

1 **SENATE FLOOR VERSION**

2 February 24, 2021

3 SENATE BILL NO. 739

By: Leewright and Hall

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7 An Act relating to the sales tax credit; amending
8 Section 3, Chapter 196, O.S.L. 2017, as amended by
9 Section 1, Chapter 443, O.S.L. 2019, Section 4,
10 Chapter 196, O.S.L. 2017, as amended by Section 2,
11 Chapter 443, O.S.L. 2019, Section 5, Chapter 196,
12 O.S.L. 2017, as amended by Section 3, Chapter 443,
13 O.S.L. 2019, Section 6, Chapter 196, O.S.L. 2017, as
14 amended by Section 4, Chapter 443, O.S.L. 2019 and
15 Section 7, Chapter 196, O.S.L. 2017, as amended by
16 Section 5, Chapter 443, O.S.L. 2019 (68 O.S. Supp.
17 2020, Sections 2393, 2394, 2395, 2396 and 2397),
18 which relate to the Oklahoma Tourism Development Act;
19 modifying definitions; transferring powers and duties
20 from the Executive Director of the Oklahoma Tourism
21 and Recreation Department to the Executive Director
22 of the Oklahoma Department of Commerce; requiring
23 certain company to hire consulting firm; providing
24 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

1 Commerce to promulgate certain rules; clarifying
2 statutory language; providing statutory reference;
3 and providing an effective date.

4
5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. AMENDATORY Section 3, Chapter 196, O.S.L.
7 2017, as amended by Section 1, Chapter 443, O.S.L. 2019 (68 O.S.
8 Supp. 2020, Section 2393), is amended to read as follows:

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

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

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

19 3. "Approved costs" means:

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

- 1 b. the costs of acquiring real property or rights in real
2 property in connection with a tourism attraction
3 project, and any costs incidental thereto,
4 c. the costs of contract bonds and of insurance of all
5 kinds that may be required or necessary during the
6 course of the acquisition, construction, equipping and
7 installation of a tourism attraction project which are
8 not paid by the vendor, supplier or contractor, or
9 otherwise provided,
10 d. all costs of architectural and engineering services
11 including, but not limited to, estimates, plans and
12 specifications, preliminary investigations, and
13 supervision of construction and installation, as well
14 as for the performance of all the duties required by
15 or consequent to the acquisition, construction,
16 equipping and installation of a tourism attraction
17 project,
18 e. all costs required to be paid under the terms of any
19 contract for the acquisition, construction, equipping
20 and installation of a tourism attraction project,
21 f. all costs required for the installation of utilities
22 in connection with a tourism attraction project
23 including, but not limited to, water, sewer, sewage
24 treatment, gas, electricity and communications, and

1 including off-site construction of utility extensions
2 paid for by the approved company, and

3 g. all other costs comparable with those described in
4 this paragraph;

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

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

17 6. "Entertainment District" means a mixed-use planned
18 development project, with approved costs of One Million Dollars
19 (\$1,000,000.00) or more in the aggregate, encompassing more than one
20 hundred thousand (100,000) square feet and including an
21 entertainment or recreational component and at least three of the
22 following categories: (a) retail; (b) housing; (c) office; (d)
23 restaurants; (e) hotel, regardless of whether the hotel is a
24 destination hotel; (f) grocery; (g) brewery facilities for a small

1 brewer (as defined in the Oklahoma Alcoholic Beverage Control Act,
2 Section 1-103 of Title 37A of the Oklahoma Statutes); or (h)
3 structured parking. An Entertainment District may include a project
4 that is anticipated to be completed in multiple phases;

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

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

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

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

23 11. "Preliminary approval" means the action taken by the
24 Executive Director conditioned upon final approval by the Executive

1 Director upon satisfaction by the eligible company of the
2 requirements of ~~this act~~ the Oklahoma Tourism Development Act;

3 12. a. "Tourism attraction" means:

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

17 b. A tourism attraction shall not include:

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

1 (b) the lodging facilities are a part of a
2 destination hotel or an Entertainment
3 District,

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

6 (a) the goods are created at the site of the
7 tourism attraction project, or

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

10 (c) such facilities are a part of an
11 Entertainment District,

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

18 (4) facilities that do not serve as a likely
19 destination where individuals who are not
20 residents of this state would remain overnight in
21 commercial lodging at or near the tourism
22 attraction project, unless such facilities are a
23 part of an Entertainment District,

24

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

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

- 16 a. the acquisition, including the acquisition of real
17 estate by leasehold interest with a minimum term of
18 ten (10) years, construction and equipping of a
19 tourism attraction, and
20 b. the construction and installation of improvements to
21 facilities necessary or desirable for the acquisition,
22 construction and installation of a tourism attraction,
23 including, but not limited to:
24 (1) surveys, and

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

2 (a) water, sewer, sewage treatment, gas,
3 electricity, communications and similar
4 facilities, and

