

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE

5 BILL NO. 739

By: Leewright and Hall of the
Senate

6 and

7 Bashore of the House

8

9

10 An Act relating to the sales tax credit; amending

11 Section 3, Chapter 196, O.S.L. 2017, as amended by

12 Section 1, Chapter 443, O.S.L. 2019, Section 4,

13 Chapter 196, O.S.L. 2017, as amended by Section 2,

14 Chapter 443, O.S.L. 2019, Section 5, Chapter 196,

15 O.S.L. 2017, as amended by Section 3, Chapter 443,

16 O.S.L. 2019, Section 6, Chapter 196, O.S.L. 2017, as

17 amended by Section 4, Chapter 443, O.S.L. 2019 and

18 Section 7, Chapter 196, O.S.L. 2017, as amended by

19 Section 5, Chapter 443, O.S.L. 2019 (68 O.S. Supp.

20 2020, Sections 2393, 2394, 2395, 2396 and 2397),

21 which relate to the Oklahoma Tourism Development Act;

22 modifying definitions; transferring powers and duties

23 from the Executive Director of the Oklahoma Tourism

24 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

1 of Commerce on certain date; requiring the transfer
2 of certain administrative rules; requiring the
3 Secretary of State to provide certain notice and make
4 modification to the Administrative Code; providing
5 the Oklahoma Department of Commerce jurisdiction over
6 certain rules; authorizing the Oklahoma Department of
7 Commerce to promulgate certain rules; clarifying
8 statutory language; providing statutory reference;
9 and providing an effective date.

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

11 SECTION 1. AMENDATORY Section 3, Chapter 196, O.S.L.
12 2017, as amended by Section 1, Chapter 443, O.S.L. 2019 (68 O.S.
13 Supp. 2020, Section 2393), is amended to read as follows:

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

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

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

24 3. "Approved costs" means:

- a. obligations incurred for labor and to vendors,
contractors, subcontractors, builders and suppliers in

1 connection with the acquisition, construction,
2 equipping and installation of a tourism attraction
3 project,

4 b. the costs of acquiring real property or rights in real
5 property in connection with a tourism attraction
6 project, and any costs incidental thereto,

7 c. the costs of contract bonds and of insurance of all
8 kinds that may be required or necessary during the
9 course of the acquisition, construction, equipping and
10 installation of a tourism attraction project which are
11 not paid by the vendor, supplier or contractor, or
12 otherwise provided,

13 d. all costs of architectural and engineering services
14 including, but not limited to, estimates, plans and
15 specifications, preliminary investigations, and
16 supervision of construction and installation, as well
17 as for the performance of all the duties required by
18 or consequent to the acquisition, construction,
19 equipping and installation of a tourism attraction
20 project,

21 e. all costs required to be paid under the terms of any
22 contract for the acquisition, construction, equipping
23 and installation of a tourism attraction project,

24

1 f. all costs required for the installation of utilities
2 in connection with a tourism attraction project
3 including, but not limited to, water, sewer, sewage
4 treatment, gas, electricity and communications, and
5 including off-site construction of utility extensions
6 paid for by the approved company, and

7 g. all other costs comparable with those described in
8 this paragraph;

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

12 5. "Eligible company" means any corporation, limited liability
13 company, partnership, sole proprietorship, business trust or any
14 other entity, operating or intending to operate a tourism attraction
15 project, whether owned or leased, within this state that meets the
16 standards promulgated by the Executive Director pursuant to Section
17 2394 of this title and, with respect to an Entertainment District,
18 shall also include any such entity that will acquire, construct,
19 develop, equip, install, expand or operate all or any portion of the
20 Entertainment District, whether owned or leased;

21 6. "Entertainment District" means a mixed-use planned
22 development project, with approved costs of One Million Dollars
23 (\$1,000,000.00) or more in the aggregate, encompassing more than one
24 hundred thousand (100,000) square feet and including an

