

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 ENGROSSED SENATE
5 BILL NO. 14x

By: Thompson (Roger) and Hall
of the Senate

6 and

7 Wallace and Martinez of the
8 House

9
10 An Act relating to sales tax credit; amending 68 O.S.
11 2021, Sections 2396 and 2397, which relate to the
12 Oklahoma Tourism Development Act; modifying term of
13 agreement; modifying certain annual limit; updating
14 statutory language; updating statutory references;
15 and providing an effective date.

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

17 SECTION 1. AMENDATORY 68 O.S. 2021, Section 2396, is
18 amended to read as follows:

19 Section 2396. A. Upon granting final approval, the Executive
20 Director of the Oklahoma Department of Commerce may enter into an
21 agreement with an approved company with respect to its tourism
22 attraction project. The terms and provisions of each agreement
23 shall include, but shall not be limited to:
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1 1. The amount of approved costs, which shall be determined by
2 negotiations between the Executive Director and the approved
3 company;

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

13 3. The following provisions:

14 a. the term of the agreement ~~shall~~ may be up to ten (10)
15 years from the later of:

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

18 (2) the completion date specified in the agreement,
19 if the completion date is within three (3) years
20 of the date of the final approval of the tourism
21 attraction project. However, the term of the
22 agreement may be extended for up to two (2)
23 additional years by the Executive Director, with
24 the advice and consent of the Oklahoma Tax

1 Commission, if the Executive Director determines
2 that the failure to complete the tourism
3 attraction project within three (3) years
4 resulted from:

5 (a) unanticipated and unavoidable delay in the
6 construction of the tourism attraction
7 project,

8 (b) an original completion date for the tourism
9 attraction project, as originally planned,
10 which will be more than three (3) years from
11 the date construction began, or

12 (c) a change in business structure resulting
13 from a merger or acquisition,

14 b. in any tax year during which an agreement is in
15 effect, if the amount of sales tax to be remitted by
16 the approved company or an Entertainment District
17 Tenant Party, if applicable, exceeds the sales tax
18 credit available to the approved company or
19 Entertainment District Tenant Party, if applicable,
20 then the approved company or Entertainment District
21 Tenant Party, if applicable, shall pay the excess to
22 this state as sales tax,

23 c. within forty-five (45) days after the end of each
24 calendar year the approved company shall supply the

1 Executive Director with such reports and
2 certifications as the Executive Director may request
3 demonstrating to the satisfaction of the Executive
4 Director that the approved company is in compliance
5 with the provisions of the Oklahoma Tourism
6 Development Act, and

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

10 (1) with respect to any tourism attraction project
11 that is not an Entertainment District in any
12 calendar year following the fourth year of the
13 agreement, the tourism attraction project fails
14 to attract at least fifteen percent (15%) of its
15 visitors from among persons who are not residents
16 of this state, or

17 (2) in any calendar year following the first year of
18 the project or the tourism attraction project is
19 not operating and open to the public on a regular
20 and consistent basis, which for a tourism
21 attraction project that is an Entertainment
22 District shall mean that a substantial portion of
23 the Entertainment District is not operating and
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1 open to the public on a regular and consistent
2 basis.

3 B. The agreement shall not be transferable or assignable by the
4 approved company without the written consent of the Executive
5 Director but, with respect to a tourism attraction project that is
6 an Entertainment District, the approved company can elect to pass-
7 through all or a portion of the sales tax credit to one or more
8 Entertainment District Tenant Parties in accordance with Section
9 2397 of this title.

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

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

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

15 SECTION 2. AMENDATORY 68 O.S. 2021, Section 2397, is
16 amended to read as follows:

17 Section 2397. A. Upon receiving notification from the
18 Executive Director of the Oklahoma Department of Commerce that an
19 approved company has entered into a tourism project agreement and is
20 entitled to the inducements provided by the Oklahoma Tourism
21 Development Act, the Oklahoma Tax Commission shall provide the
22 approved company with forms and instructions as necessary to claim
23 or receive or pass-through those inducements.

