

As Introduced

**129th General Assembly
Regular Session
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S. B. No. 322

Senator Gentile

Cosponsors: Senators Kearney, Tavares, Schiavoni

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A B I L L

To amend sections 122.17, 122.171, and 5747.07 and to 1
enact section 5747.073 of the Revised Code to 2
authorize an income tax withholding credit for a 3
manufacturer that expands production or that 4
restarts production at an idle facility. 5

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

Section 1. That sections 122.17, 122.171, and 5747.07 be 6
amended and section 5747.073 of the Revised Code be enacted to 7
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 employed in the 13
project to the extent the employee's withholdings are not used to 14
determine the credit under section 122.171 or 5747.073 of the 15
Revised Code. "Income tax revenue" excludes amounts withheld 16
before the day the taxpayer becomes eligible for the credit. 17

(2) "Baseline income tax revenue" means income tax revenue 18
except that the applicable withholding period is the twelve months 19

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

(3) "Excess income tax revenue" means income tax revenue 34
minus baseline income tax revenue. 35

(B) The tax credit authority may make grants under this 36
section to foster job creation in this state. Such a grant shall 37
take the form of a refundable credit allowed against the tax 38
imposed by section 5725.18, 5729.03, 5733.06, or 5747.02 or levied 39
under Chapter 5751. of the Revised Code. The credit shall be 40
claimed for the taxable years or tax periods specified in the 41
taxpayer's agreement with the tax credit authority under division 42
(D) of this section. With respect to taxes imposed under section 43
5733.06 or 5747.02 or Chapter 5751. of the Revised Code, the 44
credit shall be claimed in the order required under section 45
5733.98, 5747.98, or 5751.98 of the Revised Code. The amount of 46
the credit available for a taxable year or for a calendar year 47
that includes a tax period equals the excess income tax revenue 48
for that year multiplied by the percentage specified in the 49
agreement with the tax credit authority. Any credit granted under 50
this section against the tax imposed by section 5733.06 or 5747.02 51

of the Revised Code, to the extent not fully utilized against such 52
tax for taxable years ending prior to 2008, shall automatically be 53
converted without any action taken by the tax credit authority to 54
a credit against the tax levied under Chapter 5751. of the Revised 55
Code for tax periods beginning on or after July 1, 2008, provided 56
that the person to whom the credit was granted is subject to such 57
tax. The converted credit shall apply to those calendar years in 58
which the remaining taxable years specified in the agreement end. 59

(C) A taxpayer or potential taxpayer who proposes a project 60
to create new jobs in this state may apply to the tax credit 61
authority to enter into an agreement for a tax credit under this 62
section. The director of development shall prescribe the form of 63
the application. After receipt of an application, the authority 64
may enter into an agreement with the taxpayer for a credit under 65
this section if it determines all of the following: 66

(1) The taxpayer's project will increase payroll and income 67
tax revenue; 68

(2) The taxpayer's project is economically sound and will 69
benefit the people of this state by increasing opportunities for 70
employment and strengthening the economy of this state; 71

(3) Receiving the tax credit is a major factor in the 72
taxpayer's decision to go forward with the project. 73

(D) An agreement under this section shall include all of the 74
following: 75

(1) A detailed description of the project that is the subject 76
of the agreement; 77

(2) The term of the tax credit, which shall not exceed 78
fifteen years, and the first taxable year, or first calendar year 79
that includes a tax period, for which the credit may be claimed; 80

(3) A requirement that the taxpayer shall maintain operations 81

at the project location for at least the greater of seven years or 82
the term of the credit plus three years; 83

(4) The percentage, as determined by the tax credit 84
authority, of excess income tax revenue that will be allowed as 85
the amount of the credit for each taxable year or for each 86
calendar year that includes a tax period; 87

(5) The pay increase factor to be applied to the taxpayer's 88
baseline income tax revenue; 89

(6) A requirement that the taxpayer annually shall report to 90
the director of development employment, tax withholding, 91
investment, and other information the director needs to perform 92
the director's duties under this section; 93

(7) A requirement that the director of development annually 94
review the information reported under division (D)(6) of this 95
section and verify compliance with the agreement; if the taxpayer 96
is in compliance, a requirement that the director issue a 97
certificate to the taxpayer stating that the information has been 98
verified and identifying the amount of the credit that may be 99
claimed for the taxable or calendar year; 100

(8) A provision providing that the taxpayer may not relocate 101
a substantial number of employment positions from elsewhere in 102
this state to the project location unless the director of 103
development determines that the legislative authority of the 104
county, township, or municipal corporation from which the 105
employment positions would be relocated has been notified by the 106
taxpayer of the relocation. 107

For purposes of this section, the movement of an employment 108
position from one political subdivision to another political 109
subdivision shall be considered a relocation of an employment 110
position unless the employment position in the first political 111
subdivision is replaced. 112

(E) If a taxpayer fails to meet or comply with any condition 113
or requirement set forth in a tax credit agreement, the tax credit 114
authority may amend the agreement to reduce the percentage or term 115
of the tax credit. The reduction of the percentage or term may 116
take effect in the current taxable or calendar year. 117

(F) Projects that consist solely of point-of-final-purchase 118
retail facilities are not eligible for a tax credit under this 119
section. If a project consists of both point-of-final-purchase 120
retail facilities and nonretail facilities, only the portion of 121
the project consisting of the nonretail facilities is eligible for 122
a tax credit and only the excess income tax revenue from the 123
nonretail facilities shall be considered when computing the amount 124
of the tax credit. If a warehouse facility is part of a 125
point-of-final-purchase retail facility and supplies only that 126
facility, the warehouse facility is not eligible for a tax credit. 127
Catalog distribution centers are not considered 128
point-of-final-purchase retail facilities for the purposes of this 129
division, and are eligible for tax credits under this section. 130

