An Act

ENROLLED SENATE
BILL NO. 461

By: Mazzei, Nichols, Lamb and Gumm of the Senate

and

Hickman, Buck and Cox of the House

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 2357.36, as last amended by Section 9, Chapter 436, O.S.L. 2008, 2357.37, as last amended by Section 10, Chapter 436, O.S.L. 2008, and 2357.40, as last amended by Section 13, Chapter 436, O.S.L. 2008 (68 O.S. Supp. 2009, Sections 2357.36, 2357.37 and 2357.40), which relate to tax incentives for tourism attractions and film, digital media production or music production and development facility projects; modifying definition; requiring reports include analysis of the extent to which projects are revenue neutral; requiring certain extension of credits be revenue neutral; limiting amount of subsequent extensions of credits; requiring certain proof of expenditures prior to granting credits; extending duration of credits; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.36, as last amended by Section 9, Chapter 436, O.S.L. 2008 (68 O.S. Supp. 2009, Section 2357.36), is amended to read as follows:

Section 2357.36 As used in the Oklahoma Tourism Development Act:

1. "Agreement" means an agreement entered into pursuant to Section 2357.39 of this title, by and between the Director of the Oklahoma Tourism and Recreation Department and an approved company, with respect to a tourism attraction project or film, digital media or music production and development facility project;

2. "Approved company" means any eligible company that is seeking to undertake a tourism attraction or film, digital media or music production and development facility project and is approved by the Director pursuant to Sections 2357.38 and 2357.39 of this title;

3. "Approved costs" means:

a. obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in connection with the acquisition, construction, equipping and installation of a tourism attraction project or film, digital media or music production and development facility project,

b. the costs of acquiring real property or rights in real property in connection with a tourism attraction project or film, digital media or music production and development facility project, and any costs incidental thereto,

c. the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project or film, digital media or music production and development facility project which is not paid by the vendor, supplier, contractor, or otherwise provided,

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

project or film, digital media or music production and development facility project,

e. all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project or film, digital media or music production and development facility project,

f. all costs required for the installation of utilities in connection with a tourism attraction project or film, digital media or music production and development facility project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including off-site construction of utility extensions paid for by the approved company, and

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

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

5. "Eligible company" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project or undertake film, digital media or music production and development facility project, whether owned or leased, within this state that meets the standards promulgated by the Director pursuant to Section 2357.37 of this title;

6. "Final approval" means the action taken by the Director authorizing the eligible company to receive inducements under Section 2357.40 of this title;

7. "Increased state sales tax liability" means that portion of an approved company's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourist attraction or for purposes of a film, digital media or music production and development facility project for any monthly sales tax reporting period after the approved company provides the

certification required by subsection B of Section 2357.40 of this title, which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding the certification;

8. "Inducements" means the income tax credit or sales tax credit as prescribed in Section 2357.40 of this title;

9. "Preliminary approval" means the action taken by the Director conditioned upon final approval by the Director upon satisfaction by the eligible company of the requirements of the Oklahoma Tourism Development Act;

10. a. "Tourism attraction" means:

(1) a cultural or historical site,

(2) a recreational or entertainment facility,

(3) an area of natural phenomenon or scenic beauty,

(4) a theme park,

(5) an amusement or entertainment park,

(6) an indoor or outdoor play or music show,

(7) a botanical garden, ~~or~~

(8) a cultural or educational center, or

(9) a destination hotel whose location and amenities, including but not limited to upscale dining, recreation and entertainment, make the hotel itself a destination for tourists.

b. A tourism attraction shall not include:

(1) lodging facilities, unless:

(a) the facilities constitute a portion of a tourism attraction project and represent

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

(b) the lodging facilities are a part of a destination hotel,

(2) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project,

(3) facilities that are not open to the general public,

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

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

(6) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under Section 200 et seq. of Title 3A of the Oklahoma Statutes shall be a tourism attraction for purposes of the Oklahoma Tourism Development Act for any approved project as outlined in subparagraph a of this paragraph or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; and

11. "Tourism attraction project", "film, digital media or music production and development facility project" or "project" means:

a. the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of

ten (10) years, construction, and equipping of a tourism attraction or film, digital media or music production and development facility, and

b. the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction or film, digital media or music production and development facility, including, but not limited to:

(1) surveys, and

(2) installation of utilities, which may include:

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

(b) off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located,

all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract tourists.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.37, as last amended by Section 10, Chapter 436, O.S.L. 2008 (68 O.S. Supp. 2009, Section 2357.37), is amended to read as follows:

Section 2357.37 A. The Director of the Oklahoma Tourism and Recreation Department, with approval of the Oklahoma Tourism and Recreation Commission, shall establish standards for the making of applications for inducements to eligible companies and their tourism attraction projects, or film, digital media and music production and development facility projects by the promulgation of rules in accordance with the Administrative Procedures Act.

