

122:7-1-01                   **Definitions.**

As used in rules 122:7-1-02 to 122:7-1-09 of the Administrative Code:

- (A) "Affiliated entities" means any person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, the taxpayer. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of fifty per cent or more.
- (B) "Amendment" means any change to the terms and conditions of a tax credit agreement following approval from the authority.
- (C) "Authority" means the tax credit authority created pursuant to division (M) of section 122.17 of the Revised Code.
- (D) "Consumer price index" means the statistic released by the United States department of labor, bureau of labor statistics.
- (E) "Director" means the director of development ~~services agency~~ of the state of Ohio.
- (F) "Disadvantaged person" means a resident of Ohio who meets at least one of the following criteria:
  - (1) Is a person who is currently receiving unemployment compensation or has not held a full-time job for at least the four months immediately preceding the determination of disadvantaged person status;
  - (2) Is certified as having a disability by the state of Ohio's rehabilitation services commission or bureau of workers' compensation, or who is determined to be disabled by the United States social security administration;
  - (3) Is eligible for Workforce Innovation and Opportunity Act program assistance; or
  - (4) Is a person whose total gross annual income is less than the annual equivalent of one hundred fifty per cent of the federal minimum wage, or is part of a household of two or more persons whose total gross annual income is less than the annual equivalent of three hundred fifty per cent of the federal minimum wage.
- (G) "Effective date" means January 1 of the first year of the term of the tax credit as approved by the authority.
- (H) "Excess income tax revenue" means the total amount to be withheld under section 5747.06 of the Revised Code by the taxpayer from the compensation of each new

employee to be created at the project location during the term of the agreement and post-term reporting period.

(I) "Executive director" means the executive director of the tax credit authority.

(J) "Extraordinary circumstance" means

- (1) The proposed project will encompass asset expenditures that significantly exceed the asset expenditures of similar projects within that industry sector;
- (2) The proposed project establishes or enhances a taxpayer's operations within a targeted industry. Targeted industry means an industry sector that the department of development services agency has then identified as a sector whose growth is vital to the economic success of Ohio;
- (3) The proposed project utilizes a facility that has been vacant for at least twelve consecutive months immediately preceding the application for the proposed project;
- (4) For a taxpayer with existing operations at the project location, the proposed project will result in a growth in the number of full-time equivalent employees at the project location of at least three hundred per cent;
- (5) The proposed project establishes a company or division national/or international headquarters location and the taxpayer will employ a minimum of two-hundred fifty full-time equivalent employees at the project location; or
- (6) After assessing all of the factors included but not limited to those listed in this division and in paragraph (C) of rule 122:7-1-06 of the Administrative Code as well as such other factors regarding the proposed project as an indication of substantial economic impact, the authority determines that the proposed project presents an extraordinary opportunity for the state. Additional consideration will be provided to proposed projects that:
  - (a) Plan to generate substantial payroll growth in a distressed city or county. Distress criteria are established by the department of development services agency and are published in map format at least twice each year to identify "priority investment areas".
  - (b) Commit to hire and retain a significant percentage of disadvantaged persons.

(K) "Fixed-asset investment" means the dollar amount invested in building, land, machinery and equipment, and infrastructure related to the project. Fixed-asset investment does

not include investments in furniture, personal computers, inventory, working capital, and other operating expenses.

