



State of Oklahoma

Incentive Evaluation Commission

Tourism Development Act Final Draft Evaluation

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Key Findings & Recommendations



Overview

This is the first evaluation of the Tourism Development Act. The Tourism Development Act is a sales tax credit intended to create new or expand existing tourism attractions in Oklahoma. It provides a tax credit of up to 10 percent of approved costs, capped at \$1 million, to companies who spend at least \$500,000 on tourism attractions, such as cultural or historic sites, recreational facilities, or destination hotels. These projects must attract at least 25 percent of visitors from outside the state and produce significant revenues. No credits will be awarded after January 1, 2026.

Recommendation: Retain

Key Findings

- **Tourism spending can be a significant revenue source for both state and local governments.** Statewide spending on tourism was \$11.8 billion in Oklahoma and \$1.2 trillion nationally in 2022. Traveling spending between 2021 and 2022 increased by 12.3 percent, supporting an approximate gain of 5,230 jobs.
- **Tourism in Oklahoma has grown, despite national trends.** While domestic tourism on the national level has remained stagnant, the number of visitors to Oklahoma grew by 3.3 percent between 2021 and 2022.
- **The Tourism Development Act provides a specific definition of what constitutes a tourism attraction.** It is defined as one of the following: a cultural or historic site, a recreational or entertainment facility, an area of natural phenomena or scenic beauty, a theme park, an amusement or entertainment park, an indoor or outdoor play or music show, a botanical garden, a cultural or educational center, an Entertainment District, or a destination hotel whose location and amenities make the hotel itself a destination for tourists.
- **In order to qualify for the program, applicants must submit a portfolio of documents that provide evidence that as a result of the project the company will invest capital into the project, will create jobs, and improve the quality of life in the area.** This application allows the Department of Commerce (“the Department”) to ensure the program only provides tax credits to applicants that meet the intent of the program. Companies must also present evidence that at least 25 percent of visitors originate from outside Oklahoma.
- **There are checks in place to ensure fiscal accountability.** Once approved, a company is eligible for up to \$1 million in sales tax credits if it spends at least \$500,000, or a tax credit of up to 25 percent of the project costs if the company spends more than \$1 million. The sales tax credits are not transferable or assignable and the Tax Commission must receive proof of expenditures.
- **All participating projects in the program are hotels undergoing renovations.** Two are located in Oklahoma City, and two are located in Tulsa.
- **In most cases, there were quality of life improvements in census tracts with participating tourism projects.** When adjusted for inflation, on average there was a 15.7 percent increase in per capita income in the census tracts that contained participating projects. The total number of jobs increased by 43.4 percent.
- **The Tourism Development Act has produced a positive impact for the State.** Through 2023, the State has provided \$4.7 million in program tax incentives for projects that total \$184 million in



expenditures. The Department estimates that these projects have produced \$33 million in state tax revenue. There is significant importing of tax revenue, as 28 percent of the visitors to these sites originate from out of state.

- **The program generated \$8 million more in state tax revenue than was appropriated:**

Figure 1: Estimated Net Impact of the Tourism Development Act

Year	Total Appropriation	Estimated Oklahoma Tax Revenue	Net Impact
2023	\$4,740,085	\$13,260,490	\$8,520,405

- **The two benchmark programs identified in other states, Arkansas and West Virginia, have higher minimum project costs than Oklahoma.** Both states have a minimum project cost of \$1.0 million, compared to \$0.5 million in Oklahoma. Arkansas allows a minimum \$0.5 million project cost if the project is located in a high unemployment county.
- **The tax credit amount offered in Oklahoma is similar to Arkansas and West Virginia.** All three states offer credits in the amount of 25 percent of the project costs if they meet certain requirements; Arkansas offers a credit in the amount of 15 percent of project costs if the project is not in a high unemployment county.
- **The Tourism Development Act incorporates multiple best practices¹ that support its intent as a mechanism to promote improve the “material well-being” of Oklahoma’s residents.** First, the program is capped at a maximum allocation of \$15.0 million each year, ensuring it does not create a large financial liability to the State. It requires participants to demonstrate they meet multiple requirements, such as the percent of visitors to each site that originate from out-of-state, the minimum amount invested in each project, and the forecasted economic impacts of the project. It requires companies to submit expenditures as part of the application for the tax credit, allowing for full accountability of tax credits issued.

