An Act

ENROLLED SENATE
BILL NO. 14x

By: Thompson (Roger) and Hall of the Senate

and

Wallace and Martinez of the House

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

SUBJECT: Tax credit

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

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

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

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

2. A date certain by which the approved company shall have completed the tourism attraction project or an individual component or phase of the project if the tourism attraction project is an

Entertainment District. Within three (3) months of the completion date of the whole or an individual component or phase of the project, the approved company shall document its actual costs of the project through a certification of the costs by an independent certified public accountant acceptable to the Executive Director; and

3. The following provisions:

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

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

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

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

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

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

b. in any tax year during which an agreement is in effect, if the amount of sales tax to be remitted by the approved company or an Entertainment District

Tenant Party, if applicable, exceeds the sales tax credit available to the approved company or Entertainment District Tenant Party, if applicable, then the approved company or Entertainment District Tenant Party, if applicable, shall pay the excess to this state as sales tax,

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

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

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

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

B. The agreement shall not be transferable or assignable by the approved company without the written consent of the Executive Director but, with respect to a tourism attraction project that is an Entertainment District, the approved company can elect to pass-

through all or a portion of the sales tax credit to one or more Entertainment District Tenant Parties in accordance with Section 2397 of this title.

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

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

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

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

Section 2397. A. Upon receiving notification from the Executive Director of the Oklahoma Department of Commerce that an approved company has entered into a tourism 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 or receive or pass-through those inducements.

B. An approved company whose agreement provides that it shall expend approved costs of 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 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 Executive 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 a 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~~ this state as determined by the Oklahoma Department of Commerce. 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 a 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~~ this state as determined by the Oklahoma Department of Commerce. Sales tax credits allowed pursuant to the provisions of the Oklahoma Tourism Development Act shall not be transferable or assignable; provided that, with respect to a tourism attraction project that is an Entertainment District, the approved company can elect to pass-through all or a portion of the sales tax credit to one or more Entertainment District Tenant Parties. The approved company and the Entertainment District Tenant Party shall jointly file a copy of the written credit pass-through agreement with the Oklahoma Tax Commission within thirty (30) days of the effective date of the agreement. Such filing of the agreement with the Oklahoma Tax Commission shall perfect such agreement. The written agreement shall contain the name, address and taxpayer identification number of the parties to the agreement, the amount of credit being passed-through, the month and year the credit was originally allowed to the approved company, the month and tax year or years for which the credit may be claimed, and a representation by the approved company that the approved company has neither claimed for its own behalf nor conveyed such credits to any other Entertainment District Tenant

Party. The Tax Commission shall develop a standard form for use by an approved company and an Entertainment District Tenant Party demonstrating eligibility for the Entertainment District Tenant Party to utilize the sales tax credit. The Tax Commission shall develop a system to record and track the pass-through of the sales tax credit and certify the ownership of the sales tax credit and may promulgate rules to permit verification of the validity and timeliness of a sales tax credit claimed upon a sales tax return pursuant to this subsection but shall not promulgate any rules which unduly restrict or hinder the pass-through of such sales tax credit to an Entertainment District Tenant Party.

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 a 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 Executive 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 a 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~~ this state as determined by the Oklahoma Department of Commerce. 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~~ this state as determined by the Oklahoma Department of Commerce. For a tourism attraction project that is an Entertainment District, an approved company may elect to receive an incentive payment based on sales tax collections of Entertainment District Tenant Parties rather than a sales tax credit. The incentive payment shall be 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~~ this state as determined by the Oklahoma Department of Commerce; provided that, (A) in no event shall the incentive payments exceed the increased state sales tax liability of the approved company and the Entertainment District Tenant Parties that is actually received by the Tax Commission, and (B) the approved company shall be entitled to receive only ten

percent (10%) of the incentive payment amount during each calendar year. The Tax Commission shall issue an incentive payment memorandum to the approved company granting a right to receive an incentive payment from the Tax Commission 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~~ this state as determined by the Oklahoma Department of Commerce. As soon as practicable after the end of each calendar year during the term of the agreement, the approved company shall file a claim for the incentive payment with the Tax Commission, and the Tax Commission shall be responsible for ensuring that the amount of the incentive payment claimed does not exceed the increased state sales tax liability of the approved company and the Entertainment District Tenant Parties that has been actually received by the Tax Commission, which may include accessing the Oklahoma sales tax returns of the Entertainment District Tenant Parties as permitted by this section.

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

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

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

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

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

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

C. 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 or an Entertainment District Tenant Party, if applicable, for all sales tax reporting periods following the issuance of the credit memorandum subject to the following limitations:

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

2. An approved company whose agreement provides that it shall expend approved costs in excess of One Million Dollars ($1,000,000.00) or an Entertainment District Party, if applicable, 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

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

The approved company or an Entertainment District Tenant Party, if applicable, shall have no obligation to refund or otherwise return any amount of this inducement 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 or Entertainment District Tenant Party, if applicable, to claim or receive or pass-through the inducements provided by the Oklahoma Tourism Development Act.

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

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

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

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

or addition to the transferred rules shall be under the jurisdiction of the Oklahoma Department of Commerce, who shall have the authority to enact rules in order to carry out the provisions of the Oklahoma Tourism Development Act.

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

Passed the Senate the 24th day of May, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 26th

day of May, 20 23, at 5:48 o'clock pr. M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 2nd

day of June, 20 23, at 10:02 o'clock A M.

By: _____

OFFICE OF

THE GOVERNOR
STATE OF OKLAHOMA

No. SB 14x

OKLAHOMA CITY, OKLA., June 2, 20 23

TIME SIGNED: _____

TO THE HONORABLE PRESIDENT PRO TEMPORE
AND MEMBERS OF THE OKLAHOMA SENATE
FIRST ***EXTRAORDINARY*** SESSION OF THE
FIFTY-NINTH OKLAHOMA LEGISLATURE

ENROLLED SENATE BILL NO. 14x:

Both because I support fiscal discipline and strongly oppose an increase in recurring expenditures, and because I am disheartened by other aspects of the budget package, I have not signed Senate Bill 14x.

Subject to objections to the unique process by which the Bill made its way to my desk, the Bill will become law without signature.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

_____

Delivered to SENATE: [signature]
Date/Time: 6/2/23; 12:50pm

SENATE:
By [signature]
Date/Time 6/2/23 12:52 pm

RECEIVED
JUN 02 2023
OKLAHOMA SECRETARY
OF STATE