B. With respect to each eligible company making an application to the Director for inducements, and with respect to the tourism attraction or film, digital media and music production and development facility project described in the application, the

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

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

2. A description and location of the project;

3. Capital and other anticipated expenditures for the project that indicate that the total cost of the project shall exceed the minimum amount set forth in subsection C of this section and the anticipated sources of funding therefor;

4. The anticipated employment and wages to be paid at the project;

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

6. The anticipated revenues and expenses generated by the project.

Based upon a review of these materials, if the Director determines that the eligible company and the tourism attraction or film, digital media and music production and development facility project may reasonably be expected to satisfy the criteria for final approval in subsection C of this section, then the Director may consider granting a preliminary approval of the eligible company and the tourism attraction project pursuant to subsection B of Section 2357.38 of this title.

C. 1. For a tourism attraction project, after granting a preliminary approval, the Director shall engage the services of a competent consulting firm which shall submit to the Director a report analyzing the data made available by the eligible company and which shall collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism attraction project will:

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

b. have costs in excess of Five Hundred Thousand Dollars ($500,000.00)~~;~~,

c. have a significant and positive economic impact on this state considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in this state, and the extent to which the tourism attraction project will be revenue neutral to the State of Oklahoma, meaning the amount by which increased tax revenues from the tourism attraction project will exceed the sales tax credit or income tax credit allowed pursuant to Section 2357.40 of this title~~;~~,

d. produce sufficient revenues and public demand to be operating and open to the public on a regular and persistent basis~~;~~, and

e. not adversely affect existing employment in this state.

2. For a film, digital media or music production and development facility project, after granting a preliminary approval, the Director shall engage the services of a competent consulting firm which shall submit to the Director a report analyzing the data made available by the eligible company and which shall collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the film, digital media or music production and development facility will:

a. for music production and postproduction facilities have costs in excess of One Hundred Thousand Dollars ($100,000.00), for film and digital media production and postproduction facilities have costs in excess of Three Hundred Fifty Thousand Dollars ($350,000.00)~~;~~,

b. have a significant and positive economic impact on this state considering, among other factors, the extent to which the film, digital media or music production and development facility will compete directly with existing facilities in this state, and the extent to which the film, digital media or music production and development facility will be revenue neutral to the State of Oklahoma, meaning the amount by which increased tax revenues from the facility will exceed the sales tax credit or income tax credit allowed pursuant to Section 2357.40 of this title~~;~~, and

c. not adversely affect existing employment in this state.

D. The eligible company shall pay for the cost of the consultant's report and shall cooperate with the consultant and provide all of the data that the consultant deems necessary to make a determination of this section.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.40, as last amended by Section 13, Chapter 436, O.S.L. 2008 (68 O.S. Supp. 2009, Section 2357.40), is amended to read as follows:

Section 2357.40 A. Upon receiving notification from the Director of the Oklahoma Tourism and Recreation Department that an approved company has entered into a tourism project agreement or a film, digital media and music production and development facility project agreement and is entitled to the inducements provided by the Oklahoma Tourism Development Act, the Oklahoma Tax Commission shall provide the approved company with forms and instructions as necessary to claim those inducements.