Recommendations

- The Tourism Development Act is accomplishing what it is intended to accomplish and should be retained. Since all projects using the program are in urban areas, the State may consider targeting certain areas, such as rural or underdeveloped communities.

¹ A list of these best practices is provided in Appendix B.



Introduction



Incentive Evaluation Commission Overview

In 2015, HB2182 established the Oklahoma Incentive Evaluation Commission (the Commission). It requires the Commission to conduct evaluations of all qualified state incentives over a four-year timeframe. The law also provides that criteria specific to each incentive be used for the evaluation. The Commission has completed two cycles of qualified evaluations, from 2016-2019 and 2020 through 2023. This is now the first year of a new four-year cycle.

In 2023, the Legislature passed and Governor Stitt signed into law SB 745, which made a number of changes to the incentive evaluation process that were recommended by the Commission. Among them was the ability of the Commission to review qualified incentives within the four-year evaluation cycle. In prior cycles, incentives had to be reviewed at least once every four years, which effectively locked in place the order that incentives would be evaluated. As a result, some incentives in this cycle may be reviewed in less or more than four years.

One reason for the change in the evaluation cycle was to allow incentives with similar purposes or that are targeted to specific industries or parts of the state to be evaluated in the same year. This allows for continuity in the discussion and comparisons of effect and effectiveness. This grouping is considered an evaluation best practice.² For 2024, there are two broad categories of evaluated incentives:

- Financing/Venture Capital/Early Business related.
- Tourism/Film/Quality of Life related.

This evaluation of the Tourism Development Act “the Act” tax credit administered by the Oklahoma Department of Commerce (Department) and the Oklahoma Tax Commission (OTC) is one of 12 evaluations being conducted by the Commission in 2024.

Incentive Background

The Oklahoma Tourism Development Act took effect on November 1, 2017 and is located at §68-2390-7³ in the Oklahoma State Statutes. In the Act, the Legislature found that “the general welfare and material well-being of the citizens of the State of Oklahoma depend, in large measure, upon the development of tourism attractions in the state.”⁴ In 2021, the administration of the Act was transferred from the Oklahoma Tourism Department to the Department of Commerce.⁵

Criteria for Evaluation

A key factor in evaluating the effectiveness of incentive programs is to determine whether they are meeting the stated goals as established in state statute or legislation. In the case of this credit, the specific goal included in legislation is to induce the creation of new or the expansion of existing tourist attractions to relieve unemployment and create a new source of tax revenue to support public services.

To assist in a determination of program effectiveness, the Commission has adopted the following criteria:

² “Best Practices for Planning Tax Incentive Evaluations: Lessons Learned from Indiana’s Evaluation Process,” Pew Charitable Trusts, August 2022, p.3. Accessed electronically at www.pewtrusts.org/-/media/assets/2022/08/best-practices_incentiveeval-planning_2022-3-24_final.pdf

³ The complete statute is provided in Appendix D.

⁴ §68-2392

⁵ SB739



- Program use
 - Number of visitors to participating sites that originate from out-of-state
 - Number of new participating sites on an annual basis
 - Amount of capital investment in participating sites
- Improved quality of life measures in surrounding areas
 - Changes in employment, including salaries and wages
 - Changes in capital investment
- State return on investment



Tourism Development Act Background



Tourism Development Act Purpose and Origin

As previously noted, the Tourism Development Act was created in 2017 and is a sales tax credit program. Intended to induce the creation of new or the expansion of existing tourism attractions in Oklahoma, these attractions may reduce unemployment by preserving or creating jobs and increase state tax revenue to support public services. The OTC and the Oklahoma Tourism and Recreation Department were initially tasked with administering the program; as previously noted, that responsibility now belongs to the Department of Commerce.