(G) Financial statements and other information submitted to 131
the department of development or the tax credit authority by an 132
applicant or recipient of a tax credit under this section, and any 133
information taken for any purpose from such statements or 134
information, are not public records subject to section 149.43 of 135
the Revised Code. However, the chairperson of the authority may 136
make use of the statements and other information for purposes of 137
issuing public reports or in connection with court proceedings 138
concerning tax credit agreements under this section. Upon the 139
request of the tax commissioner or, if the applicant or recipient 140
is an insurance company, upon the request of the superintendent of 141
insurance, the chairperson of the authority shall provide to the 142
commissioner or superintendent any statement or information 143
submitted by an applicant or recipient of a tax credit in 144

connection with the credit. The commissioner or superintendent 145
shall preserve the confidentiality of the statement or 146
information. 147

(H) A taxpayer claiming a credit under this section shall 148
submit to the tax commissioner or, if the taxpayer is an insurance 149
company, to the superintendent of insurance, a copy of the 150
director of development's certificate of verification under 151
division (D)(7) of this section with the taxpayer's tax report or 152
return for the taxable year or for the calendar year that includes 153
the tax period. Failure to submit a copy of the certificate with 154
the report or return does not invalidate a claim for a credit if 155
the taxpayer submits a copy of the certificate to the commissioner 156
or superintendent within sixty days after the commissioner or 157
superintendent requests it. 158

(I) The director of development, after consultation with the 159
tax commissioner and the superintendent of insurance and in 160
accordance with Chapter 119. of the Revised Code, shall adopt 161
rules necessary to implement this section. The rules may provide 162
for recipients of tax credits under this section to be charged 163
fees to cover administrative costs of the tax credit program. The 164
fees collected shall be credited to the tax incentive programs 165
operating fund created in section 122.174 of the Revised Code. At 166
the time the director gives public notice under division (A) of 167
section 119.03 of the Revised Code of the adoption of the rules, 168
the director shall submit copies of the proposed rules to the 169
chairpersons of the standing committees on economic development in 170
the senate and the house of representatives. 171

(J) For the purposes of this section, a taxpayer may include 172
a partnership, a corporation that has made an election under 173
subchapter S of chapter one of subtitle A of the Internal Revenue 174
Code, or any other business entity through which income flows as a 175
distributive share to its owners. A partnership, S-corporation, or 176

other such business entity may elect to pass the credit received 177
under this section through to the persons to whom the income or 178
profit of the partnership, S-corporation, or other entity is 179
distributed. The election shall be made on the annual report 180
required under division (D)(6) of this section. The election 181
applies to and is irrevocable for the credit for which the report 182
is submitted. If the election is made, the credit shall be 183
apportioned among those persons in the same proportions as those 184
in which the income or profit is distributed. 185

(K) If the director of development determines that a taxpayer 186
who has received a credit under this section is not complying with 187
the requirement under division (D)(3) of this section, the 188
director shall notify the tax credit authority of the 189
noncompliance. After receiving such a notice, and after giving the 190
taxpayer an opportunity to explain the noncompliance, the tax 191
credit authority may require the taxpayer to refund to this state 192
a portion of the credit in accordance with the following: 193

(1) If the taxpayer maintained operations at the project 194
location for a period less than or equal to the term of the 195
credit, an amount not exceeding one hundred per cent of the sum of 196
any credits allowed and received under this section; 197

(2) If the taxpayer maintained operations at the project 198
location for a period longer than the term of the credit, but less 199
than the greater of seven years or the term of the credit plus 200
three years, an amount not exceeding seventy-five per cent of the 201
sum of any credits allowed and received under this section. 202

In determining the portion of the tax credit to be refunded 203
to this state, the tax credit authority shall consider the effect 204
of market conditions on the taxpayer's project and whether the 205
taxpayer continues to maintain other operations in this state. 206
After making the determination, the authority shall certify the 207
amount to be refunded to the tax commissioner or superintendent of 208

insurance, as appropriate. If the amount is certified to the 209
commissioner, the commissioner shall make an assessment for that 210
amount against the taxpayer under Chapter 5733., 5747., or 5751. 211
of the Revised Code. If the amount is certified to the 212
superintendent, the superintendent shall make an assessment for 213
that amount against the taxpayer under Chapter 5725. or 5729. of 214
the Revised Code. The time limitations on assessments under those 215
chapters do not apply to an assessment under this division, but 216
the commissioner or superintendent, as appropriate, shall make the 217
assessment within one year after the date the authority certifies 218
to the commissioner or superintendent the amount to be refunded. 219

(L) On or before the first day of August each year, the 220
director of development shall submit a report to the governor, the 221
president of the senate, and the speaker of the house of 222
representatives on the tax credit program under this section. The 223
report shall include information on the number of agreements that 224
were entered into under this section during the preceding calendar 225
year, a description of the project that is the subject of each 226
such agreement, and an update on the status of projects under 227
agreements entered into before the preceding calendar year. 228

(M) There is hereby created the tax credit authority, which 229
consists of the director of development and four other members 230
appointed as follows: the governor, the president of the senate, 231
and the speaker of the house of representatives each shall appoint 232
one member who shall be a specialist in economic development; the 233
governor also shall appoint a member who is a specialist in 234
taxation. Of the initial appointees, the members appointed by the 235
governor shall serve a term of two years; the members appointed by 236
the president of the senate and the speaker of the house of 237
representatives shall serve a term of four years. Thereafter, 238
terms of office shall be for four years. Initial appointments to 239
the authority shall be made within thirty days after January 13, 240

1993. Each member shall serve on the authority until the end of 241
the term for which the member was appointed. Vacancies shall be 242
filled in the same manner provided for original appointments. Any 243
member appointed to fill a vacancy occurring prior to the 244
expiration of the term for which the member's predecessor was 245
appointed shall hold office for the remainder of that term. 246
Members may be reappointed to the authority. Members of the 247
authority shall receive their necessary and actual expenses while 248
engaged in the business of the authority. The director of 249
development shall serve as chairperson of the authority, and the 250
members annually shall elect a vice-chairperson from among 251
themselves. Three members of the authority constitute a quorum to 252
transact and vote on the business of the authority. The majority 253
vote of the membership of the authority is necessary to approve 254
any such business, including the election of the vice-chairperson. 255