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1 B. An approved company whose agreement provides that it shall
2 expend approved costs of more than Five Hundred Thousand Dollars
3 (\$500,000.00) for a tourism attraction project but less than One
4 Million Dollars (\$1,000,000.00) shall be entitled to a sales tax
5 credit if the company certifies to the Tax Commission that it has
6 expended at least the minimum amount in approved costs, and the
7 Executive Director certifies that the approved company is in
8 compliance with the Oklahoma Tourism Development Act. The Tax
9 Commission shall then issue a tax credit memorandum to the approved
10 company granting a sales tax credit in the amount of up to ten
11 percent (10%) of the approved costs, but limited to the percent of
12 the approved costs that will result in the project being revenue-
13 neutral to ~~the State of Oklahoma~~ this state as determined by the
14 Oklahoma Department of Commerce. Subsequent requests for credit for
15 additional certified approved costs in excess of the minimum amount
16 for each project as listed in this subsection but less than One
17 Million Dollars (\$1,000,000.00) shall result in a sales tax credit
18 in the amount of up to ten percent (10%) of the approved costs, but
19 limited to the percent of the approved costs that will result in the
20 project being revenue-neutral to ~~the State of Oklahoma~~ this state as
21 determined by the Oklahoma Department of Commerce. Sales tax
22 credits allowed pursuant to the provisions of the Oklahoma Tourism
23 Development Act shall not be transferable or assignable; provided
24 that, with respect to a tourism attraction project that is an

1 Entertainment District, the approved company can elect to pass-
2 through all or a portion of the sales tax credit to one or more
3 Entertainment District Tenant Parties. The approved company and the
4 Entertainment District Tenant Party shall jointly file a copy of the
5 written credit pass-through agreement with the Oklahoma Tax
6 Commission within thirty (30) days of the effective date of the
7 agreement. Such filing of the agreement with the Oklahoma Tax
8 Commission shall perfect such agreement. The written agreement
9 shall contain the name, address and taxpayer identification number
10 of the parties to the agreement, the amount of credit being passed-
11 through, the month and year the credit was originally allowed to the
12 approved company, the month and tax year or years for which the
13 credit may be claimed, and a representation by the approved company
14 that the approved company has neither claimed for its own behalf nor
15 conveyed such credits to any other Entertainment District Tenant
16 Party. The Tax Commission shall develop a standard form for use by
17 an approved company and an Entertainment District Tenant Party
18 demonstrating eligibility for the Entertainment District Tenant
19 Party to utilize the sales tax credit. The Tax Commission shall
20 develop a system to record and track the pass-through of the sales
21 tax credit and certify the ownership of the sales tax credit and may
22 promulgate rules to permit verification of the validity and
23 timeliness of a sales tax credit claimed upon a sales tax return
24 pursuant to this subsection but shall not promulgate any rules which

1 unduly restrict or hinder the pass-through of such sales tax credit
2 to an Entertainment District Tenant Party.

3 An approved company whose agreement provides that it shall
4 expend approved costs in excess of One Million Dollars
5 (\$1,000,000.00) shall be entitled to a sales tax credit if the
6 company certifies to the Tax Commission that it has expended at
7 least One Million Dollars (\$1,000,000.00) in approved costs and the
8 Executive Director certifies that the approved company is in
9 compliance with the Oklahoma Tourism Development Act. The Tax
10 Commission shall then issue a tax credit memorandum to the approved
11 company granting a sales tax credit in the amount of up to twenty-
12 five percent (25%) of the approved costs, but limited to the percent
13 of the approved costs that will result in the project being revenue-
14 neutral to ~~the State of Oklahoma~~ this state as determined by the
15 Oklahoma Department of Commerce. The credit on all subsequent
16 additional certified approved costs shall be in the amount of up to
17 twenty-five percent (25%) of the costs, but limited to the percent
18 of the approved costs that will result in the project being revenue-
19 neutral to ~~the State of Oklahoma~~ this state as determined by the
20 Oklahoma Department of Commerce. For a tourism attraction project
21 that is an Entertainment District, an approved company may elect to
22 receive an incentive payment based on sales tax collections of
23 Entertainment District Tenant Parties rather than a sales tax
24 credit. The incentive payment shall be in the amount of up to