The State modified the Act in 2019 to make entertainment districts eligible for the program incentive. These districts allow for multiple developers to participate in the program within a specific area. The 2019 modification also allows developers to pass the sales tax credit through to the tenants of the entertainment districts.

No sales tax credit or other incentive payment as part of this program can be issued after January 1, 2026. However, if the Act reaches its full credit capacity of \$15.0 million per year, it has the potential to generate more than \$600 million in development for of the state of Oklahoma.⁶

Oklahoma Tourism Industry

Although the amount of overall domestic travel in the United States remained stagnant, the number of visitors to Oklahoma grew by 3.3 percent between 2021 and 2022. Oklahoma welcomed 18.3 million visitors in 2022, which translates into 4.6 visitors for every resident. In 2022, 45 percent of visitors to Oklahoma originated from neighboring states, with Dallas-Fort Worth as the top origin market. In 2022, most visitors to the state travel to either Oklahoma City (29 percent) or Tulsa (25 percent).⁷

In 2022, the most common reason for individuals to visit Oklahoma was to visit family or friends (41 percent), but this generated a relatively low average spend per visitor of \$376. By contrast, 29 percent of visitors to Oklahoma were motivated to travel to casinos or other gaming activities; these individuals spent an average of \$872 per visit. Those who come to Oklahoma for arts and cultural activities spend an average of \$806 per trip, but only half as many individuals (14 percent of visitors) come for arts activities as they do for gambling.⁸

Tourists to Oklahoma represent a potential revenue source for both the state as a whole and local governments. National spending on travel and tourism was \$1.2 trillion in 2022, \$11.8 billion of which occurred in Oklahoma alone. Travel spending in Oklahoma increased 12.3 percent, supporting an approximate gain of 5,230 jobs and an 8.4 percent increase in state and local tax revenue. This spending came primarily from tourists originating outside of Oklahoma, with tourism spending by Oklahoma residents accounting for slightly over one-fourth of all visitor spending.⁹

⁶ Oklahoma Department of Commerce, "Tourism Development Act Incentive Report," 2024.

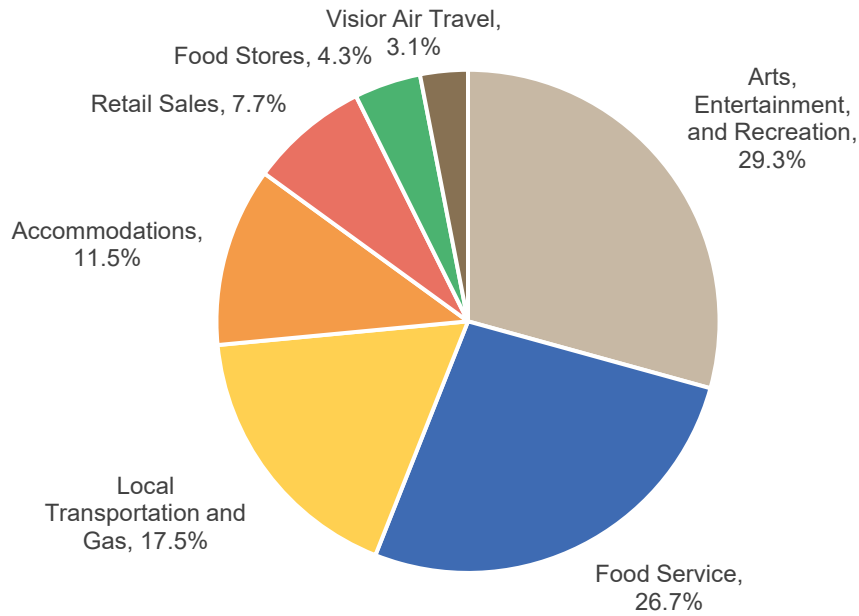
⁷ Omnitrak, "CY 2022 Oklahoma Visitor Profile and Insights Report: Prepared for the Oklahoma Tourism and Recreation Department." July 2023. Accessed electronically at: <https://ds8hbldo2z4gr.cloudfront.net/wp-content/uploads/2024/01/CY2022-Oklahoma-Visitor-Profile-Insights-Report.pdf>