The director of development may appoint a professional 256
employee of the department of development to serve as the 257
director's substitute at a meeting of the authority. The director 258
shall make the appointment in writing. In the absence of the 259
director from a meeting of the authority, the appointed substitute 260
shall serve as chairperson. In the absence of both the director 261
and the director's substitute from a meeting, the vice-chairperson 262
shall serve as chairperson. 263

(N) For purposes of the credits granted by this section 264
against the taxes imposed under sections 5725.18 and 5729.03 of 265
the Revised Code, "taxable year" means the period covered by the 266
taxpayer's annual statement to the superintendent of insurance. 267

Sec. 122.171. (A) As used in this section: 268

(1) "Capital investment project" means a plan of investment 269
at a project site for the acquisition, construction, renovation, 270
or repair of buildings, machinery, or equipment, or for 271

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| capitalized costs of basic research and new product development | 272 |
| determined in accordance with generally accepted accounting | 273 |
| principles, but does not include any of the following: | 274 |
| (a) Payments made for the acquisition of personal property | 275 |
| through operating leases; | 276 |
| (b) Project costs paid before January 1, 2002; | 277 |
| (c) Payments made to a related member as defined in section | 278 |
| 5733.042 of the Revised Code or to a consolidated elected taxpayer | 279 |
| or a combined taxpayer as defined in section 5751.01 of the | 280 |
| Revised Code. | 281 |
| (2) "Eligible business" means a taxpayer and its related | 282 |
| members with Ohio operations satisfying all of the following: | 283 |
| (a) The taxpayer employs at least five hundred full-time | 284 |
| equivalent employees or has an annual payroll of at least | 285 |
| thirty-five million dollars at the time the tax credit authority | 286 |
| grants the tax credit under this section; | 287 |
| (b) The taxpayer makes or causes to be made payments for the | 288 |
| capital investment project of one of the following: | 289 |
| (i) If the taxpayer is engaged at the project site primarily | 290 |
| as a manufacturer, at least fifty million dollars in the aggregate | 291 |
| at the project site during a period of three consecutive calendar | 292 |
| years, including the calendar year that includes a day of the | 293 |
| taxpayer's taxable year or tax period with respect to which the | 294 |
| credit is granted; | 295 |
| (ii) If the taxpayer is engaged at the project site primarily | 296 |
| in significant corporate administrative functions, as defined by | 297 |
| the director of development by rule, at least twenty million | 298 |
| dollars in the aggregate at the project site during a period of | 299 |
| three consecutive calendar years including the calendar year that | 300 |
| includes a day of the taxpayer's taxable year or tax period with | 301 |

respect to which the credit is granted; 302

(iii) If the taxpayer is applying to enter into an agreement 303
for a tax credit authorized under division (B)(3) of this section, 304
at least five million dollars in the aggregate at the project site 305
during a period of three consecutive calendar years, including the 306
calendar year that includes a day of the taxpayer's taxable year 307
or tax period with respect to which the credit is granted. 308

(c) The taxpayer had a capital investment project reviewed 309
and approved by the tax credit authority as provided in divisions 310
(C), (D), and (E) of this section. 311

(3) "Full-time equivalent employees" means the quotient 312
obtained by dividing the total number of hours for which employees 313
were compensated for employment in the project by two thousand 314
eighty. "Full-time equivalent employees" shall exclude hours that 315
are counted for a credit under section 122.17 of the Revised Code. 316

(4) "Income tax revenue" means the total amount withheld 317
under section 5747.06 of the Revised Code by the taxpayer during 318
the taxable year, or during the calendar year that includes the 319
tax period, from the compensation of all employees employed in the 320
project whose hours of compensation are included in calculating 321
the number of full-time equivalent employees but excluding any 322
withholding claimed as a credit under section 5747.073 of the 323
Revised Code. 324

(5) "Manufacturer" has the same meaning as in section 325
5739.011 of the Revised Code. 326

(6) "Project site" means an integrated complex of facilities 327
in this state, as specified by the tax credit authority under this 328
section, within a fifteen-mile radius where a taxpayer is 329
primarily operating as an eligible business. 330

(7) "Related member" has the same meaning as in section 331
5733.042 of the Revised Code as that section existed on the 332

effective date of its amendment by Am. Sub. H.B. 215 of the 122nd 333
general assembly, September 29, 1997. 334

(8) "Taxable year" includes, in the case of a domestic or 335
foreign insurance company, the calendar year ending on the 336
thirty-first day of December preceding the day the superintendent 337
of insurance is required to certify to the treasurer of state 338
under section 5725.20 or 5729.05 of the Revised Code the amount of 339
taxes due from insurance companies. 340

(B) The tax credit authority created under section 122.17 of 341
the Revised Code may grant tax credits under this section for the 342
purpose of fostering job retention in this state. Upon application 343
by an eligible business and upon consideration of the 344
recommendation of the director of budget and management, tax 345
commissioner, the superintendent of insurance in the case of an 346
insurance company, and director of development under division (C) 347
of this section, the tax credit authority may grant the following 348
credits against the tax imposed by section 5725.18, 5729.03, 349
5733.06, 5747.02, or 5751.02 of the Revised Code: 350

(1) A nonrefundable credit to an eligible business; 351

(2) A refundable credit to an eligible business meeting the 352
following conditions, provided that the director of budget and 353
management, tax commissioner, superintendent of insurance in the 354
case of an insurance company, and director of development have 355
recommended the granting of the credit to the tax credit authority 356
before July 1, 2011: 357

(a) The business retains at least one thousand full-time 358
equivalent employees at the project site. 359

(b) The business makes or causes to be made payments for a 360
capital investment project of at least twenty-five million dollars 361
in the aggregate at the project site during a period of three 362
consecutive calendar years, including the calendar year that 363

includes a day of the business' taxable year or tax period with 364
respect to which the credit is granted. 365

