

An Act

ENROLLED SENATE
BILL NO. 739

By: Leewright and Hall of the
Senate

and

Bashore of the House

An Act relating to the sales tax credit; amending Section 3, Chapter 196, O.S.L. 2017, as amended by Section 1, Chapter 443, O.S.L. 2019, Section 4, Chapter 196, O.S.L. 2017, as amended by Section 2, Chapter 443, O.S.L. 2019, Section 5, Chapter 196, O.S.L. 2017, as amended by Section 3, Chapter 443, O.S.L. 2019, Section 6, Chapter 196, O.S.L. 2017, as amended by Section 4, Chapter 443, O.S.L. 2019 and Section 7, Chapter 196, O.S.L. 2017, as amended by Section 5, Chapter 443, O.S.L. 2019 (68 O.S. Supp. 2020, Sections 2393, 2394, 2395, 2396 and 2397), which relate to the Oklahoma Tourism Development Act; modifying definitions; transferring powers and duties from the Executive Director of the Oklahoma Tourism and Recreation Department to the Executive Director of the Oklahoma Department of Commerce; requiring certain company to hire consulting firm; providing exception upon request of company; authorizing the Executive Director of the Oklahoma Department of Commerce to allow a company to hire the Department to produce report; requiring certain costs to be established by promulgation of rules; establishing minimum fee; clarifying circumstances for payment of fee; requiring deposit of fee revenue; eliminating authorization to appeal certain decision; authorizing the Oklahoma Department of Commerce to determine revenue neutrality of certain projects; transferring certain agreements executed by the Oklahoma Tourism and Recreation Department to the Oklahoma Department of Commerce on certain date; requiring the transfer

of certain administrative rules; requiring the Secretary of State to provide certain notice and make modification to the Administrative Code; providing the Oklahoma Department of Commerce jurisdiction over certain rules; authorizing the Oklahoma Department of Commerce to promulgate certain rules; clarifying statutory language; providing statutory reference; and providing an effective date.

SUBJECT: Sales tax credit

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 196, O.S.L. 2017, as amended by Section 1, Chapter 443, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2393), is amended to read as follows:

Section 2393. As used in the Oklahoma Tourism Development Act:

1. "Agreement" means an agreement entered into pursuant to Section 2396 of this title, by and between the Executive Director of the ~~Oklahoma Tourism and Recreation Department~~ Oklahoma Department of Commerce and an approved company, with respect to a tourism attraction project;

2. "Approved company" means any eligible company or companies seeking to undertake a tourism attraction project and is approved by the Executive Director pursuant to Sections 2395 and 2396 of this title;

3. "Approved costs" means:

- a. obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in connection with the acquisition, construction, equipping and installation of a tourism attraction project,

- b. the costs of acquiring real property or rights in real property in connection with a tourism attraction project, and any costs incidental thereto,
- c. the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project which are not paid by the vendor, supplier or contractor, or otherwise provided,
- d. all costs of architectural and engineering services including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping and installation of a tourism attraction project,
- e. all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project,
- f. all costs required for the installation of utilities in connection with a tourism attraction project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including off-site construction of utility extensions paid for by the approved company, and
- g. all other costs comparable with those described in this paragraph;

4. "Director" means the Executive Director of the ~~Oklahoma Tourism and Recreation Department~~ Oklahoma Department of Commerce or the Executive Director's designated representative;

5. "Eligible company" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project, whether owned or leased, within this state that meets the

standards promulgated by the Executive Director pursuant to Section 2394 of this title and, with respect to an Entertainment District, shall also include any such entity that will acquire, construct, develop, equip, install, expand or operate all or any portion of the Entertainment District, whether owned or leased;

6. "Entertainment District" means a mixed-use planned development project, with approved costs of One Million Dollars (\$1,000,000.00) or more in the aggregate, encompassing more than one hundred thousand (100,000) square feet and including an entertainment or recreational component and at least three of the following categories: (a) retail; (b) housing; (c) office; (d) restaurants; (e) hotel, regardless of whether the hotel is a destination hotel; (f) grocery; (g) brewery facilities for a small brewer (as defined in the Oklahoma Alcoholic Beverage Control Act, Section 1-103 of Title 37A of the Oklahoma Statutes); or (h) structured parking. An Entertainment District may include a project that is anticipated to be completed in multiple phases;

7. "Entertainment District Tenant Party" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity operating within a tourism attraction project that is an Entertainment District pursuant to a lease or similar agreement with an approved company or otherwise;

