 194
fees collected shall be credited to the tax incentive programs 195
operating fund created in section 122.174 of the Revised Code. At 196
the time the director gives public notice under division (A) of 197
section 119.03 of the Revised Code of the adoption of the rules, 198
the director shall submit copies of the proposed rules to the 199
chairpersons of the standing committees on economic development in 200
the senate and the house of representatives. 201

(J) For the purposes of this section, a taxpayer may include 202
a partnership, a corporation that has made an election under 203
subchapter S of chapter one of subtitle A of the Internal Revenue 204
Code, or any other business entity through which income flows as a 205
distributive share to its owners. A partnership, S-corporation, or 206
other such business entity may elect to pass the credit received 207

under this section through to the persons to whom the income or 208
profit of the partnership, S-corporation, or other entity is 209
distributed. The election shall be made on the annual report 210
required under division (D)(6) of this section. The election 211
applies to and is irrevocable for the credit for which the report 212
is submitted. If the election is made, the credit shall be 213
apportioned among those persons in the same proportions as those 214
in which the income or profit is distributed. 215

(K) If the director of development determines that a taxpayer 216
who has received a credit under this section is not complying with 217
the requirement under division (D)(3) of this section, the 218
director shall notify the tax credit authority of the 219
noncompliance. After receiving such a notice, and after giving the 220
taxpayer an opportunity to explain the noncompliance, the tax 221
credit authority may require the taxpayer to refund to this state 222
a portion of the credit in accordance with the following: 223

(1) If the taxpayer maintained operations at the project 224
location for a period less than or equal to the term of the 225
credit, an amount not exceeding one hundred per cent of the sum of 226
any credits allowed and received under this section; 227

(2) If the taxpayer maintained operations at the project 228
location for a period longer than the term of the credit, but less 229
than the greater of seven years or the term of the credit plus 230
three years, an amount not exceeding seventy-five per cent of the 231
sum of any credits allowed and received under this section. 232

In determining the portion of the tax credit to be refunded 233
to this state, the tax credit authority shall consider the effect 234
of market conditions on the taxpayer's project and whether the 235
taxpayer continues to maintain other operations in this state. 236
After making the determination, the authority shall certify the 237
amount to be refunded to the tax commissioner or superintendent of 238
insurance, as appropriate. If the amount is certified to the 239

commissioner, the commissioner shall make an assessment for that 240
amount against the taxpayer under Chapter 5733., 5747., or 5751. 241
of the Revised Code. If the amount is certified to the 242
superintendent, the superintendent shall make an assessment for 243
that amount against the taxpayer under Chapter 5725. or 5729. of 244
the Revised Code. The time limitations on assessments under those 245
chapters do not apply to an assessment under this division, but 246
the commissioner or superintendent, as appropriate, shall make the 247
assessment within one year after the date the authority certifies 248
to the commissioner or superintendent the amount to be refunded. 249

(L) On or before the first day of August each year, the 250
director of development shall submit a report to the governor, the 251
president of the senate, and the speaker of the house of 252
representatives on the tax credit program under this section. The 253
report shall include information on the number of agreements that 254
were entered into under this section during the preceding calendar 255
year, a description of the project that is the subject of each 256
such agreement, and an update on the status of projects under 257
agreements entered into before the preceding calendar year. 258

(M) There is hereby created the tax credit authority, which 259
consists of the director of development and four other members 260
appointed as follows: the governor, the president of the senate, 261
and the speaker of the house of representatives each shall appoint 262
one member who shall be a specialist in economic development; the 263
governor also shall appoint a member who is a specialist in 264
taxation. Of the initial appointees, the members appointed by the 265
governor shall serve a term of two years; the members appointed by 266
the president of the senate and the speaker of the house of 267
representatives shall serve a term of four years. Thereafter, 268
terms of office shall be for four years. Initial appointments to 269
the authority shall be made within thirty days after January 13, 270
1993. Each member shall serve on the authority until the end of 271

the term for which the member was appointed. Vacancies shall be 272
filled in the same manner provided for original appointments. Any 273
member appointed to fill a vacancy occurring prior to the 274
expiration of the term for which the member's predecessor was 275
appointed shall hold office for the remainder of that term. 276
Members may be reappointed to the authority. Members of the 277
authority shall receive their necessary and actual expenses while 278
engaged in the business of the authority. The director of 279
development shall serve as chairperson of the authority, and the 280
members annually shall elect a vice-chairperson from among 281
themselves. Three members of the authority constitute a quorum to 282
transact and vote on the business of the authority. The majority 283
vote of the membership of the authority is necessary to approve 284
any such business, including the election of the vice-chairperson. 285

The director of development may appoint a professional 286
employee of the department of development to serve as the 287
director's substitute at a meeting of the authority. The director 288
shall make the appointment in writing. In the absence of the 289
director from a meeting of the authority, the appointed substitute 290
shall serve as chairperson. In the absence of both the director 291
and the director's substitute from a meeting, the vice-chairperson 292
shall serve as chairperson. 293

(N) For purposes of the credits granted by this section 294
against the taxes imposed under sections 5725.18 and 5729.03 of 295
the Revised Code, "taxable year" means the period covered by the 296
taxpayer's annual statement to the superintendent of insurance. 297

(O) On or before the first day of January of each of the six 298
calendar years following the year in which H.B. 327 of the 129th 299
general assembly becomes effective, each taxpayer subject to an 300
agreement with the tax credit authority under this section on the 301
basis of home-based employees shall report the number of 302
home-based employees and other employees employed by the taxpayer 303

in this state to the department of development. 304

(P) On or before the first day of January of the seventh 305
calendar year following the year in which H.B. 327 of the 129th 306
general assembly became effective, the director of development 307
shall submit a report to the governor, the president of the 308
senate, and the speaker of the house of representatives on the 309
effect of agreements entered into under this section in which the 310
taxpayer included home-based employees in the computation of 311
income tax revenue. The report shall include information on the 312
number of such agreements that were entered into in the preceding 313
six years, a description of the projects that were the subjects of 314
such agreements, and an analysis of nationwide home-based 315
employment trends, including the number of home-based jobs created 316
from July 1, 2011, through June 30, 2017, and a description of any 317
home-based employment tax incentives provided by other states 318
during that time. 319

(O) The director of development may require any agreement 320
entered into under this section for a tax credit computed on the 321
basis of home-based employees to contain a provision that the 322
taxpayer makes available health care benefits and tuition 323
reimbursement to all employees. 324

Section 2. That existing section 122.17 of the Revised Code 325
is hereby repealed. 326