B. An approved company whose agreement provides that it shall expend approved costs of more than One Hundred Thousand Dollars ($100,000.00) for music production and postproduction facilities, Three Hundred Fifty Thousand Dollars ($350,000.00) for film and digital media production and postproduction facilities, and more than Five Hundred Thousand Dollars ($500,000.00) for a tourism attraction project but less than One Million Dollars ($1,000,000.00) shall be entitled to an income tax credit or a sales tax credit if

the company certifies to the Tax Commission that it has expended at least the minimum amount in approved costs, and the Director certifies that the approved company is in compliance with the Oklahoma Tourism Development Act. The Tax Commission shall then issue a tax credit memorandum to the approved company granting an income tax credit or sales tax credit in the amount of up to ten percent (10%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue neutral to the State of Oklahoma as determined by the Oklahoma Tax Commission. Subsequent requests for credit for additional certified approved costs in excess of the minimum amount for each project as listed in this subsection but less than One Million Dollars ($1,000,000.00) shall result in an income tax credit or sales tax credit in the amount of up to ten percent (10%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue neutral to the State of Oklahoma as determined by the Oklahoma Tax Commission. Income tax credits or sales tax credits allowed pursuant to the provisions of the Oklahoma Tourism Development Act shall not be transferable or assignable.

An approved company whose agreement provides that it shall expend approved costs in excess of One Million Dollars ($1,000,000.00) shall be entitled to an income tax credit or sales tax credit if the company certifies to the Tax Commission that it has expended at least One Million Dollars ($1,000,000.00) in approved costs and the Director certifies that the approved company is in compliance with the Oklahoma Tourism Development Act. The Tax Commission shall then issue a tax credit memorandum to the approved company granting an income tax credit or sales tax credit in the amount of up to twenty-five percent (25%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue neutral to the State of Oklahoma as determined by the Oklahoma Tax Commission. The credit on all subsequent additional certified approved costs shall be in the amount of up to twenty-five percent (25%) of the costs, but limited to the percent of the approved costs that will result in the project being revenue neutral to the State of Oklahoma as determined by the Oklahoma Tax Commission.

The Tax Commission ~~may~~ shall require proof of expenditures prior to issuing a tax credit memorandum to the approved company which may be satisfied by a report from an independent certified public

accountant. Additional credit memoranda may be issued as the approved company certifies additional expenditures of approved costs.

No tax credit memorandum shall be issued for any approved costs expended after the expiration of two (2) years from the date the agreement was signed by the Director and the approved company. However, the Director, with the advice and consent of the Tax Commission, may authorize tax credits for approved costs expended up to four (4) years from the date the agreement was signed if the Director determines that the failure to complete the tourism attraction project within two (2) years resulted from:

1. Unanticipated and unavoidable delay in the construction of the tourism attraction or film, digital media and music production and development facility project;

2. An original completion date for the tourism attraction or film, digital media and music production and development facility project, as originally planned, which will be more than two (2) years from the date construction began; or

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

C. 1. An income tax credit allowed pursuant to the provisions of this section shall be applied to the amount of income taxes due from the approved company. If the amount of an income tax credit allowed pursuant to the provisions of this section exceeds the amount of income taxes due for the year in which the credit is granted, the amount of the credit not used may be carried forward for a period not to exceed ten (10) years.

2. A sales tax credit allowed pursuant to the provisions of this section may be used to offset a portion of the reported state sales tax liability of the approved company for all sales tax reporting periods following the issuance of the credit memorandum subject to the following limitations:

a. only increased state sales tax liability may be offset by the issued credit,

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

c. all issued credit memoranda shall expire at the end of the month following the expiration of the agreement as provided in Section 2357.39 of this title.

The approved company shall have no obligation to refund or otherwise return any amount of this credit to the person from whom the sales tax was collected.

D. The Tax Commission shall promulgate rules as are necessary for the proper administration of the Oklahoma Tourism Development Act. The Tax Commission may also develop forms and instructions as necessary for an approved company to claim the income tax credit provided by the Oklahoma Tourism Development Act.

E. The Tax Commission shall have the authority to obtain any information necessary from the approved company and the Director to verify that approved companies have received the proper amounts of tax credits as authorized by the Oklahoma Tourism Development Act. The Oklahoma Tax Commission shall demand the repayment of any credits taken in excess of the credit allowed by the Oklahoma Tourism Development Act.

F. No income or sales tax credit authorized by this section shall be granted on or after January 1, ~~2014~~ 2016.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 4th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 5th

day of May, 2010,

at 1:37 o'clock P M.

By: [illegible]

Approved by the Governor of the State of Oklahoma the 10th day of

May, 2010, at 6:15 o'clock P M.

[illegible]

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

11th day of May, 2010,

at 11:52 o'clock A. M.

By: M. Susan Savage