8. "Final approval" means the action taken by the Executive Director authorizing the eligible company to receive inducements under Section 2397 of this title;

9. "Increased state sales tax liability" means that portion of an entity's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction which exceeds the reported state sales tax liability for sales to its customers at the tourism attraction for the same month in the calendar year immediately preceding the certification as an approved company or an Entertainment District Tenant Party, as applicable;

10. "Inducements" means the sales tax credit or incentive payment as prescribed in Section 2397 of this title;

11. "Preliminary approval" means the action taken by the Executive Director conditioned upon final approval by the Executive Director upon satisfaction by the eligible company of the requirements of ~~this act~~ the Oklahoma Tourism Development Act;

12. a. "Tourism attraction" means:

- (1) a cultural or historical site,
- (2) a recreational or entertainment facility,
- (3) an area of natural phenomena or scenic beauty,
- (4) a theme park,
- (5) an amusement or entertainment park,
- (6) an indoor or outdoor play or music show,
- (7) a botanical garden,
- (8) a cultural or educational center,
- (9) a destination hotel whose location and amenities, including, but not limited to, upscale dining, recreation and entertainment, make the hotel itself a destination for tourists, or
- (10) an Entertainment District.

b. A tourism attraction shall not include:

- (1) lodging facilities, unless:
 - (a) the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved costs of the tourism attraction project, or

- (b) the lodging facilities are a part of a destination hotel or an Entertainment District,
- (2) facilities that are primarily devoted to the retail sale of goods, unless:
 - (a) the goods are created at the site of the tourism attraction project, or
 - (b) if the sale of goods is incidental to the tourism attraction project, or
 - (c) such facilities are a part of an Entertainment District,
- (3) facilities that are not open to the general public, unless such facilities are a part of an Entertainment District wherein a substantial portion of the Entertainment District is open to the general public, as determined by the Executive Director,
- (4) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project, unless such facilities are a part of an Entertainment District,
- (5) facilities owned by the State of Oklahoma or a political subdivision of this state, or
- (6) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under the Oklahoma Horse Racing Act, Sections 200 through 209 of Title 3A of the Oklahoma Statutes, shall be a tourism attraction for purposes of ~~this act~~ the Oklahoma Tourism Development Act for any approved project as outlined in subparagraph a of this paragraph or for an approved project relating to pari-

mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; and

13. "Tourism attraction project" or "project" means:

- a. the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction and equipping of a tourism attraction, and
- b. the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction and installation of a tourism attraction, including, but not limited to:
 - (1) surveys, and
 - (2) installation of utilities, which may include:
 - (a) water, sewer, sewage treatment, gas, electricity, communications and similar facilities, and
 - (b) off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which shall be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract tourists.

SECTION 2. AMENDATORY Section 4, Chapter 196, O.S.L. 2017, as amended by Section 2, Chapter 443, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2394), is amended to read as follows:

Section 2394. A. The Executive Director of the ~~Oklahoma Tourism and Recreation Department, with approval of the Oklahoma Tourism and Recreation Commission,~~ Oklahoma Department of Commerce shall establish standards for the making of applications for inducements to eligible companies and their tourism attraction

projects by the promulgation of rules in accordance with the Administrative Procedures Act.

B. With respect to each eligible company making an application to the Executive Director for inducements, and with respect to the tourism attraction described in the application, the Executive Director shall make inquiries and request materials of the applicant that shall include, but shall not be limited to:

1. Marketing plans for the project that target individuals who are not residents of this state;

2. A description and location of the project, including a description and boundary of the area encompassing the Entertainment District, if applicable;

3. Capital and other anticipated expenditures for the project that indicate that the total cost of the project shall exceed the minimum amount set forth in subsection C of this section and the anticipated sources of funding therefor, which for an Entertainment District that is anticipated to be completed in multiple phases may include capital and other anticipated expenditures for all phases of the project;

4. The anticipated employment and wages to be paid at the project, which may include employment and wages to be paid by the eligible company and any tenants of the tourism attraction project;

5. Business plans which indicate the average number of days in a year in which the project or any component thereof will be in operation and open to the public, if applicable; and

6. The anticipated revenues and expenses generated by the project, which for an Entertainment District may include the anticipated revenues and expenses generated by each of the different phases or components of the Entertainment District.