⁸ Omnitrak, "CY 2022 Oklahoma Visitor Profile and Insights Report: Prepared for the Oklahoma Tourism and Recreation Department." July 2023. Accessed electronically at: <https://ds8hbldo2z4gr.cloudfront.net/wp-content/uploads/2024/01/CY2022-Oklahoma-Visitor-Profile-Insights-Report.pdf>

⁹ Dean Runyan Associates, "The Economic Impact of Travel in Oklahoma: 2022 State and County Impacts." 31 October 2023. Accessible electronically at: <https://ds8hbldo2z4gr.cloudfront.net/wp-content/uploads/2024/01/Oklahoma-Economic-Impact-Report-2022.pdf>



Figure 2: 2022 Oklahoma Visitor Spending by Commodity



Source: Dean Runyan Associates, Prepared for the Oklahoma Tourism and Recreation Department

Tourists in Oklahoma spent most of their collective \$11.8 billion on food and entertainment. However, the local impact of dollars spent in Oklahoma includes the \$1.3 billion tourists spent on accommodations (11.5 percent of total visitor spending), \$1.9 billion on local transportation and gas (17.5 percent of total visitor spending), \$850 million on retail items (7.7 percent of total visitor spending), and \$475 million (4.3 percent of total visitor spending) in food stores.¹⁰

¹⁰ Dean Runyan Associates, "The Economic Impact of Travel in Oklahoma: 2022 State and County Impacts." 31 October 2023. Accessible electronically at: <https://ds8hblido2z4gr.cloudfront.net/wp-content/uploads/2024/01/Oklahoma-Economic-Impact-Report-2022.pdf>



Program Usage & Administration



Program Characteristics

The Act cannot provide more than \$15.0 million in total tax credits in a given year.

A tourism attraction can include the acquisition of real estate and construction of a tourist attraction or the construction and installation of improvements to facilities to create a tourist attraction. This can include surveying or installation of utilities.

Per statute, a “tourism attraction” is defined as one of the following:

1. A cultural or historical site,
2. A recreational or entertainment facility,
3. An area of natural phenomena 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,
8. A cultural or educational center,
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, or
10. An Entertainment District.

A site is not considered a tourism attraction if it is one of the following:

1. A lodging facility, unless the facilities constitute a portion of a tourism attraction project and represent less than 50 percent of the total approved costs of the tourism attraction project, or the lodging facilities are part of a destination hotel or Entertainment District.
2. Facilities that are primarily devoted to the retail sale of goods, unless the good are created at the site of the tourism attraction project, if the sale of goods is incidental to the tourism attraction project, or such facilities are part of an Entertainment District.
3. Facilities that are not open to the general public, unless such facilities are part of an Entertainment District wherein a substantial portion of the Entertainment District is open to the general public, as determined by the Executive Director.
4. Facilities that do not serve as a likely destination wherein individuals who are not residents of the state would remain overnight in commercial lodging at or near the tourism attraction project, unless such facilities are part of an Entertainment District.
5. Facilities owned by the State of Oklahoma or a political subdivision of the state.
6. Facilities established for the purpose of conducting legalized gambling, unless it is a facility regulated under the Oklahoma Horse Racing Act and not for a establishing a casino or for casino-style gambling.

In order to be eligible as a Tourism Attraction Project, a development project must meet all of the following criteria:

1. Attract at least 25 percent of visitors from outside Oklahoma.
2. Have costs exceeding \$500,000.
3. Have significant and positive economic impacts, while remaining revenue neutral to the state.
4. Produce significant revenues and public demand to be operating in and open to the public on a regular and persistent basis.
5. Not adversely affect existing employment in the state.