(c) In 2010, the business received a written offer of 366
financial incentives from another state of the United States that 367
the director determines to be sufficient inducement for the 368
business to relocate the business' operations from this state to 369
that state. 370

(3) A refundable credit to an eligible business with a total 371
annual payroll of at least twenty million dollars, provided that 372
the tax credit authority grants the tax credit on or after July 1, 373
2011, and before January 1, 2014. 374

The credits authorized in divisions (B)(1), (2), and (3) of 375
this section may be granted for a period up to fifteen taxable 376
years or, in the case of the tax levied by section 5751.02 of the 377
Revised Code, for a period of up to fifteen calendar years. The 378
credit amount for a taxable year or a calendar year that includes 379
the tax period for which a credit may be claimed equals the income 380
tax revenue for that year multiplied by the percentage specified 381
in the agreement with the tax credit authority. The percentage may 382
not exceed seventy-five per cent. The credit shall be claimed in 383
the order required under section 5725.98, 5729.98, 5733.98, 384
5747.98, or 5751.98 of the Revised Code. In determining the 385
percentage and term of the credit, the tax credit authority shall 386
consider both the number of full-time equivalent employees and the 387
value of the capital investment project. The credit amount may not 388
be based on the income tax revenue for a calendar year before the 389
calendar year in which the tax credit authority specifies the tax 390
credit is to begin, and the credit shall be claimed only for the 391
taxable years or tax periods specified in the eligible business' 392
agreement with the tax credit authority. In no event shall the 393
credit be claimed for a taxable year or tax period terminating 394
before the date specified in the agreement. Any credit granted 395

under this section against the tax imposed by section 5733.06 or 396
5747.02 of the Revised Code, to the extent not fully utilized 397
against such tax for taxable years ending prior to 2008, shall 398
automatically be converted without any action taken by the tax 399
credit authority to a credit against the tax levied under Chapter 400
5751. of the Revised Code for tax periods beginning on or after 401
July 1, 2008, provided that the person to whom the credit was 402
granted is subject to such tax. The converted credit shall apply 403
to those calendar years in which the remaining taxable years 404
specified in the agreement end. 405

If a nonrefundable credit allowed under division (B)(1) of 406
this section for a taxable year or tax period exceeds the 407
taxpayer's tax liability for that year or period, the excess may 408
be carried forward for the three succeeding taxable or calendar 409
years, but the amount of any excess credit allowed in any taxable 410
year or tax period shall be deducted from the balance carried 411
forward to the succeeding year or period. 412

(C) A taxpayer that proposes a capital investment project to 413
retain jobs in this state may apply to the tax credit authority to 414
enter into an agreement for a tax credit under this section. The 415
director of development shall prescribe the form of the 416
application. After receipt of an application, the authority shall 417
forward copies of the application to the director of budget and 418
management, the tax commissioner, the superintendent of insurance 419
in the case of an insurance company, and the director of 420
development, each of whom shall review the application to 421
determine the economic impact the proposed project would have on 422
the state and the affected political subdivisions and shall submit 423
a summary of their determinations and recommendations to the 424
authority. 425

(D) Upon review and consideration of the determinations and 426
recommendations described in division (C) of this section, the tax 427

credit authority may enter into an agreement with the taxpayer for 428
a credit under this section if the authority determines all of the 429
following: 430

(1) The taxpayer's capital investment project will result in 431
the retention of employment in this state. 432

(2) The taxpayer is economically sound and has the ability to 433
complete the proposed capital investment project. 434

(3) The taxpayer intends to and has the ability to maintain 435
operations at the project site for at least the greater of (a) the 436
term of the credit plus three years, or (b) seven years. 437

(4) Receiving the credit is a major factor in the taxpayer's 438
decision to begin, continue with, or complete the project. 439

(5) If the taxpayer is applying to enter into an agreement 440
for a tax credit authorized under division (B)(3) of this section, 441
the taxpayer's capital investment project will be located in the 442
political subdivision in which the taxpayer maintains its 443
principal place of business. 444

(E) An agreement under this section shall include all of the 445
following: 446

(1) A detailed description of the project that is the subject 447
of the agreement, including the amount of the investment, the 448
period over which the investment has been or is being made, the 449
number of full-time equivalent employees at the project site, and 450
the anticipated income tax revenue to be generated. 451

(2) The term of the credit, the percentage of the tax credit, 452
the maximum annual value of tax credits that may be allowed each 453
year, and the first year for which the credit may be claimed. 454

(3) A requirement that the taxpayer maintain operations at 455
the project site for at least the greater of (a) the term of the 456
credit plus three years, or (b) seven years. 457

(4)(a) In the case of a credit granted under division (B)(1) 458
of this section, a requirement that the taxpayer retain at least 459
five hundred full-time equivalent employees at the project site 460
and within this state for the entire term of the credit, or a 461
requirement that the taxpayer maintain an annual payroll of at 462
least thirty-five million dollars for the entire term of the 463
credit; 464

(b) In the case of a credit granted under division (B)(2) of 465
this section, a requirement that the taxpayer retain at least one 466
thousand full-time equivalent employees at the project site and 467
within this state for the entire term of the credit; 468

(c) In the case of a credit granted under division (B)(3) of 469
this section, either of the following: 470

(i) A requirement that the taxpayer retain at least five 471
hundred full-time equivalent employees at the project site and 472
within this state for the entire term of the credit and a 473
requirement that the taxpayer maintain an annual payroll of at 474
least twenty million dollars for the entire term of the credit; 475

(ii) A requirement that the taxpayer maintain an annual 476
payroll of at least thirty-five million dollars for the entire 477
term of the credit. 478

(5) A requirement that the taxpayer annually report to the 479
director of development employment, tax withholding, capital 480
investment, and other information the director needs to perform 481
the director's duties under this section. 482