Based upon a review of these materials, if the Executive Director determines that the eligible company and the tourism attraction may reasonably be expected to satisfy the criteria for final approval in subsection C of this section, then the Executive Director may consider granting a preliminary approval of the

eligible company and the tourism attraction project pursuant to subsection B of Section 2395 of this title.

C. ~~For~~ Except as provided for in subsection D of this section, for a tourism attraction project, after granting a preliminary approval, the Executive Director shall engage the services of require the eligible company to hire a competent consulting firm which shall submit to the Executive Director a report analyzing the data made available by the eligible company and which shall collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism attraction project will:

1. Attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of this state;

2. Have costs in excess of Five Hundred Thousand Dollars (\$500,000.00);

3. Have a significant and positive economic impact on this state considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in this state, and the extent to which the tourism attraction project will be revenue-neutral to the State of Oklahoma, meaning the amount by which increased tax revenues from the tourism attraction project will exceed the inducements allowed pursuant to Section 2397 of this title;

4. Produce sufficient revenues and public demand to be operating and open to the public on a regular and persistent basis; and

5. Not adversely affect existing employment in this state.

D. At the request of the eligible company, the Executive Director may allow the eligible company to hire the Oklahoma Department of Commerce to prepare the report required in subsection C of this section.

E. For a tourism attraction project that is an Entertainment District and is anticipated to be completed in multiple phases, the consulting firm's required report may include the data and

information for the entire Entertainment District including any and all components or phases of the Entertainment District and a separate report for each component or phase of the Entertainment District shall not be required.

~~E. F.~~ F. The eligible company shall pay for the cost of the ~~consultant's~~ required report and shall cooperate with the ~~consultant~~ entity preparing the report and provide all of the data that the ~~consultant~~ preparing entity deems necessary to make a determination pursuant to this section. The cost for preparation of this report by the Oklahoma Department of Commerce shall be set forth by administrative rules promulgated by the Department, but in any event shall be a nonrefundable fee of no less than Five Thousand Dollars (\$5,000.00) per report. Payment for preparation of this report by the Oklahoma Department of Commerce shall be made by the eligible company to the Department upon approval of the request, and funds received shall be deposited into the Oklahoma Department of Commerce Revolving Fund created in Section 5012 of Title 74 of the Oklahoma Statutes.

SECTION 3. AMENDATORY Section 5, Chapter 196, O.S.L. 2017, as amended by Section 3, Chapter 443, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2395), is amended to read as follows:

Section 2395. A. ~~The Executive Director of the Oklahoma Tourism and Recreation Department, with the approval of the Oklahoma Tourism and Recreation Commission,~~ Oklahoma Department of Commerce shall establish standards for preliminary approval and final approval of eligible companies and their projects by the promulgation of rules in accordance with the Administrative Procedures Act.

B. The Executive Director may give preliminary approval by designating an eligible company as a preliminarily approved company and preliminarily authorizing the undertaking of the tourism attraction project.

C. The Executive Director shall review the report ~~of the consultant~~ prepared pursuant to subsection C of Section 2394 of this title and other information that has been made available to the Executive Director in order to assist the Executive Director in

determining whether the tourism attraction project will further the purposes of ~~this act~~ the Oklahoma Tourism Development Act.

D. The criteria for final approval of eligible companies and tourism attraction projects shall include, but shall not be limited to, the criteria set forth in subsection C of Section 2394 of this title.

E. After a review of the relevant materials, the consultant's report, other information made available to the Executive Director, and completion of other inquiries, the Executive Director may give final approval to the eligible company's application for a tourism attraction project and may grant to the eligible company the status of an approved company. ~~The decision reached by the Executive Director may be appealed by the eligible company to the Tourism and Recreation Commission. The decision of the Tourism and Recreation Commission shall constitute the final administrative decision of the Oklahoma Tourism and Recreation Department.~~

SECTION 4. AMENDATORY Section 6, Chapter 196, O.S.L. 2017, as amended by Section 4, Chapter 443, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2396), is amended to read as follows:

Section 2396. A. Upon granting final approval, the Executive Director of the ~~Oklahoma Tourism and Recreation Department~~ Oklahoma Department of Commerce may enter into an agreement with an approved company with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but shall not be limited to:

1. The amount of approved costs, which shall be determined by negotiations between the Executive Director and the approved company;