Program Administration

The Executive Director of the Act sets the standards for preliminary approval and final approval of eligible companies and their projects. To be considered for acceptance into the program, applicants can submit the following materials to the Department of Commerce:

1. Marketing plans for the project that target individuals who are not residents of Oklahoma.
2. A description and location of the project, including a description and boundary of the area encompassing the Entertainment District, if applicable.
3. Capital and other anticipated expenditures for the project that demonstrate that the total cost of the project exceeds the minimum of \$500,000.
4. The anticipated employment and wages to be paid at the project.
5. Business plans that indicate the number of days in a year in which the project or any component thereof will be in operation and open to the public.
6. The anticipated revenues and expenses generated by the project.

Once these materials are reviewed, the Executive Director of the Act determines whether the eligible company and tourism attraction are reasonably expected to satisfy the eligibility criteria.

If the applicant meets all the aforementioned requirements, the Executive Director will grant preliminary approval. The Executive Director then engages a consulting firm, whose cost is borne by the applicant, to analyze the data provided in the application as well as additional data collected by the firm. The consulting firm then provides an independent judgment to determine whether the project meets all the requirements to receive the tax credit. The Executive Director then reviews the consultant's independent report and grants final approval to the project if appropriate.

If the project is not approved, the eligible company can appeal the decision with the Tourism and Recreation Commission. The Commission's decision is final.

Once approved, a company is eligible for up to \$1.0 million in sales tax credits if it spends at least \$0.5 million, or a tax credit of up to 25 percent of the project costs if the eligible company spends more than \$1.0 million. The Tax Commission issues a tax credit memorandum granting a sales tax credit of up to 10 percent of the approved costs. This is limited to the percent of approved costs that will result in the project being revenue-neutral to the State. These sales tax credits are not transferable or assignable, unless it is a pass-through to the Entertainment District Tenant Parties. The Tax Commission must receive proof of expenditures before it issues a tax credit memorandum or incentive payment memorandum to the approved company; this proof can be submitted in the form of a report from an independent certified public accountant.

No tax credits will be awarded as part of this program after January 1, 2026.

Historic Program Usage

As of 2023, there have been four projects completed using this program. Two of these projects have been completed in Tulsa, and two are located in Oklahoma City. All four are hotels undergoing renovation.

Through 2023, the State has provided \$4.7 million in program tax incentives for projects that total \$184 million in expenditures and have produced \$33.0 million in state benefits. 28 percent of the visitors to these hotels originate from out of state.



After adjusting for inflation, the property values of these sites have increased 0.4 percent between the year the project began and five years later. According to the Department, this is influenced by one site losing value; the others have increased in value between 14.7 and 85.9 percent.¹¹

Quality of Life Impacts

As a measure of the program's success, the Department compared the census tracts where projects are located to determine whether employment and per-capita income had increased. These comparisons were made from the year the project started to five years onward.

On average, there was a 15.7 percent increase in per capita income, when adjusted for inflation, across all projects, from \$44,300 to \$51,300. The total number of jobs increased 43.4 percent, from 3,400 to 4,900 jobs. All but one project had a net increase in jobs; one project lost 10 jobs but still had a 7.2 percent increase in inflation-adjusted per capita income.¹²

¹¹ Oklahoma Department of Commerce

¹² Oklahoma Department of Commerce



Economic & Fiscal Impact



Economic and Fiscal Impact

To evaluate the economic and fiscal impact of the Tourism Development Act, the project team took the amounts funded in the program through 2023 and used IMPLAN to calculate the direct, indirect, and induced effects of the investments of project. A detailed methodology of economic impact analyses through the use of IMPLAN is described in **Appendix A**. The total investment of \$184 million resulted in over \$312 million in economic output, including the employment of 2,403 people.