1 entertainment or recreational component and at least three of the
2 following categories: (a) retail; (b) housing; (c) office; (d)
3 restaurants; (e) hotel, regardless of whether the hotel is a
4 destination hotel; (f) grocery; (g) brewery facilities for a small
5 brewer (as defined in the Oklahoma Alcoholic Beverage Control Act,
6 Section 1-103 of Title 37A of the Oklahoma Statutes); or (h)
7 structured parking. An Entertainment District may include a project
8 that is anticipated to be completed in multiple phases;

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

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

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

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

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

7 12. a. "Tourism attraction" means:

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

21 b. A tourism attraction shall not include:

- 22 (1) lodging facilities, unless:
 - 23 (a) the facilities constitute a portion of a
24 tourism attraction project and represent

1 less than fifty percent (50%) of the total
2 approved costs of the tourism attraction
3 project, or

4 (b) the lodging facilities are a part of a
5 destination hotel or an Entertainment
6 District,

7 (2) facilities that are primarily devoted to the
8 retail sale of goods, unless:

9 (a) the goods are created at the site of the
10 tourism attraction project, or

11 (b) if the sale of goods is incidental to the
12 tourism attraction project, or

13 (c) such facilities are a part of an
14 Entertainment District,

15 (3) facilities that are not open to the general
16 public, unless such facilities are a part of an
17 Entertainment District wherein a substantial
18 portion of the Entertainment District is open to
19 the general public, as determined by the
20 Executive Director,

21 (4) facilities that do not serve as a likely
22 destination where individuals who are not
23 residents of this state would remain overnight in
24 commercial lodging at or near the tourism

1 attraction project, unless such facilities are a
2 part of an Entertainment District,

3 (5) facilities owned by the State of Oklahoma or a
4 political subdivision of this state, or

5 (6) facilities established for the purpose of
6 conducting legalized gambling. However, a
7 facility regulated under the Oklahoma Horse
8 Racing Act, Sections 200 through 209 of Title 3A
9 of the Oklahoma Statutes, shall be a tourism
10 attraction for purposes of ~~this act~~ the Oklahoma
11 Tourism Development Act for any approved project
12 as outlined in subparagraph a of this paragraph
13 or for an approved project relating to pari-
14 mutuel racing at the facility and not for
15 establishing a casino or for offering casino-
16 style gambling; and

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

- 18 a. the acquisition, including the acquisition of real
19 estate by leasehold interest with a minimum term of
20 ten (10) years, construction and equipping of a
21 tourism attraction, and
- 22 b. the construction and installation of improvements to
23 facilities necessary or desirable for the acquisition,
24

1 construction and installation of a tourism attraction,
2 including, but not limited to:

3 (1) surveys, and

4 (2) installation of utilities, which may include:

5 (a) water, sewer, sewage treatment, gas,
6 electricity, communications and similar
7 facilities, and

8 (b) off-site construction of utility extensions
9 to the boundaries of the real estate on
10 which the facilities are located, all of
11 which shall be used to improve the economic
12 situation of the approved company in a
13 manner that shall allow the approved company
14 to attract tourists.

15 SECTION 2. AMENDATORY Section 4, Chapter 196, O.S.L.
16 2017, as amended by Section 2, Chapter 443, O.S.L. 2019 (68 O.S.
17 Supp. 2020, Section 2394), is amended to read as follows:

18 Section 2394. A. The Executive Director of the ~~Oklahoma~~
19 ~~Tourism and Recreation Department, with approval of the Oklahoma~~
20 ~~Tourism and Recreation Commission, Oklahoma Department of Commerce~~
21 shall establish standards for the making of applications for
22 inducements to eligible companies and their tourism attraction
23 projects by the promulgation of rules in accordance with the
24 Administrative Procedures Act.