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

12 SECTION 2. AMENDATORY Section 4, Chapter 196, O.S.L.
13 2017, as amended by Section 2, Chapter 443, O.S.L. 2019 (68 O.S.
14 Supp. 2020, Section 2394), is amended to read as follows:

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

22 B. With respect to each eligible company making an application
23 to the Executive Director for inducements, and with respect to the
24 tourism attraction described in the application, the Executive

1 Director shall make inquiries and request materials of the applicant
2 that shall include, but shall not be limited to:

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

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

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

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

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

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

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

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

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

19 2. Have costs in excess of Five Hundred Thousand Dollars
20 (\$500,000.00);

21 3. Have a significant and positive economic impact on this
22 state considering, among other factors, the extent to which the
23 tourism attraction project will compete directly with existing
24 tourism attractions in this state, and the extent to which the

1 tourism attraction project will be revenue-neutral to the State of
2 Oklahoma, meaning the amount by which increased tax revenues from
3 the tourism attraction project will exceed the inducements allowed
4 pursuant to Section 2397 of this title;

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

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

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

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

20 ~~E.~~ F. The eligible company shall pay for the cost of the
21 ~~consultant's~~ required report and shall cooperate with the ~~consultant~~
22 entity preparing the report and provide all of the data that the
23 ~~consultant~~ preparing entity deems necessary to make a determination
24 pursuant to this section. The cost for preparation of this report

1 by the Oklahoma Department of Commerce shall be set forth by
2 administrative rules promulgated by the Department, but in any event
3 shall be a nonrefundable fee of no less than Five Thousand Dollars
4 (\$5,000.00) per report. Payment for preparation of this report by
5 the Oklahoma Department of Commerce shall be made by the eligible
6 company to the Department upon approval of the request, and funds
7 received shall be deposited into the Oklahoma Department of Commerce
8 Revolving Fund created in Section 5012 of Title 74 of the Oklahoma
9 Statutes.

10 SECTION 3. AMENDATORY Section 5, Chapter 196, O.S.L.
11 2017, as amended by Section 3, Chapter 443, O.S.L. 2019 (68 O.S.
12 Supp. 2020, Section 2395), is amended to read as follows:

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

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

24

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

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

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

21 SECTION 4. AMENDATORY Section 6, Chapter 196, O.S.L.
22 2017, as amended by Section 4, Chapter 443, O.S.L. 2019 (68 O.S.
23 Supp. 2020, Section 2396), is amended to read as follows:
24

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

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

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

19 3. The following provisions:

20 a. the term of the agreement shall be ten (10) years from
21 the later of:
22 (1) the date of the final approval of the tourism
23 attraction project, or
24

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

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

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

19 (c) a change in business structure resulting
20 from a merger or acquisition,

21 b. in any tax year during which an agreement is in
22 effect, if the amount of sales tax to be remitted by
23 the approved company or an Entertainment District
24 Tenant Party, if applicable, exceeds the sales tax

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

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

14 d. the approved company or an Entertainment District
15 Tenant Party, if applicable, shall not receive an
16 inducement with respect to any calendar year if:

17 (1) with respect to any tourism attraction project
18 that is not an Entertainment District in any
19 calendar year following the fourth year of the
20 agreement, the tourism attraction project fails
21 to attract at least fifteen percent (15%) of its
22 visitors from among persons who are not residents
23 of this state, or
24

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

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

17 C. If the approved company utilizes or receives inducements
18 which are subsequently disallowed then the approved company will be
19 liable for the payment to the Tax Commission of an amount equal to
20 (i) all taxes resulting from the disallowance of the inducements
21 plus applicable penalties and interest, whether owed by the approved
22 company or an Entertainment District Tenant Party to which the
23 credits have been passed-through in accordance with Section 2397 of
24 this title, and/or (ii) all incentive payments previously received

1 by the approved company, plus applicable penalties and interest.
2 Only the approved company originally allowed a sales tax credit
3 shall be held liable to make such payments and not any Entertainment
4 District Tenant Party to whom the credit has been passed-through in
5 accordance with Section 2397 of this title.

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

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

21 SECTION 5. AMENDATORY Section 7, Chapter 196, O.S.L.
22 2017, as amended by Section 5, Chapter 443, O.S.L. 2019 (68 O.S.
23 Supp. 2020, Section 2397), is amended to read as follows:

24

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

9 B. An approved company whose agreement provides that it shall
10 expend approved costs of more than Five Hundred Thousand Dollars
11 (\$500,000.00) for a tourism attraction project but less than One
12 Million Dollars (\$1,000,000.00) shall be entitled to a sales tax
13 credit if the company certifies to the Tax Commission that it has
14 expended at least the minimum amount in approved costs, and the
15 Executive Director certifies that the approved company is in
16 compliance with ~~this act~~ the Oklahoma Tourism Development Act . The
17 Tax Commission shall then issue a tax credit memorandum to the
18 approved company granting a sales tax credit in the amount of up to
19 ten percent (10%) of the approved costs, but limited to the percent
20 of the approved costs that will result in the project being revenue-
21 neutral to the State of Oklahoma as determined by the ~~Tax Commission~~
22 Oklahoma Department of Commerce. Subsequent requests for credit for
23 additional certified approved costs in excess of the minimum amount
24 for each project as listed in this subsection but less than One