Figure 3: Impact of Tourism Development Act Funding

Year		Output	Value Added	Labor Income	Employment	Estimated Oklahoma Tax Revenue
2023	Direct Effect	\$184,178,684	\$110,630,522	\$54,550,768	1,703	\$9,690,744
	Indirect Effect	\$70,101,694	\$32,339,103	\$20,371,181	371	\$1,681,720
	Induced Effect	\$58,266,910	\$31,394,350	\$16,629,216	329	\$1,888,026
	Total Effect	\$312,547,288	\$174,363,975	\$91,551,165	2,403	\$13,260,490

Source: IMPLAN Analysis; Dept. of Commerce

Overall, the Tourism Development Act had a net positive impact for the State of Oklahoma. It is estimated to generate over \$13 million in tax revenue for the State, at a cost of less than \$5 million in appropriations.

Figure 4: Annual Tax Revenue Generated

Year	Total Appropriation	Estimated Oklahoma Tax Revenue	Net Impact
2023	\$4,740,085	\$13,260,490	\$8,520,405

Source: IMPLAN Analysis; Dept. of Commerce



Incentive Benchmarking



Benchmarking

For evaluation purposes, benchmarking provides information related to how peer states use and evaluate similar incentives. At the outset, it should be understood that no states are ‘perfect peers’ – there will be multiple differences in economic, demographic and political factors that will have to be considered in any analysis; likewise, it is exceedingly rare that any two state incentive programs will be exactly the same.¹³ These benchmarking realities must be taken into consideration when making comparisons – and, for the sake of brevity, the report will not continually re-make this point throughout the discussion.

The process of creating a comparison group for incentives typically begins with bordering states. This is generally the starting point, because proximity often leads states to compete for the same regional businesses or business/industry investments. Second, neighboring states often (but not always) have similar economic, demographic or political structures that lend themselves to comparison.

In the case of tourism development programs, however, the primary comparison group is those states that have developed programs to encourage the attraction and expansion of tourist attractions. Inclusive of Oklahoma, a total of 2 states were found to have programs that support tourism development. A detailed description of comparable state programs can be found in **Appendix C**.

Both of the benchmark programs generally require at least \$1.0 million in project costs to be approved, twice the amount of Oklahoma’s threshold of \$0.5 million.

The incentive in Arkansas differs from what is offered in West Virginia and Oklahoma in that provides a tax credit that can be taken against the participating company’s payroll tax.

Arkansas

Arkansas’ **Tourism Development Act** provides state sales and income tax credits to businesses initiating approved tourism attraction projects. Project costs must be a minimum of \$1.0 million; if they are located in a high unemployment county the minimum is \$0.5 million.

The sales tax credit can be applied against the business’s increased sales tax liability as a result of the project. The amount of awarded credit is equal to 15 percent of eligible project costs for projects above \$1.0 million and 25 percent of project costs for projects located in high unemployment counties.

The program also targets employment by issuing a state corporate income tax credit equal to 4 percent of the annual payroll of new full time, permanent employees beginning in the year in when the employees are hired. If the business does not use all of the credit in that year, it can apply it against its corporate income taxes at any point in the succeeding nine years.¹⁴

West Virginia

The West Virginia Department of Economic Development administers the state’s **Tourism Development Act**, which was passed in 2004 to encourage the creation of new and the expansion of existing tourism attractions within the state. Projects are eligible if they can demonstrate that they create or preserve job opportunities in the state’s tourism industry, improve the local economy, and generate new sources of sales tax revenue.

¹³ The primary instances of exactly alike state incentive programs occur when states choose to ‘piggyback’ onto federal programs.

¹⁴ Arkansas Economic Development Commission, Tourism Development Incentives, Accessed electronically at: <https://www.arkansasedc.com/why-arkansas/business-climate/incentives/pages/specialized-incentives>



Projects are approved if they meet the following requirements and pay a \$10,000 application fee:

1. The project costs at least \$1.0 million.
2. The tourism site attracts at least 25 percent of its visitors from out of state.
3. The site is open to the public at least 100 days per year.
4. The project provides additional employment opportunities in West Virginia's tourism industry.
5. The project creates a significant and positive impact on the state.

Additionally, projects that involve lodging must meet at least one of the following criteria:

1. Lodging represents less than 50 percent of the project's approved costs.
2. The project is located on recreational property owned or leased by the state or federal government.
3. The project involves the restoration or rehabilitation of a building on the National Register of Historic Places, or is located in a historic district.