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

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

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

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

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

21 5. Business plans which indicate the average number of days in
22 a year in which the project or any component thereof will be in
23 operation and open to the public, if applicable; and
24

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

5 Based upon a review of these materials, if the Executive
6 Director determines that the eligible company and the tourism
7 attraction may reasonably be expected to satisfy the criteria for
8 final approval in subsection C of this section, then the Executive
9 Director may consider granting a preliminary approval of the
10 eligible company and the tourism attraction project pursuant to
11 subsection B of Section 2395 of this title.

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

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

23 2. Have costs in excess of Five Hundred Thousand Dollars
24 (\$500,000.00);

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

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

12 5. Not adversely affect existing employment in this state.

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

17 E. For a tourism attraction project that is an Entertainment
18 District and is anticipated to be completed in multiple phases, the
19 ~~consulting firm's~~ required report may include the data and
20 information for the entire Entertainment District including any and
21 all components or phases of the Entertainment District and a
22 separate report for each component or phase of the Entertainment
23 District shall not be required.

24

1 ~~E. F.~~ The eligible company shall pay for the cost of the
2 ~~consultant's~~ required report and shall cooperate with the ~~consultant~~
3 entity preparing the report and provide all of the data that the
4 ~~consultant~~ preparing entity deems necessary to make a determination
5 pursuant to this section. The cost for preparation of this report
6 by the Oklahoma Department of Commerce shall be set forth by
7 administrative rules promulgated by the Department, but in any event
8 shall be a nonrefundable fee of no less than Five Thousand Dollars
9 (\$5,000.00) per report. Payment for preparation of this report by
10 the Oklahoma Department of Commerce shall be made by the eligible
11 company to the Department upon approval of the request, and funds
12 received shall be deposited into the Oklahoma Department of Commerce
13 Revolving Fund created in Section 5012 of Title 74 of the Oklahoma
14 Statutes.

15 SECTION 3. AMENDATORY Section 5, Chapter 196, O.S.L.
16 2017, as amended by Section 3, Chapter 443, O.S.L. 2019 (68 O.S.
17 Supp. 2020, Section 2395), is amended to read as follows:

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

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

5 C. The Executive Director shall review the report ~~of the~~
6 ~~consultant~~ prepared pursuant to subsection C of Section 2394 of this
7 title and other information that has been made available to the
8 Executive Director in order to assist the Executive Director in
9 determining whether the tourism attraction project will further the
10 purposes of ~~this act~~ the Oklahoma Tourism Development Act.

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

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

1 SECTION 4. AMENDATORY Section 6, Chapter 196, O.S.L.
2 2017, as amended by Section 4, Chapter 443, O.S.L. 2019 (68 O.S.
3 Supp. 2020, Section 2396), is amended to read as follows:

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

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

13 2. A date certain by which the approved company shall have
14 completed the tourism attraction project or an individual component
15 or phase of the project if the tourism attraction project is an
16 Entertainment District. Within three (3) months of the completion
17 date of the whole or an individual component or phase of the
18 project, the approved company shall document its actual costs of the
19 project through a certification of the costs by an independent
20 certified public accountant acceptable to the Executive Director;
21 and

22 3. The following provisions:

23 a. the term of the agreement shall be ten (10) years from
24 the later of:

1 (1) the date of the final approval of the tourism
2 attraction project, or

3 (2) the completion date specified in the agreement,
4 if the completion date is within three (3) years
5 of the date of the final approval of the tourism
6 attraction project. However, the term of the
7 agreement may be extended for up to two (2)
8 additional years by the Executive Director, with
9 the advice and consent of the Oklahoma Tax
10 Commission, if the Executive Director determines
11 that the failure to complete the tourism
12 attraction project within three (3) years
13 resulted from:

14 (a) unanticipated and unavoidable delay in the
15 construction of the tourism attraction
16 project,

17 (b) an original completion date for the tourism
18 attraction project, as originally planned,
19 which will be more than three (3) years from
20 the date construction began, or