2. A date certain by which the approved company shall have completed the tourism attraction project or an individual component or phase of the project if the tourism attraction project is an Entertainment District. Within three (3) months of the completion date of the whole or an individual component or phase of the project, the approved company shall document its actual costs of the project through a certification of the costs by an independent

certified public accountant acceptable to the Executive Director;
and

3. The following provisions:

- a. the term of the agreement shall be ten (10) years from the later of:
 - (1) the date of the final approval of the tourism attraction project, or
 - (2) the completion date specified in the agreement, if the completion date is within three (3) years of the date of the final approval of the tourism attraction project. However, the term of the agreement may be extended for up to two (2) additional years by the Executive Director, with the advice and consent of the Oklahoma Tax Commission, if the Executive Director determines that the failure to complete the tourism attraction project within three (3) years resulted from:
 - (a) unanticipated and unavoidable delay in the construction of the tourism attraction project,
 - (b) an original completion date for the tourism attraction project, as originally planned, which will be more than three (3) years from the date construction began, or
 - (c) a change in business structure resulting from a merger or acquisition,
- b. in any tax year during which an agreement is in effect, if the amount of sales tax to be remitted by the approved company or an Entertainment District Tenant Party, if applicable, exceeds the sales tax credit available to the approved company or Entertainment District Tenant Party, if applicable, then the approved company or Entertainment District

Tenant Party, if applicable, shall pay the excess to this state as sales tax,

- c. within forty-five (45) days after the end of each calendar year the approved company shall supply the Executive Director with such reports and certifications as the Executive Director may request demonstrating to the satisfaction of the Executive Director that the approved company is in compliance with the provisions of the Oklahoma Tourism Development Act, and
- d. the approved company or an Entertainment District Tenant Party, if applicable, shall not receive an inducement with respect to any calendar year if:
 - (1) with respect to any tourism attraction project that is not an Entertainment District in any calendar year following the fourth year of the agreement, the tourism attraction project fails to attract at least fifteen percent (15%) of its visitors from among persons who are not residents of this state, or
 - (2) in any calendar year following the first year of the project or the tourism attraction project is not operating and open to the public on a regular and consistent basis, which for a tourism attraction project that is an Entertainment District shall mean that a substantial portion of the Entertainment District is not operating and open to the public on a regular and consistent basis.

B. The agreement shall not be transferable or assignable by the approved company without the written consent of the Executive Director but, with respect to a tourism attraction project that is an Entertainment District, the approved company can elect to pass-through all or a portion of the sales tax credit to one or more Entertainment District Tenant Parties in accordance with Section 2397 of this title.

C. If the approved company utilizes or receives inducements which are subsequently disallowed then the approved company will be liable for the payment to the Tax Commission of an amount equal to (i) all taxes resulting from the disallowance of the inducements plus applicable penalties and interest, whether owed by the approved company or an Entertainment District Tenant Party to which the credits have been passed-through in accordance with Section 2397 of this title, and/or (ii) all incentive payments previously received by the approved company, plus applicable penalties and interest. Only the approved company originally allowed a sales tax credit shall be held liable to make such payments and not any Entertainment District Tenant Party to whom the credit has been passed-through in accordance with Section 2397 of this title.

D. The Executive Director shall provide a copy of each agreement entered into with an approved company to the Tax Commission.

E. For a tourism attraction project that is an Entertainment District and anticipated to have multiple components or phases, the Executive Director may enter into more than one agreement with different approved companies for the different components or phases of the Entertainment District and such agreements may be entered into at different times as though the different components or phases of the Entertainment District are their own separate project. In such case, the Executive Director shall not be required to obtain a separate ~~consultant's~~ report (referred to in subsection C of Section 2394 of this title) for each individual component or phase of the Entertainment District, but only one ~~consultant's~~ report for the entire Entertainment District.

SECTION 5. AMENDATORY Section 7, Chapter 196, O.S.L. 2017, as amended by Section 5, Chapter 443, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2397), is amended to read as follows:

Section 2397. A. Upon receiving notification from the Executive Director of the ~~Oklahoma Tourism and Recreation Department~~ Oklahoma Department of Commerce that an approved company has entered into a tourism project agreement and is entitled to the inducements provided by the Oklahoma Tourism Development Act, the Oklahoma Tax Commission shall provide the approved company with forms and

instructions as necessary to claim or receive or pass-through those inducements.