(6) A requirement that the director of development annually 483
review the annual reports of the taxpayer to verify the 484
information reported under division (E)(5) of this section and 485
compliance with the agreement. Upon verification, the director 486
shall issue a certificate to the taxpayer stating that the 487
information has been verified and identifying the amount of the 488

credit for the taxable year or calendar year that includes the tax 489
period. In determining the number of full-time equivalent 490
employees, no position shall be counted that is filled by an 491
employee who is included in the calculation of a tax credit under 492
section 122.17 of the Revised Code. 493

(7) A provision providing that the taxpayer may not relocate 494
a substantial number of employment positions from elsewhere in 495
this state to the project site unless the director of development 496
determines that the taxpayer notified the legislative authority of 497
the county, township, or municipal corporation from which the 498
employment positions would be relocated. 499

For purposes of this section, the movement of an employment 500
position from one political subdivision to another political 501
subdivision shall be considered a relocation of an employment 502
position unless the movement is confined to the project site. The 503
transfer of an employment position from one political subdivision 504
to another political subdivision shall not be considered a 505
relocation of an employment position if the employment position in 506
the first political subdivision is replaced by another employment 507
position. 508

(8) A waiver by the taxpayer of any limitations periods 509
relating to assessments or adjustments resulting from the 510
taxpayer's failure to comply with the agreement. 511

(F) If a taxpayer fails to meet or comply with any condition 512
or requirement set forth in a tax credit agreement, the tax credit 513
authority may amend the agreement to reduce the percentage or term 514
of the credit. The reduction of the percentage or term may take 515
effect in the current taxable or calendar year. 516

(G) Financial statements and other information submitted to 517
the department of development or the tax credit authority by an 518
applicant for or recipient of a tax credit under this section, and 519

any information taken for any purpose from such statements or 520
information, are not public records subject to section 149.43 of 521
the Revised Code. However, the chairperson of the authority may 522
make use of the statements and other information for purposes of 523
issuing public reports or in connection with court proceedings 524
concerning tax credit agreements under this section. Upon the 525
request of the tax commissioner, or the superintendent of 526
insurance in the case of an insurance company, the chairperson of 527
the authority shall provide to the commissioner or superintendent 528
any statement or other information submitted by an applicant for 529
or recipient of a tax credit in connection with the credit. The 530
commissioner or superintendent shall preserve the confidentiality 531
of the statement or other information. 532

(H) A taxpayer claiming a tax credit under this section shall 533
submit to the tax commissioner or, in the case of an insurance 534
company, to the superintendent of insurance, a copy of the 535
director of development's certificate of verification under 536
division (E)(6) of this section with the taxpayer's tax report or 537
return for the taxable year or for the calendar year that includes 538
the tax period. Failure to submit a copy of the certificate with 539
the report or return does not invalidate a claim for a credit if 540
the taxpayer submits a copy of the certificate to the commissioner 541
or superintendent within sixty days after the commissioner or 542
superintendent requests it. 543

(I) For the purposes of this section, a taxpayer may include 544
a partnership, a corporation that has made an election under 545
subchapter S of chapter one of subtitle A of the Internal Revenue 546
Code, or any other business entity through which income flows as a 547
distributive share to its owners. A partnership, S-corporation, or 548
other such business entity may elect to pass the credit received 549
under this section through to the persons to whom the income or 550
profit of the partnership, S-corporation, or other entity is 551

distributed. The election shall be made on the annual report 552
required under division (E)(5) of this section. The election 553
applies to and is irrevocable for the credit for which the report 554
is submitted. If the election is made, the credit shall be 555
apportioned among those persons in the same proportions as those 556
in which the income or profit is distributed. 557

(J) If the director of development determines that a taxpayer 558
that received a tax credit under this section is not complying 559
with the requirement under division (E)(3) of this section, the 560
director shall notify the tax credit authority of the 561
noncompliance. After receiving such a notice, and after giving the 562
taxpayer an opportunity to explain the noncompliance, the 563
authority may terminate the agreement and require the taxpayer to 564
refund to the state all or a portion of the credit claimed in 565
previous years, as follows: 566

(1) If the taxpayer maintained operations at the project site 567
for less than or equal to the term of the credit, an amount not to 568
exceed one hundred per cent of the sum of any tax credits allowed 569
and received under this section. 570

(2) If the taxpayer maintained operations at the project site 571
longer than the term of the credit, but less than the greater of 572
(a) the term of the credit plus three years, or (b) seven years, 573
the amount required to be refunded shall not exceed seventy-five 574
per cent of the sum of any tax credits allowed and received under 575
this section. 576

In determining the portion of the credit to be refunded to 577
this state, the authority shall consider the effect of market 578
conditions on the taxpayer's project and whether the taxpayer 579
continues to maintain other operations in this state. After making 580
the determination, the authority shall certify the amount to be 581
refunded to the tax commissioner or the superintendent of 582
insurance. If the taxpayer is not an insurance company, the 583

commissioner shall make an assessment for that amount against the 584
taxpayer under Chapter 5733., 5747., or 5751. of the Revised Code. 585
If the taxpayer is an insurance company, the superintendent of 586
insurance shall make an assessment under section 5725.222 or 587
5729.102 of the Revised Code. The time limitations on assessments 588
under those chapters and sections do not apply to an assessment 589
under this division, but the commissioner or superintendent shall 590
make the assessment within one year after the date the authority 591
certifies to the commissioner or superintendent the amount to be 592
refunded. 593

(K) The director of development, after consultation with the 594
tax commissioner and the superintendent of insurance and in 595
accordance with Chapter 119. of the Revised Code, shall adopt 596
rules necessary to implement this section. The rules may provide 597
for recipients of tax credits under this section to be charged 598
fees to cover administrative costs of the tax credit program. The 599
fees collected shall be credited to the tax incentive programs 600
operating fund created in section 122.174 of the Revised Code. At 601
the time the director gives public notice under division (A) of 602
section 119.03 of the Revised Code of the adoption of the rules, 603
the director shall submit copies of the proposed rules to the 604
chairpersons of the standing committees on economic development in 605
the senate and the house of representatives. 606