Once a company is approved and its project is completed and open to the public, it can apply a sales tax credit to its monthly sales tax return. The sales tax credit is equal to 25 percent of the project's approved costs or investment. Companies can qualify for a tax credit of 35 percent of the project costs if it meets the following requirements:

1. The project is located on or adjacent to an abandoned mine land.
2. The project is located within 5 miles of state or federal recreation land, such as a state or national park.
3. The project involves a structure on the National Register of Historic Places, or is located within a National Historic District, and is considered a contributing resource.¹⁵

¹⁵ West Virginia Economic Development, Tourism Development Act, Accessed electronically at: <https://westvirginia.gov/tourism-development-act/>



Appendices



Appendix A: IMPLAN Economic Impact Methodology

The economic impact methodology utilized to determine the multiplier effects is IMPLAN (Impact Analysis for PLANning), a proprietary model; PFM has obtained a license for use of the IMPLAN model for these evaluations.

IMPLAN's Social Accounting Matrices (SAMs) capture the actual dollar amounts of all business transactions taking place in a regional economy as reported each year by businesses and governmental agencies. SAM accounts are a better measure of economic flow than traditional input-output accounts because they include "non-market" transactions. Examples of these transactions would be taxes and unemployment benefits.

Multipliers

SAMs can be constructed to show the effects of a given change on the economy of interest. These are called Multiplier Models. Multiplier Models study the impacts of a user-specified change in the chosen economy for 440 different industries. Because the Multiplier Models are built directly from the region-specific SAMs, they will reflect the region's unique structure and trade situation.

Multiplier Models are the framework for building impact analysis questions. Derived mathematically, these models estimate the magnitude and distribution of economic impacts, and measure three types of effects which are displayed in the final report. These are the direct, indirect, and induced changes within the economy.

- **Direct** effects are determined by the Event as defined by the user (i.e., a \$10 million order is a \$10 million direct effect).
- The **indirect** effects are determined by the amount of the direct effect spent within the study region on supplies, services, labor, and taxes.
- Finally, the **induced** effect measures the money that is re-spent in the study area as a result of spending from the indirect effect.

Each of these steps recognizes an important leakage from the economic study region spent on purchases outside of the defined area. Eventually, these leakages will stop the cycle.

Fiscal Impacts

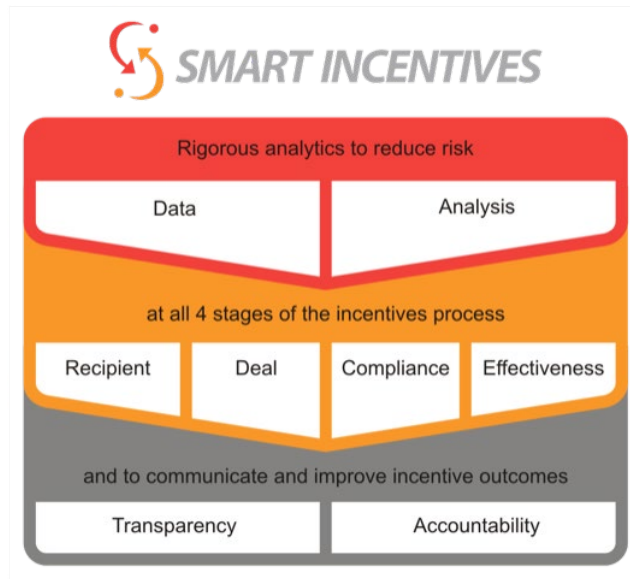
The IMPLAN tax report captures all tax revenue in the study area, across all levels of government that exist in that study area, for the specific industries and institutions affected by an event or group of events. Tax Impact results are based on the collected and reported taxes within the region for the given data year. IMPLAN taxes shown (and collected) are industry and geographically specific. The IMPLAN tax impact report splits the tax impacts into the various tax categories based on the picture of that region's economy. But, there is no industry-specific profile for taxes paid by tax category, so the distribution across tax categories is an all-industry average. While this is a limitation of the IMPLAN fiscal reporting, the IMPLAN tax report serves as an appropriate measure of jurisdictional tax results in the aggregate. Tax results cannot be added to any summary or detailed results as they are already included as a portion of Output. State taxes do not include taxes or district assessments levied by Federal, county, sub-county, city or township governments.