- (L) "Full-time equivalent employees" means the quotient obtained by dividing the total number of hours for which employees, including qualifying work-from-home employees, were compensated for employment in the project by two-thousand eighty. If the authority determines that full-time employees in a particular industry sector normally work fewer than two thousand eighty hours per year, the authority may reduce the denominator described in the preceding sentence to the number of hours that correspond to full-time employment in the relevant industry sector. The calculation of "full-time equivalent employees" ~~shall~~ excludes any and all hours that are included as part of a tax credit under section 122.171 of the Revised Code.
- (M) "Income tax revenue" means the total amount withheld under section 5747.06 of the Revised Code by the taxpayer during the tax year from the compensation of each employee at the project location.
- (N) "Maintain operations" means the continuation of operations of the taxpayer as described in the tax credit agreement.
- (O) "Minority" means a resident of Ohio who is a member of one of the following groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.
- (P) "Payroll increase factor" means a numerical percentage determined by the authority to represent retained payroll growth, and ~~which shall be~~ applied annually during the term of the tax credit to adjust the "baseline payroll," as defined in division (A)(2) of section 122.17 of the Revised Code. The payroll increase factor ~~shall be~~ is a minimum of one. The payroll increase factor ~~shall be~~ is to be multiplied by the current taxable year's baseline payroll to equal the next taxable year's baseline payroll for each year during the term of the tax credit.
- (Q) "Person" means, but is not limited to, individuals, combinations of individuals of any form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partnerships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, for-profit corporations, S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal tax purposes, and any other entities.
- (R) "Post-term reporting period" means the time period a taxpayer ~~must~~ is to report to the authority and director to verify the maintenance of operations at the project location. The post-term reporting period begins at the conclusion of the tax credit term and continues for a minimum of three years as set forth in the tax credit

agreement corresponding to the taxpayer's obligation to maintain operations at the project location.

- (S) "Project locations" means the address or addresses listed in the tax credit agreement.
- (T) "Relocated employees" means the full-time equivalent employees or employment positions employed by the taxpayer or an affiliated entity at the location elsewhere in the State other than the project location that are relocated to the project location, and whose positions are not replaced within the same calendar year, or, if the employees or employment positions are relocated in the final quarter of the calendar year, within that calendar year or the following calendar year.
- (U) "Retail" means operations that include point-of-final-purchase transactions at a facility open to the consuming public, wherein one party is obligated to pay the price and the other party is obligated to transfer title to or possession of the item sold.
- (V) "Substantial number of employment positions" means individual employees of the taxpayer for which the aggregate annual gross payroll, excluding amounts paid for fringe benefits, is at least two hundred thousand dollars. In calculating the "substantial number of employment positions" threshold, the taxpayer ~~must~~ is to aggregate the payroll from all relocated employees under paragraph (B) of rule 122:7-1-09 of the Administrative Code for each year during the term of the tax credit.
- (W) "Substantially maintain" with respect to division (K)(1)(c) of section 122.17 of the Revised Code means at least fifty per cent of each of the commitments identified in the tax credit agreement.
- (X) "Substantially meet" with respect to division (K)(1)(b) of section 122.17 of the Revised Code means at least fifty per cent of each of the commitments identified in the tax credit agreement.
- (Y) "Tax year" means the calendar year in and for which the tax imposed by section 5725.18, 5726.02, 5729.03, 5736.02 or 5747.02 or levied under Chapter 5751. of the Revised Code is required to be paid.
- (Z) "Taxable year" means the annual tax reporting period of the taxpayer prescribed by division (M) of section 5751.01 of the Revised Code with respect to persons subject to the Ohio commercial activities tax, and prescribed by division (M) of section 5747.01 of the Revised Code with respect to persons subject to individual income tax. With respect to insurance companies taxable year means the calendar year subject to the franchise tax return required pursuant to section 5725.18 of the Revised Code, or subject to the tax required pursuant to section 5729.03 of the Revised Code.

(AA) "Taxpayer" means a business entity that has entered into an agreement for a tax credit pursuant to division (D) of section 122.17 of the Revised Code.

(BB) "Transferred payroll" means the payroll attributed to all relocated employees at the project location, if any.

(CC) "Qualifying work-from-home employees" has the same meaning as division (A)(8) of section 122.17 of the Revised Code and further means all of the following:

(1) the employee is subject to the same benefits, evaluation processes and advancement opportunities as if the employee were employed primarily at the project location;

(2) the taxpayer has the ability to require the employee to report to a project location identified in its tax credit agreement, if necessary;

(3) the employee is provided with necessary equipment to perform job duties that interacts with systems controlled from a project location identified in the taxpayer's tax credit agreement; and

(4) the employee is supervised from a project location identified in the taxpayer's tax credit agreement.

Effective:

Five Year Review (FYR) Dates: 10/25/2024

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Certification

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Date

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