1 twenty-five percent (25%) of the approved costs but limited to the
2 percent of the approved costs that will result in the project being
3 revenue-neutral to ~~the State of Oklahoma~~ this state as determined by
4 the Oklahoma Department of Commerce; provided that, (A) in no event
5 shall the incentive payments exceed the increased state sales tax
6 liability of the approved company and the Entertainment District
7 Tenant Parties that is actually received by the Tax Commission, and
8 (B) the approved company shall be entitled to receive only ten
9 percent (10%) of the incentive payment amount during each calendar
10 year. The Tax Commission shall issue an incentive payment
11 memorandum to the approved company granting a right to receive an
12 incentive payment from the Tax Commission in the amount of up to
13 twenty-five percent (25%) of the approved costs but limited to the
14 percent of the approved costs that will result in the project being
15 revenue-neutral to ~~the State of Oklahoma~~ this state as determined by
16 the Oklahoma Department of Commerce. As soon as practicable after
17 the end of each calendar year during the term of the agreement, the
18 approved company shall file a claim for the incentive payment with
19 the Tax Commission, and the Tax Commission shall be responsible for
20 ensuring that the amount of the incentive payment claimed does not
21 exceed the increased state sales tax liability of the approved
22 company and the Entertainment District Tenant Parties that has been
23 actually received by the Tax Commission, which may include accessing
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1 the Oklahoma sales tax returns of the Entertainment District Tenant
2 Parties as permitted by this section.

3 The cumulative inducements provided pursuant to the Oklahoma
4 Tourism Development Act shall not exceed ~~Fifteen Million Dollars~~
5 ~~(\$15,000,000.00)~~ Thirty Million Dollars (\$30,000,000.00) per year.

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

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

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

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

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

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

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

14 2. An approved company whose agreement provides that it shall
15 expend approved costs in excess of One Million Dollars
16 (\$1,000,000.00) or an Entertainment District Party, if applicable,
17 shall be entitled to use only ten percent (10%) of the amount of
18 each issued credit to offset increased state sales tax liability
19 during each calendar year, plus the amount of any unused credit
20 carried forward from a prior calendar year, and an approved company
21 whose agreement provides that it shall expend approved costs of more
22 than the minimum amount for each project as listed in this
23 subsection but less than One Million Dollars (\$1,000,000.00) shall
24 be entitled to use only twenty percent (20%) of the amount of each

1 issued credit to offset increased state sales tax liability during
2 each calendar year, plus the amount of any unused credit carried
3 forward from a prior calendar year; and

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

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

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

18 E. The Tax Commission shall have the authority to obtain any
19 information necessary from or regarding the approved company or an
20 Entertainment District Tenant Party, if applicable, and the
21 Executive Director to verify that approved companies or an
22 Entertainment District Tenant Party, if applicable, have received
23 the proper amounts of inducements as authorized by the Oklahoma
24 Tourism Development Act. The Oklahoma Tax Commission shall demand

1 the repayment of any inducements taken or received in excess of the
2 inducements allowed by ~~this act~~ the Oklahoma Tourism Development
3 Act.

4 F. No sales tax credit or incentive payment right authorized by
5 this section shall be granted on or after January 1, 2026.

6 Notwithstanding the foregoing, an approved company that has entered
7 into a tourism attraction project agreement with the Oklahoma
8 Department of Commerce pursuant to Section 2396 of this title prior
9 to January 1, 2026, shall continue to be entitled to claim or
10 receive any inducements authorized by this section as contemplated
11 by the tourism project agreement.

12 G. All currently approved tourism project agreements executed
13 by the Oklahoma Tourism and Recreation Department are hereby
14 transferred to the Oklahoma Department of Commerce upon ~~the~~
15 ~~effective date of this act~~ November 1, 2021.

16 H. On ~~the effective date of this act~~ November 1, 2021, all
17 administrative rules promulgated by the Oklahoma Tourism and
18 Recreation Department regarding the Oklahoma Tourism Development Act
19 shall be transferred to and become a part of the administrative
20 rules of the Oklahoma Department of Commerce. The Office of
21 Administrative Rules in the Office of the Secretary of State shall
22 provide adequate notice in the Oklahoma Register of the transferred
23 rules and shall place the transferred rules under the Administrative
24 Code section of the Oklahoma Department of Commerce. On ~~the~~

1 ~~effective date of this act~~ November 1, 2021, any amendment, repeal,
2 or addition to the transferred rules shall be under the jurisdiction
3 of the Oklahoma Department of Commerce, who shall have the authority
4 to enact rules in order to carry out the provisions of the Oklahoma
5 Tourism Development Act.

6 SECTION 3. This act shall become effective November 1, 2023.

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8 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
9 AND BUDGET, dated 05/23/2023 - DO PASS, As Amended.
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