21 (c) a change in business structure resulting
22 from a merger or acquisition,

23 b. in any tax year during which an agreement is in
24 effect, if the amount of sales tax to be remitted by

1 the approved company or an Entertainment District
2 Tenant Party, if applicable, exceeds the sales tax
3 credit available to the approved company or
4 Entertainment District Tenant Party, if applicable,
5 then the approved company or Entertainment District
6 Tenant Party, if applicable, shall pay the excess to
7 this state as sales tax,

8 c. within forty-five (45) days after the end of each
9 calendar year the approved company shall supply the
10 Executive Director with such reports and
11 certifications as the Executive Director may request
12 demonstrating to the satisfaction of the Executive
13 Director that the approved company is in compliance
14 with the provisions of the Oklahoma Tourism
15 Development Act, and

16 d. the approved company or an Entertainment District
17 Tenant Party, if applicable, shall not receive an
18 inducement with respect to any calendar year if:
19 (1) with respect to any tourism attraction project
20 that is not an Entertainment District in any
21 calendar year following the fourth year of the
22 agreement, the tourism attraction project fails
23 to attract at least fifteen percent (15%) of its
24

1 visitors from among persons who are not residents
2 of this state, or

3 (2) in any calendar year following the first year of
4 the project or the tourism attraction project is
5 not operating and open to the public on a regular
6 and consistent basis, which for a tourism
7 attraction project that is an Entertainment
8 District shall mean that a substantial portion of
9 the Entertainment District is not operating and
10 open to the public on a regular and consistent
11 basis.

12 B. The agreement shall not be transferable or assignable by the
13 approved company without the written consent of the Executive
14 Director but, with respect to a tourism attraction project that is
15 an Entertainment District, the approved company can elect to pass-
16 through all or a portion of the sales tax credit to one or more
17 Entertainment District Tenant Parties in accordance with Section
18 2397 of this title.

19 C. If the approved company utilizes or receives inducements
20 which are subsequently disallowed then the approved company will be
21 liable for the payment to the Tax Commission of an amount equal to
22 (i) all taxes resulting from the disallowance of the inducements
23 plus applicable penalties and interest, whether owed by the approved
24 company or an Entertainment District Tenant Party to which the

1 credits have been passed-through in accordance with Section 2397 of
2 this title, and/or (ii) all incentive payments previously received
3 by the approved company, plus applicable penalties and interest.
4 Only the approved company originally allowed a sales tax credit
5 shall be held liable to make such payments and not any Entertainment
6 District Tenant Party to whom the credit has been passed-through in
7 accordance with Section 2397 of this title.

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

11 E. For a tourism attraction project that is an Entertainment
12 District and anticipated to have multiple components or phases, the
13 Executive Director may enter into more than one agreement with
14 different approved companies for the different components or phases
15 of the Entertainment District and such agreements may be entered
16 into at different times as though the different components or phases
17 of the Entertainment District are their own separate project. In
18 such case, the Executive Director shall not be required to obtain a
19 separate ~~consultant's~~ report (referred to in subsection C of Section
20 2394 of this title) for each individual component or phase of the
21 Entertainment District, but only one ~~consultant's~~ report for the
22 entire Entertainment District.

23

24

1 SECTION 5. AMENDATORY Section 7, Chapter 196, O.S.L.
2 2017, as amended by Section 5, Chapter 443, O.S.L. 2019 (68 O.S.
3 Supp. 2020, Section 2397), is amended to read as follows:

4 Section 2397. A. Upon receiving notification from the
5 Executive Director of the ~~Oklahoma Tourism and Recreation Department~~
6 Oklahoma Department of Commerce that an approved company has entered
7 into a tourism project agreement and is entitled to the inducements
8 provided by the Oklahoma Tourism Development Act, the Oklahoma Tax
9 Commission shall provide the approved company with forms and
10 instructions as necessary to claim or receive or pass-through those
11 inducements.