(L) On or before the first day of August of each year, the 607
director of development shall submit a report to the governor, the 608
president of the senate, and the speaker of the house of 609
representatives on the tax credit program under this section. The 610
report shall include information on the number of agreements that 611
were entered into under this section during the preceding calendar 612
year, a description of the project that is the subject of each 613
such agreement, and an update on the status of projects under 614
agreements entered into before the preceding calendar year. 615

(M)(1) The aggregate amount of tax credits issued under 616
division (B)(1) of this section during any calendar year for 617
capital investment projects reviewed and approved by the tax 618
credit authority may not exceed the following amounts: 619

(a) For 2010, thirteen million dollars; 620

(b) For 2011 through 2023, the amount of the limit for the 621
preceding calendar year plus thirteen million dollars; 622

(c) For 2024 and each year thereafter, one hundred 623
ninety-five million dollars. 624

(2) The aggregate amount of tax credits authorized under 625
divisions (B)(2) and (3) of this section and allowed to be claimed 626
by taxpayers in any calendar year for capital improvement projects 627
reviewed and approved by the tax credit authority in 2011, 2012, 628
and 2013 combined shall not exceed twenty-five million dollars. An 629
amount equal to the aggregate amount of credits first authorized 630
in calendar year 2011, 2012, and 2013 may be claimed over the 631
ensuing period up to fifteen years, subject to the terms of 632
individual tax credit agreements. 633

The limitations in division (M) of this section do not apply 634
to credits for capital investment projects approved by the tax 635
credit authority before July 1, 2009. 636

Sec. 5747.07. (A) As used in this section: 637

(1) "Partial weekly withholding period" means a period during 638
which an employer directly, indirectly, or constructively pays 639
compensation to, or credits compensation to the benefit of, an 640
employee, and that consists of a consecutive Saturday, Sunday, 641
Monday, and Tuesday or a consecutive Wednesday, Thursday, and 642
Friday. There are two partial weekly withholding periods each 643
week, except that a partial weekly withholding period cannot 644
extend from one calendar year into the next calendar year; if the 645

first day of January falls on a day other than Saturday or 646
Wednesday, the partial weekly withholding period ends on the 647
thirty-first day of December and there are three partial weekly 648
withholding periods during that week. 649

(2) "Undeposited taxes" means the taxes an employer is 650
required to deduct and withhold from an employee's compensation 651
pursuant to section 5747.06 of the Revised Code that have not been 652
remitted to the tax commissioner pursuant to this section or to 653
the treasurer of state pursuant to section 5747.072 of the Revised 654
Code. 655

(3) A "week" begins on Saturday and concludes at the end of 656
the following Friday. 657

(B) Except as provided in divisions (C) and (D) of this 658
section ~~and in~~ division (A) of section 5747.072 of the Revised 659
Code, and section 5747.073 of the Revised Code, every employer 660
required to deduct and withhold any amount under section 5747.06 661
of the Revised Code shall file a return and shall pay the amount 662
required by law as follows: 663

(1) An employer who accumulates or is required to accumulate 664
undeposited taxes of one hundred thousand dollars or more during a 665
partial weekly withholding period shall make the payment of the 666
undeposited taxes by the close of the first banking day after the 667
day on which the accumulation reaches one hundred thousand 668
dollars. If required under division (I) of this section, the 669
payment shall be made by electronic funds transfer under section 670
5747.072 of the Revised Code. 671

(2)(a) Except as required by division (B)(1) of this section, 672
an employer described in division (B)(2)(b) of this section shall 673
make the payment of undeposited taxes within three banking days 674
after the close of a partial weekly withholding period during 675
which the employer was required to deduct and withhold any amount 676

under this chapter. If required under division (I) of this 677
section, the payment shall be made by electronic funds transfer 678
under section 5747.072 of the Revised Code. 679

(b) For amounts required to be deducted and withheld during 680
1994, an employer described in division (B)(2)(b) of this section 681
is one whose actual or required payments under this section 682
exceeded one hundred eighty thousand dollars during the 683
twelve-month period ending June 30, 1993. For amounts required to 684
be deducted and withheld during 1995 and each year thereafter, an 685
employer described in division (B)(2)(b) of this section is one 686
whose actual or required payments under this section were at least 687
eighty-four thousand dollars during the twelve-month period ending 688
on the thirtieth day of June of the preceding calendar year. 689

(3) Except as required by divisions (B)(1) and (2) of this 690
section, if an employer's actual or required payments were more 691
than two thousand dollars during the twelve-month period ending on 692
the thirtieth day of June of the preceding calendar year, the 693
employer shall make the payment of undeposited taxes for each 694
month during which they were required to be withheld no later than 695
fifteen days following the last day of that month. The employer 696
shall file the return prescribed by the tax commissioner with the 697
payment. 698

(4) Except as required by divisions (B)(1), (2), and (3) of 699
this section, an employer shall make the payment of undeposited 700
taxes for each calendar quarter during which they were required to 701
be withheld no later than the last day of the month following the 702
last day of March, June, September, and December each year. The 703
employer shall file the return prescribed by the tax commissioner 704
with the payment. 705

(C) The return and payment schedules prescribed by divisions 706
(B)(1) and (2) of this section do not apply to the return and 707
payment of undeposited school district income taxes arising from 708

taxes levied pursuant to Chapter 5748. of the Revised Code. 709
Undeposited school district income taxes shall be returned and 710
paid pursuant to divisions (B)(3) and (4) of this section, as 711
applicable. 712

(D)(1) The requirements of division (B) of this section are 713
met if the amount paid is not less than ninety-five per cent of 714
the actual tax withheld or required to be withheld for the prior 715
quarterly, monthly, or partial weekly withholding period, and the 716
underpayment is not due to willful neglect. Any underpayment of 717
withheld tax shall be paid within thirty days of the date on which 718
the withheld tax was due without regard to division (D)(1) of this 719
section. An employer described in division (B)(1) or (2) of this 720
section shall make the payment by electronic funds transfer under 721
section 5747.072 of the Revised Code. 722

