

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2866

By: Wallace

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2021, Sections 2396 and 2397, which relates to
9 the Oklahoma Tourism Development Act; modification on
10 length of allowable term; increasing cumulative
11 inducement cap amount; providing an effective date
12 and declaring an emergency.

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

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

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

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

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

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

8 3. The following provisions:

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

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

13 (2) the completion date specified in the agreement,
14 if the completion date is within three (3) years
15 of the date of the final approval of the tourism
16 attraction project. However, the term of the
17 agreement may be extended for up to two (2)
18 additional years by the Executive Director, with
19 the advice and consent of the Oklahoma Tax
20 Commission, if the Executive Director determines
21 that the failure to complete the tourism
22 attraction project within three (3) years
23 resulted from:
24

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

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

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

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

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

1 with the provisions of the Oklahoma Tourism
2 Development Act, and

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

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

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

22 B. The agreement shall not be transferable or assignable by the
23 approved company without the written consent of the Executive
24 Director but, with respect to a tourism attraction project that is

1 an 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 in accordance with Section
4 2397 of this title.

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

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

21 E. For a tourism attraction project that is an Entertainment
22 District and anticipated to have multiple components or phases, the
23 Executive Director may enter into more than one agreement with
24 different approved companies for the different components or phases

1 of the Entertainment District and such agreements may be entered
2 into at different times as though the different components or phases
3 of the Entertainment District are their own separate project. In
4 such case, the Executive Director shall not be required to obtain a
5 separate report (referred to in subsection C of Section 2394 of this
6 title) for each individual component or phase of the Entertainment
7 District, but only one report for the entire Entertainment District.

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

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

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

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

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

19 An approved company whose agreement provides that it shall
20 expend approved costs in excess of One Million Dollars
21 (\$1,000,000.00) shall be entitled to a sales tax credit if the
22 company certifies to the Tax Commission that it has expended at
23 least One Million Dollars (\$1,000,000.00) in approved costs and the
24 Executive Director certifies that the approved company is in

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

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

17 The cumulative inducements provided pursuant to the Oklahoma
18 Tourism Development Act shall not exceed ~~Fifteen Million Dollars~~
19 ~~(\$15,000,000.00)~~ Thirty Million Dollars (\$30,000,000.00) per year.

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

1 memoranda or incentive memoranda may be issued as the approved
2 company certifies additional expenditures of approved costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 SECTION 3. This act shall become effective July 1, 2023.

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

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24 59-1-5464 JM 01/05/23