12 B. An approved company whose agreement provides that it shall
13 expend approved costs of more than Five Hundred Thousand Dollars
14 (\$500,000.00) for a tourism attraction project but less than One
15 Million Dollars (\$1,000,000.00) shall be entitled to a sales tax
16 credit if the company certifies to the Tax Commission that it has
17 expended at least the minimum amount in approved costs, and the
18 Executive Director certifies that the approved company is in
19 compliance with ~~this act~~ the Oklahoma Tourism Development Act . The
20 Tax Commission shall then issue a tax credit memorandum to the
21 approved company granting a sales tax credit in the amount of up to
22 ten percent (10%) of the approved costs, but limited to the percent
23 of the approved costs that will result in the project being revenue-
24 neutral to the State of Oklahoma as determined by the ~~Tax Commission~~

1 Oklahoma Department of Commerce. Subsequent requests for credit for
2 additional certified approved costs in excess of the minimum amount
3 for each project as listed in this subsection but less than One
4 Million Dollars (\$1,000,000.00) shall result in a sales tax credit
5 in the amount of up to ten percent (10%) of the approved costs, but
6 limited to the percent of the approved costs that will result in the
7 project being revenue-neutral to the State of Oklahoma as determined
8 by the ~~Tax Commission~~ Oklahoma Department of Commerce. Sales tax
9 credits allowed pursuant to the provisions of ~~this act~~ the Oklahoma
10 Tourism Development Act shall not be transferable or assignable;
11 provided that, with respect to a tourism attraction project that is
12 an Entertainment District, the approved company can elect to pass-
13 through all or a portion of the sales tax credit to one or more
14 Entertainment District Tenant Parties. The approved company and the
15 Entertainment District Tenant Party shall jointly file a copy of the
16 written credit pass-through agreement with the Oklahoma Tax
17 Commission within thirty (30) days of the effective date of the
18 agreement. Such filing of the agreement with the Oklahoma Tax
19 Commission shall perfect such agreement. The written agreement
20 shall contain the name, address and taxpayer identification number
21 of the parties to the agreement, the amount of credit being passed-
22 through, the month and year the credit was originally allowed to the
23 approved company, the month and tax year or years for which the
24 credit may be claimed, and a representation by the approved company

1 that the approved company has neither claimed for its own behalf nor
2 conveyed such credits to any other Entertainment District Tenant
3 Party. The Tax Commission shall develop a standard form for use by
4 an approved company and an Entertainment District Tenant Party
5 demonstrating eligibility for the Entertainment District Tenant
6 Party to utilize the sales tax credit. The Tax Commission shall
7 develop a system to record and track the pass-through of the sales
8 tax credit and certify the ownership of the sales tax credit and may
9 promulgate rules to permit verification of the validity and
10 timeliness of a sales tax credit claimed upon a sales tax return
11 pursuant to this subsection but shall not promulgate any rules which
12 unduly restrict or hinder the pass-through of such sales tax credit
13 to an Entertainment District Tenant Party.

14 An approved company whose agreement provides that it shall
15 expend approved costs in excess of One Million Dollars
16 (\$1,000,000.00) shall be entitled to a sales tax credit if the
17 company certifies to the Tax Commission that it has expended at
18 least One Million Dollars (\$1,000,000.00) in approved costs and the
19 Executive Director certifies that the approved company is in
20 compliance with ~~this act~~ the Oklahoma Tourism Development Act. The
21 Tax Commission shall then issue a tax credit memorandum to the
22 approved company granting a sales tax credit in the amount of up to
23 twenty-five percent (25%) of the approved costs, but limited to the
24 percent of the approved costs that will result in the project being