(2) If the tax commissioner believes that quarterly or 723
monthly payments would result in a delay that might jeopardize the 724
remittance of withholding payments, the commissioner may order 725
that the payments be made weekly, or more frequently if necessary, 726
and the payments shall be made no later than three banking days 727
following the close of the period for which the jeopardy order is 728
made. An order requiring weekly or more frequent payments shall be 729
delivered to the employer personally or by certified mail and 730
remains in effect until the commissioner notifies the employer to 731
the contrary. 732

(3) If compelling circumstances exist concerning the 733
remittance of undeposited taxes, the commissioner may order the 734
employer to make payments under any of the payment schedules under 735
division (B) of this section. The order shall be delivered to the 736
employer personally or by certified mail and shall remain in 737
effect until the commissioner notifies the employer to the 738
contrary. For purposes of division (D)(3) of this section, 739
"compelling circumstances" exist if either or both of the 740

following are true: 741

(a) Based upon annualization of payments made or required to 742
be made during the preceding calendar year and during the current 743
calendar year, the employer would be required for the next 744
calendar year to make payments under division (B)(2) of this 745
section. 746

(b) Based upon annualization of payments made or required to 747
be made during the current calendar year, the employer would be 748
required for the next calendar year to make payments under 749
division (B)(2) of this section. 750

(E)(1) An employer described in division (B)(1) or (2) of 751
this section shall file, not later than the last day of the month 752
following the end of each calendar quarter, a return covering, but 753
not limited to, both the actual amount deducted and withheld and 754
the amount required to be deducted and withheld for the tax 755
imposed under section 5747.02 of the Revised Code during each 756
partial weekly withholding period or portion of a partial weekly 757
withholding period during that quarter. The employer shall file 758
the quarterly return even if the aggregate amount required to be 759
deducted and withheld for the quarter is zero dollars. At the time 760
of filing the return, the employer shall pay any amounts of 761
undeposited taxes for the quarter, whether actually deducted and 762
withheld or required to be deducted and withheld, that have not 763
been previously paid. If required under division (I) of this 764
section, the payment shall be made by electronic funds transfer. 765
The tax commissioner shall prescribe the form and other 766
requirements of the quarterly return. 767

(2) In addition to other returns required to be filed and 768
payments required to be made under this section, every employer 769
required to deduct and withhold taxes shall file, not later than 770
the thirty-first day of January of each year, an annual return 771
covering, but not limited to, both the aggregate amount deducted 772

and withheld and the aggregate amount required to be deducted and 773
withheld during the entire preceding year for the tax imposed 774
under section 5747.02 of the Revised Code and for each tax imposed 775
under Chapter 5748. of the Revised Code. At the time of filing 776
that return, the employer shall pay over any amounts of 777
undeposited taxes for the preceding year, whether actually 778
deducted and withheld or required to be deducted and withheld, 779
that have not been previously paid. The employer shall make the 780
annual report, to each employee and to the tax commissioner, of 781
the compensation paid and each tax withheld, as the commissioner 782
by rule may prescribe. 783

Each employer required to deduct and withhold any tax is 784
liable for the payment of that amount required to be deducted and 785
withheld, whether or not the tax has in fact been withheld, unless 786
the failure to withhold was based upon the employer's good faith 787
in reliance upon the statement of the employee as to liability, 788
and the amount shall be deemed to be a special fund in trust for 789
the general revenue fund. 790

(F) Each employer shall file with the employer's annual 791
return the following items of information on employees for whom 792
withholding is required under section 5747.06 of the Revised Code: 793

(1) The full name of each employee, the employee's address, 794
the employee's school district of residence, and in the case of a 795
nonresident employee, the employee's principal county of 796
employment; 797

(2) The social security number of each employee; 798

(3) The total amount of compensation paid before any 799
deductions to each employee for the period for which the annual 800
return is made; 801

(4) The amount of the tax imposed by section 5747.02 of the 802
Revised Code and the amount of each tax imposed under Chapter 803

5748. of the Revised Code withheld from the compensation of the 804
employee for the period for which the annual return is made. The 805
commissioner may extend upon good cause the period for filing any 806
notice or return required to be filed under this section and may 807
adopt rules relating to extensions of time. If the extension 808
results in an extension of time for the payment of the amounts 809
withheld with respect to which the return is filed, the employer 810
shall pay, at the time the amount withheld is paid, an amount of 811
interest computed at the rate per annum prescribed by section 812
5703.47 of the Revised Code on that amount withheld, from the day 813
that amount was originally required to be paid to the day of 814
actual payment or to the day an assessment is issued under section 815
5747.13 of the Revised Code, whichever occurs first. 816

(5) In addition to all other interest charges and penalties 817
imposed, all amounts of taxes withheld or required to be withheld 818
and remaining unpaid after the day the amounts are required to be 819
paid shall bear interest from the date prescribed for payment at 820
the rate per annum prescribed by section 5703.47 of the Revised 821
Code on the amount unpaid, in addition to the amount withheld, 822
until paid or until the day an assessment is issued under section 823
5747.13 of the Revised Code, whichever occurs first. 824

(G) An employee of a corporation, limited liability company, 825
or business trust having control or supervision of or charged with 826
the responsibility of filing the report and making payment, or an 827
officer, member, manager, or trustee of a corporation, limited 828
liability company, or business trust who is responsible for the 829
execution of the corporation's, limited liability company's, or 830
business trust's fiscal responsibilities, shall be personally 831
liable for failure to file the report or pay the tax due as 832
required by this section. The dissolution, termination, or 833
bankruptcy of a corporation, limited liability company, or 834
business trust does not discharge a responsible officer's, 835

member's, manager's, employee's, or trustee's liability for a 836
failure of the corporation, limited liability company, or business 837
trust to file returns or pay tax due. 838