B. An approved company whose agreement provides that it shall expend approved costs of more than Five Hundred Thousand Dollars (\$500,000.00) for a tourism attraction project but less than One Million Dollars (\$1,000,000.00) shall be entitled to a sales tax credit if the company certifies to the Tax Commission that it has expended at least the minimum amount in approved costs, and the Executive Director certifies that the approved company is in compliance with ~~this act~~ the Oklahoma Tourism Development Act . The Tax Commission shall then issue a tax credit memorandum to the approved company granting a sales tax credit in the amount of up to ten percent (10%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the ~~Tax Commission~~ Oklahoma Department of Commerce. Subsequent requests for credit for additional certified approved costs in excess of the minimum amount for each project as listed in this subsection but less than One Million Dollars (\$1,000,000.00) shall result in a sales tax credit in the amount of up to ten percent (10%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the ~~Tax Commission~~ Oklahoma Department of Commerce. Sales tax credits allowed pursuant to the provisions of ~~this act~~ the Oklahoma Tourism Development Act shall not be transferable or assignable; provided that, with respect to a tourism attraction project that is an Entertainment District, the approved company can elect to pass-through all or a portion of the sales tax credit to one or more Entertainment District Tenant Parties. The approved company and the Entertainment District Tenant Party shall jointly file a copy of the written credit pass-through agreement with the Oklahoma Tax Commission within thirty (30) days of the effective date of the agreement. Such filing of the agreement with the Oklahoma Tax Commission shall perfect such agreement. The written agreement shall contain the name, address and taxpayer identification number of the parties to the agreement, the amount of credit being passed-through, the month and year the credit was originally allowed to the approved company, the month and tax year or years for which the credit may be claimed, and a representation by the approved company that the approved company has neither claimed for its own behalf nor conveyed such credits to any other Entertainment District Tenant

Party. The Tax Commission shall develop a standard form for use by an approved company and an Entertainment District Tenant Party demonstrating eligibility for the Entertainment District Tenant Party to utilize the sales tax credit. The Tax Commission shall develop a system to record and track the pass-through of the sales tax credit and certify the ownership of the sales tax credit and may promulgate rules to permit verification of the validity and timeliness of a sales tax credit claimed upon a sales tax return pursuant to this subsection but shall not promulgate any rules which unduly restrict or hinder the pass-through of such sales tax credit to an Entertainment District Tenant Party.

An approved company whose agreement provides that it shall expend approved costs in excess of One Million Dollars (\$1,000,000.00) shall be entitled to a sales tax credit if the company certifies to the Tax Commission that it has expended at least One Million Dollars (\$1,000,000.00) in approved costs and the Executive Director certifies that the approved company is in compliance with ~~this act~~ the Oklahoma Tourism Development Act. The Tax Commission shall then issue a tax credit memorandum to the approved company granting a sales tax credit in the amount of up to twenty-five percent (25%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the ~~Tax Commission~~ Oklahoma Department of Commerce. The credit on all subsequent additional certified approved costs shall be in the amount of up to twenty-five percent (25%) of the costs, but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the ~~Tax Commission~~ Oklahoma Department of Commerce. For a tourism attraction project that is an Entertainment District, an approved company may elect to receive an incentive payment based on sales tax collections of Entertainment District Tenant Parties rather than a sales tax credit. The incentive payment shall be in the amount of up to twenty-five percent (25%) of the approved costs but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the ~~Tax Commission~~ Oklahoma Department of Commerce; provided that, (A) in no event shall the incentive payments exceed the increased state sales tax liability of the approved company and the Entertainment District Tenant Parties that is actually received by the Tax Commission, and (B) the approved company shall be entitled to

receive only ten percent (10%) of the incentive payment amount during each calendar year. The Tax Commission shall issue an incentive payment memorandum to the approved company granting a right to receive an incentive payment from the Tax Commission in the amount of up to twenty-five percent (25%) of the approved costs but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the ~~Tax Commission~~ Oklahoma Department of Commerce. As soon as practicable after the end of each calendar year during the term of the agreement, the approved company shall file a claim for the incentive payment with the Tax Commission, and the Tax Commission shall be responsible for ensuring that the amount of the incentive payment claimed does not exceed the increased state sales tax liability of the approved company and the Entertainment District Tenant Parties that has been actually received by the Tax Commission, which may include accessing the Oklahoma sales tax returns of the Entertainment District Tenant Parties as permitted by this section.

The cumulative inducements provided pursuant to ~~this act~~ the Oklahoma Tourism Development Act shall not exceed Fifteen Million Dollars (\$15,000,000.00) per year.

