

1 ENGROSSED SENATE
2 BILL NO. 394

By: Coleman of the Senate
and
Wallace of the House

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6 [sales tax credit - Oklahoma Tourism Development Act
7 - term of agreement - annual limit - effective date]
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9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

20 2. A date certain by which the approved company shall have
21 completed the tourism attraction project or an individual component
22 or phase of the project if the tourism attraction project is an
23 Entertainment District. Within three (3) months of the completion
24 date of the whole or an individual component or phase of the

1 project, the approved company shall document its actual costs of the
2 project through a certification of the costs by an independent
3 certified public accountant acceptable to the Executive Director;
4 and

5 3. The following provisions:

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

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

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

21 (a) unanticipated and unavoidable delay in the
22 construction of the tourism attraction
23 project,
24

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

5 (c) a change in business structure resulting
6 from a merger or acquisition,

7 b. in any tax year during which an agreement is in
8 effect, if the amount of sales tax to be remitted by
9 the approved company or an Entertainment District
10 Tenant Party, if applicable, exceeds the sales tax
11 credit available to the approved company or
12 Entertainment District Tenant Party, if applicable,
13 then the approved company or Entertainment District
14 Tenant Party, if applicable, shall pay the excess to
15 this state as sales tax,

16 c. within forty-five (45) days after the end of each
17 calendar year the approved company shall supply the
18 Executive Director with such reports and
19 certifications as the Executive Director may request
20 demonstrating to the satisfaction of the Executive
21 Director that the approved company is in compliance
22 with the provisions of the Oklahoma Tourism
23 Development Act, and
24

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

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

11 (2) in any calendar year following the first year of
12 the project or the tourism attraction project is
13 not operating and open to the public on a regular
14 and consistent basis, which for a tourism
15 attraction project that is an Entertainment
16 District shall mean that a substantial portion of
17 the Entertainment District is not operating and
18 open to the public on a regular and consistent
19 basis.

20 B. The agreement shall not be transferable or assignable by the
21 approved company without the written consent of the Executive
22 Director but, with respect to a tourism attraction project that is
23 an Entertainment District, the approved company can elect to pass-
24 through all or a portion of the sales tax credit to one or more

1 Entertainment District Tenant Parties in accordance with Section
2 2397 of this title.

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

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

19 E. For a tourism attraction project that is an Entertainment
20 District and anticipated to have multiple components or phases, the
21 Executive Director may enter into more than one agreement with
22 different approved companies for the different components or phases
23 of the Entertainment District and such agreements may be entered
24 into at different times as though the different components or phases

1 of the Entertainment District are their own separate project. In
2 such case, the Executive Director shall not be required to obtain a
3 separate report (referred to in subsection C of Section 2394 of this
4 title) for each individual component or phase of the Entertainment
5 District, but only one report for the entire Entertainment District.

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

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

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

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

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

17 An approved company whose agreement provides that it shall
18 expend approved costs in excess of One Million Dollars
19 (\$1,000,000.00) shall be entitled to a sales tax credit if the
20 company certifies to the Tax Commission that it has expended at
21 least One Million Dollars (\$1,000,000.00) in approved costs and the
22 Executive Director certifies that the approved company is in
23 compliance with the Oklahoma Tourism Development Act. The Tax
24 Commission shall then issue a tax credit memorandum to the approved

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

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

16 The cumulative inducements provided pursuant to the Oklahoma
17 Tourism Development Act shall not exceed ~~Fifteen Million Dollars~~
18 ~~(\$15,000,000.00)~~ Thirty Million Dollars (\$30,000,000.00) per year.

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

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

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

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

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

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

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

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

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

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

23 D. The Tax Commission shall promulgate rules as are necessary
24 for the proper administration of the Oklahoma Tourism Development

1 Act. The Tax Commission may also develop forms and instructions as
2 necessary for an approved company or Entertainment District Tenant
3 Party, if applicable, to claim or receive or pass-through the
4 inducements provided by the Oklahoma Tourism Development Act.

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

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

23 G. All currently approved tourism project agreements executed
24 by the Oklahoma Tourism and Recreation Department are hereby

1 transferred to the Oklahoma Department of Commerce upon ~~the~~
2 ~~effective date of this act~~ November 1, 2021.

3 H. On ~~the effective date of this act~~ November 1, 2021, all
4 administrative rules promulgated by the Oklahoma Tourism and
5 Recreation Department regarding the Oklahoma Tourism Development Act
6 shall be transferred to and become a part of the administrative
7 rules of the Oklahoma Department of Commerce. The Office of
8 Administrative Rules in the Office of the Secretary of State shall
9 provide adequate notice in the Oklahoma Register of the transferred
10 rules and shall place the transferred rules under the Administrative
11 Code section of the Oklahoma Department of Commerce. On ~~the~~
12 ~~effective date of this act~~ November 1, 2021, any amendment, repeal,
13 or addition to the transferred rules shall be under the jurisdiction
14 of the Oklahoma Department of Commerce, who shall have the authority
15 to enact rules in order to carry out the provisions of the Oklahoma
16 Tourism Development Act.

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