(H) If an employer required to deduct and withhold income tax 839
from compensation and to pay that tax to the state under sections 840
5747.06 and 5747.07 of the Revised Code sells the employer's 841
business or stock of merchandise or quits the employer's business, 842
the taxes required to be deducted and withheld and paid to the 843
state pursuant to those sections prior to that time, together with 844
any interest and penalties imposed on those taxes, become due and 845
payable immediately, and that person shall make a final return 846
within fifteen days after the date of selling or quitting 847
business. The employer's successor shall withhold a sufficient 848
amount of the purchase money to cover the amount of the taxes, 849
interest, and penalties due and unpaid, until the former owner 850
produces a receipt from the tax commissioner showing that the 851
taxes, interest, and penalties have been paid or a certificate 852
indicating that no such taxes are due. If the purchaser of the 853
business or stock of merchandise fails to withhold purchase money, 854
the purchaser shall be personally liable for the payment of the 855
taxes, interest, and penalties accrued and unpaid during the 856
operation of the business by the former owner. If the amount of 857
taxes, interest, and penalties outstanding at the time of the 858
purchase exceeds the total purchase money, the tax commissioner in 859
the commissioner's discretion may adjust the liability of the 860
seller or the responsibility of the purchaser to pay that 861
liability to maximize the collection of withholding tax revenue. 862

(I)(1) An employer described in division (I)(2) of this 863
section shall make all payments required by this section for the 864
year by electronic funds transfer under section 5747.072 of the 865
Revised Code. 866

(2)(a) For 1994, an employer described in division (I)(2) of 867

this section is one whose actual or required payments under this 868
section exceeded five hundred thousand dollars during the 869
twelve-month period ending June 30, 1993. 870

(b) For 1995, an employer described in division (I)(2) of 871
this section is one whose actual or required payments under this 872
section exceeded five hundred thousand dollars during the 873
twelve-month period ending June 30, 1994. 874

(c) For 1996, an employer described in division (I)(2) of 875
this section is one whose actual or required payments under this 876
section exceeded three hundred thousand dollars during the 877
twelve-month period ending June 30, 1995. 878

(d) For 1997 through 2000, an employer described in division 879
(I)(2) of this section is one whose actual or required payments 880
under this section exceeded one hundred eighty thousand dollars 881
during the twelve-month period ending on the thirtieth day of June 882
of the preceding calendar year. 883

(e) For 2001 and thereafter, an employer described in 884
division (I)(2) of this section is one whose actual or required 885
payments under this section exceeded eighty-four thousand dollars 886
during the twelve-month period ending on the thirtieth day of June 887
of the preceding calendar year. 888

Sec. 5747.073. (A) For purposes of this section: 889

(1) "Manufacturer" and "manufacturing facility" have the same 890
meanings as in section 5711.16 of the Revised Code. 891

(2) "Wages" means wages as defined in section 3121(a) of the 892
Internal Revenue Code without regard to any wage limitations. 893

(3) "Credit period" means the six-month period during which a 894
manufacturer may claim the credit authorized by this section. 895

(4) "Clawback period" means the three years immediately 896
following the credit period, beginning on the first day of the 897

first month after the credit period ends. 898

(5) "Base-month wages" means the wages for personal services performed during the month preceding the month in which production restarted or first expanded. 899
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(B) A manufacturer required to deduct and withhold income tax from an employee's compensation under section 5747.06 of the Revised Code and remit such amounts under section 5747.07 of the Revised Code is entitled to a credit against the amount required to be remitted if the manufacturer meets both of the following conditions before January 1, 2016: 902
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(1) The manufacturer expands production at a manufacturing facility, or restarts production at a manufacturing facility that has been idle for not less than the twelve immediately preceding months; 908
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(2) Within six months after the month in which production restarts or first expands, wages for personal services performed at the manufacturing facility during a month exceed the base-month wages by seven hundred fifty thousand dollars or more. 912
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A manufacturer meeting the above conditions may apply to the tax commissioner for authorization to claim the credit. If the above conditions are met, the tax commissioner, within thirty days after receiving the application, shall authorize the credit and inform the manufacturer of the credit period. The credit period shall be six consecutive months. The credit equals the amount of undeposited taxes the manufacturer would otherwise be required to remit to the commissioner during the credit period. 916
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With respect to each employee, the amount retained by the manufacturer shall be considered to have been remitted for purposes of reporting the state and school district income tax deducted and withheld from the employee's compensation under section 5747.06 of the Revised Code and for purposes of 924
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determining the state and school district income tax paid by the 929
employee. 930

(C) If during any one of the three years comprising the 931
clawback period, the average monthly wages paid for personal 932
services performed at the manufacturing facility is less than one 933
million dollars in excess of the base-month wages, the 934
manufacturer is liable to the state for the sum of the amounts in 935
divisions (C)(1) and (2) of this section: 936

(1) The product of the amount in division (C)(1)(a) 937
multiplied by the amount in division (C)(1)(b) of this section: 938

(a) The total amount of the credit claimed for the credit 939
period; 940

(b) One million dollars divided into the difference between 941
one million dollars and the average of the monthly wages paid for 942
personal services performed at the manufacturing facility during 943
the applicable year of the clawback period. 944

(2) Ten per cent of the amount in division (C)(1) of this 945
section, plus interest on that amount calculated at the rate per 946
annum prescribed by section 5703.47 of the Revised Code from the 947
last day of the applicable year of the clawback period. 948

The amount imposed by this division shall be collected 949
utilizing the assessment procedures provided in section 5747.13 of 950
the Revised Code. 951

(D) During the clawback period, the manufacturer shall submit 952
to the tax commissioner and director of development such 953
information and documents as they request. The commissioner in 954
consultation with the director may adopt rules to administer this 955
section. 956

Section 2. That existing sections 122.17, 122.171, and 957
5747.07 of the Revised Code are hereby repealed. 958