1 revenue-neutral to the State of Oklahoma as determined by the ~~Tax~~
2 ~~Commission~~ Oklahoma Department of Commerce. The credit on all
3 subsequent additional certified approved costs shall be in the
4 amount of up to twenty-five percent (25%) of the costs, but limited
5 to the percent of the approved costs that will result in the project
6 being revenue-neutral to the State of Oklahoma as determined by the
7 ~~Tax Commission~~ Oklahoma Department of Commerce. For a tourism
8 attraction project that is an Entertainment District, an approved
9 company may elect to receive an incentive payment based on sales tax
10 collections of Entertainment District Tenant Parties rather than a
11 sales tax credit. The incentive payment shall be in the amount of
12 up to twenty-five percent (25%) of the approved costs but limited to
13 the percent of the approved costs that will result in the project
14 being revenue-neutral to the State of Oklahoma as determined by the
15 ~~Tax Commission~~ Oklahoma Department of Commerce; provided that, (A)
16 in no event shall the incentive payments exceed the increased state
17 sales tax liability of the approved company and the Entertainment
18 District Tenant Parties that is actually received by the Tax
19 Commission, and (B) the approved company shall be entitled to
20 receive only ten percent (10%) of the incentive payment amount
21 during each calendar year. The Tax Commission shall issue an
22 incentive payment memorandum to the approved company granting a
23 right to receive an incentive payment from the Tax Commission in the
24 amount of up to twenty-five percent (25%) of the approved costs but

1 limited to the percent of the approved costs that will result in the
2 project being revenue-neutral to the State of Oklahoma as determined
3 by the ~~Tax Commission~~ Oklahoma Department of Commerce. As soon as
4 practicable after the end of each calendar year during the term of
5 the agreement, the approved company shall file a claim for the
6 incentive payment with the Tax Commission, and the Tax Commission
7 shall be responsible for ensuring that the amount of the incentive
8 payment claimed does not exceed the increased state sales tax
9 liability of the approved company and the Entertainment District
10 Tenant Parties that has been actually received by the Tax
11 Commission, which may include accessing the Oklahoma sales tax
12 returns of the Entertainment District Tenant Parties as permitted by
13 this section.

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

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

23 No tax credit memorandum or incentive payment memorandum shall
24 be issued for any approved costs expended after the expiration of

1 three (3) years from the date the agreement was signed by the
2 Executive Director and the approved company. However, the Executive
3 Director, with the advice and consent of the Tax Commission, may
4 authorize inducements for approved costs expended up to five (5)
5 years from the date the agreement was signed if the Executive
6 Director determines that the failure to complete the tourism
7 attraction project within three (3) years resulted from:

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

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

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

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

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

23 2. An approved company whose agreement provides that it shall
24 expend approved costs in excess of One Million Dollars

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

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

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

20 D. The Tax Commission shall promulgate rules as are necessary
21 for the proper administration of the Oklahoma Tourism Development
22 Act. The Tax Commission may also develop forms and instructions as
23 necessary for an approved company or Entertainment District Tenant
24 Party, if applicable, to claim or receive or pass-through the

1 inducements provided by ~~this act~~ the Oklahoma Tourism Development
2 Act.

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

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

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

1 H. On the effective date of this act, all administrative rules
2 promulgated by the Oklahoma Tourism and Recreation Department
3 regarding the Oklahoma Tourism Development Act shall be transferred
4 to and become a part of the administrative rules of the Oklahoma
5 Department of Commerce. The Office of Administrative Rules in the
6 Office of the Secretary of State shall provide adequate notice in
7 the Oklahoma Register of the transferred rules and shall place the
8 transferred rules under the Administrative Code section of the
9 Oklahoma Department of Commerce. On the effective date of this act,
10 any amendment, repeal or addition to the transferred rules shall be
11 under the jurisdiction of the Oklahoma Department of Commerce, who
12 shall have the authority to enact rules in order to carry out the
13 provisions of the Oklahoma Tourism Development Act.

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

15
16 COMMITTEE REPORT BY: COMMITTEE ON TOURISM, dated 04/01/2021 - DO
17 PASS.

18
19
20
21
22
23
24