1 Million Dollars (\$1,000,000.00) shall result in a sales tax credit
2 in the amount of up to ten percent (10%) of the approved costs, but
3 limited to the percent of the approved costs that will result in the
4 project being revenue-neutral to the State of Oklahoma as determined
5 by the ~~Tax Commission~~ Oklahoma Department of Commerce. Sales tax
6 credits allowed pursuant to the provisions of ~~this act~~ the Oklahoma
7 Tourism Development Act shall not be transferable or assignable;
8 provided that, with respect to a tourism attraction project that is
9 an Entertainment District, the approved company can elect to pass-
10 through all or a portion of the sales tax credit to one or more
11 Entertainment District Tenant Parties. The approved company and the
12 Entertainment District Tenant Party shall jointly file a copy of the
13 written credit pass-through agreement with the Oklahoma Tax
14 Commission within thirty (30) days of the effective date of the
15 agreement. Such filing of the agreement with the Oklahoma Tax
16 Commission shall perfect such agreement. The written agreement
17 shall contain the name, address and taxpayer identification number
18 of the parties to the agreement, the amount of credit being passed-
19 through, the month and year the credit was originally allowed to the
20 approved company, the month and tax year or years for which the
21 credit may be claimed, and a representation by the approved company
22 that the approved company has neither claimed for its own behalf nor
23 conveyed such credits to any other Entertainment District Tenant
24 Party. The Tax Commission shall develop a standard form for use by

1 an approved company and an Entertainment District Tenant Party
2 demonstrating eligibility for the Entertainment District Tenant
3 Party to utilize the sales tax credit. The Tax Commission shall
4 develop a system to record and track the pass-through of the sales
5 tax credit and certify the ownership of the sales tax credit and may
6 promulgate rules to permit verification of the validity and
7 timeliness of a sales tax credit claimed upon a sales tax return
8 pursuant to this subsection but shall not promulgate any rules which
9 unduly restrict or hinder the pass-through of such sales tax credit
10 to an Entertainment District Tenant Party.

11 An approved company whose agreement provides that it shall
12 expend approved costs in excess of One Million Dollars
13 (\$1,000,000.00) shall be entitled to a sales tax credit if the
14 company certifies to the Tax Commission that it has expended at
15 least One Million Dollars (\$1,000,000.00) in approved costs and the
16 Executive Director certifies that the approved company is in
17 compliance with ~~this act~~ the Oklahoma Tourism Development Act. The
18 Tax Commission shall then issue a tax credit memorandum to the
19 approved company granting a sales tax credit in the amount of up to
20 twenty-five percent (25%) of the approved costs, but limited to the
21 percent of the approved costs that will result in the project being
22 revenue-neutral to the State of Oklahoma as determined by the ~~Tax~~
23 ~~Commission~~ Oklahoma Department of Commerce. The credit on all
24 subsequent additional certified approved costs shall be in the

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

1 practicable after the end of each calendar year during the term of
2 the agreement, the approved company shall file a claim for the
3 incentive payment with the Tax Commission, and the Tax Commission
4 shall be responsible for ensuring that the amount of the incentive
5 payment claimed does not exceed the increased state sales tax
6 liability of the approved company and the Entertainment District
7 Tenant Parties that has been actually received by the Tax
8 Commission, which may include accessing the Oklahoma sales tax
9 returns of the Entertainment District Tenant Parties as permitted by
10 this section.

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

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

20 No tax credit memorandum or incentive payment memorandum shall
21 be issued for any approved costs expended after the expiration of
22 three (3) years from the date the agreement was signed by the
23 Executive Director and the approved company. However, the Executive
24 Director, with the advice and consent of the Tax Commission, may

1 authorize inducements for approved costs expended up to five (5)
2 years from the date the agreement was signed if the Executive
3 Director determines that the failure to complete the tourism
4 attraction project within three (3) years resulted from:

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

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

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

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

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

20 2. An approved company whose agreement provides that it shall
21 expend approved costs in excess of One Million Dollars
22 (\$1,000,000.00) or an Entertainment District Party, if applicable,
23 shall be entitled to use only ten percent (10%) of the amount of
24 each issued credit to offset increased state sales tax liability

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

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

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

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

24

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

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

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

23 H. On the effective date of this act, all administrative rules
24 promulgated by the Oklahoma Tourism and Recreation Department

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

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

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
14 February 24, 2021 - DO PASS
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