The Tax Commission shall require proof of expenditures prior to issuing a tax credit memorandum or incentive payment memorandum to the approved company which may be satisfied by a report from an independent certified public accountant. Additional credit memoranda or incentive memoranda may be issued as the approved company certifies additional expenditures of approved costs.

No tax credit memorandum or incentive payment memorandum shall be issued for any approved costs expended after the expiration of three (3) years from the date the agreement was signed by the Executive Director and the approved company. However, the Executive Director, with the advice and consent of the Tax Commission, may authorize inducements for approved costs expended up to five (5) years from the date the agreement was signed if the Executive Director determines that the failure to complete the tourism attraction project within three (3) years resulted from:

1. Unanticipated and unavoidable delay in the construction of the tourism attraction;

2. An original completion date for the tourism attraction, as originally planned, which will be more than three (3) years from the date construction began; or

3. A change in business ownership or business structure resulting from a merger or acquisition.

C. A sales tax credit allowed pursuant to the provisions of this section may be used to offset a portion of the reported state sales tax liability of the approved company or an Entertainment District Tenant Party, if applicable, for all sales tax reporting periods following the issuance of the credit memorandum subject to the following limitations:

1. Only increased state sales tax liability may be offset by the issued credit;

2. An approved company whose agreement provides that it shall expend approved costs in excess of One Million Dollars (\$1,000,000.00) or an Entertainment District Party, if applicable, shall be entitled to use only ten percent (10%) of the amount of each issued credit to offset increased state sales tax liability during each calendar year, plus the amount of any unused credit carried forward from a prior calendar year, and an approved company whose agreement provides that it shall expend approved costs of more than the minimum amount for each project as listed in this subsection but less than One Million Dollars (\$1,000,000.00) shall be entitled to use only twenty percent (20%) of the amount of each issued credit to offset increased state sales tax liability during each calendar year, plus the amount of any unused credit carried forward from a prior calendar year; and

3. All issued credit memoranda or incentive payment memorandum shall expire at the end of the month following the expiration of the agreement as provided in Section 2396 of this title.

The approved company or an Entertainment District Tenant Party, if applicable, shall have no obligation to refund or otherwise return any amount of this inducement to the person from whom the sales tax was collected.

D. The Tax Commission shall promulgate rules as are necessary for the proper administration of the Oklahoma Tourism Development Act. The Tax Commission may also develop forms and instructions as necessary for an approved company or Entertainment District Tenant Party, if applicable, to claim or receive or pass-through the inducements provided by ~~this act~~ the Oklahoma Tourism Development Act.

E. The Tax Commission shall have the authority to obtain any information necessary from or regarding the approved company or an Entertainment District Tenant Party, if applicable, and the Executive Director to verify that approved companies or an Entertainment District Tenant Party, if applicable, have received the proper amounts of inducements as authorized by ~~this act~~ the Oklahoma Tourism Development Act. The Oklahoma Tax Commission shall demand the repayment of any inducements taken or received in excess of the inducements allowed by this act.

F. No sales tax credit or incentive payment right authorized by this section shall be granted on or after January 1, 2026. Notwithstanding the foregoing, an approved company that has entered into a tourism attraction project agreement with the ~~Oklahoma Tourism and Recreation Department~~ Oklahoma Department of Commerce pursuant to Section 2396 of this title prior to January 1, 2026, shall continue to be entitled to claim or receive any inducements authorized by this section as contemplated by the tourism project agreement.

G. All currently approved tourism project agreements executed by the Oklahoma Tourism and Recreation Department are hereby transferred to the Oklahoma Department of Commerce upon the effective date of this act.

H. On the effective date of this act, all administrative rules promulgated by the Oklahoma Tourism and Recreation Department regarding the Oklahoma Tourism Development Act shall be transferred to and become a part of the administrative rules of the Oklahoma Department of Commerce. The Office of Administrative Rules in the Office of the Secretary of State shall provide adequate notice in the Oklahoma Register of the transferred rules and shall place the transferred rules under the Administrative Code section of the Oklahoma Department of Commerce. On the effective date of this act,

any amendment, repeal or addition to the transferred rules shall be under the jurisdiction of the Oklahoma Department of Commerce, who shall have the authority to enact rules in order to carry out the provisions of the Oklahoma Tourism Development Act.

SECTION 6. This act shall become effective November 1, 2021.

Passed the Senate the 9th day of March, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____