Appendix B: Business Incentives Best Practices

There has been extensive writing around what constitute business incentives best practices. From the project team's review of many sources,¹⁶ it has identified 10 important best practices and sought to incorporate them into the analysis and discussion of this incentive.

As a starting point, business incentives should be viewed as a process, not an event. The award of an incentive and the incentive features are part of that process, and many of the identified best practices reflect that. The process itself should take into consideration each of these factors, which PFM's subcontractor, Smart Incentives, demonstrates in the following illustration:



While the project team believes this is a strong set of best practices, there may well be others that are as (or more applicable) in specific situations. It is also likely that some of the best practices will come into conflict in some situations. For example, application and reporting requirements may reduce the simplicity of business compliance. As a result, these will always be subject to analysis on a case-by-case basis.

The 10 best practices are:

1. **For maximum impact, incentives should be targeted.** Examples of useful targeting include companies or industries that export their goods or services out-of-state; high economic impact companies or industries – such as those with higher wages and benefits, significant job creation, or significant capital investment.
2. **Incentives should be discretionary.** In most instances, an application process enables the state government to require company disclosure of information related to eligibility criteria and enables the

¹⁶ Three resources in particular were relied upon on putting together the list of best practices. They are "What Factors Influence the Effectiveness of Business Incentives?" The Pew Charitable Trusts, April 4, 2019, accessed electronically at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/04/what-factors-influence-the-effectiveness-of-business-incentives>; "Improving Economic Development Incentives," Timothy J. Bartik, W.E. Upjohn Institute for Employment Research, 2018, accessed electronically at https://research.upjohn.org/cgi/viewcontent.cgi?article=1000&context=up_policybriefs; "Best Practices for the Design and Evaluation of State Tax Incentives Programs for Economic Development," Matthew N. Murray and Donald J. Bruce, January 2017, included within another evaluation at https://media.al.com/news_mobile_impact/other/AL%20ENTERTAIN%20NEWMKTS%203%209%2017.pdf



state to reject applications that do not meet its standards.

3. **Incentives should leverage significant private capital.** Ideally, the incentive should leverage private investment that is at least several multiples of the state investment.
4. **Incentives should provide most of the benefit within 1-3 years and have a limited duration.** Company discount rates are much higher than for the state, and businesses will significantly devalue incentive payments in later years.
5. **Incentives should take into consideration state and/or local as well as industry economic conditions.** Incentives that are provided in high performing areas or for stable and profitable businesses or industries will likely fail the 'but for test' – meaning the activity would likely occur without the state incentive.
6. **'Smart' incentives help businesses overcome practical barriers to growth.** In particular, customized assistance for locally owned, small and medium-sized businesses can have significant impact.
7. **Incentives should be transparent.** The incentive purpose should be clearly articulated, as are eligibility requirements, and regular, detailed reporting should be required from all program recipients.
8. **Incentives should require accountability.** When upfront financial incentives are offered in return for job creation, retention, or capital investment, there should be contract language in place that allows the state to 'claw back' state resources should the company not meet performance requirements.
9. **Incentives should have caps.** To ensure the state's financial health, program dollar caps or limits should be in place. Incentive programs should also have a limited duration, with sunsets in place to require regular review of incentive performance.
10. **Incentives should be simple and understandable.** The state should be able to easily and effectively administer the incentive, and users should be able to readily comply with its requirements.



Appendix C: Comparable State Tourism Development Programs

Name	Minimum Project Cost	Amount of Tax Credit	Percent of Out of State Visitors
Oklahoma Tourism Development Act	\$500,000	\$1 million if the project cost is between \$500,000 and \$1 million; 25% of project cost if over \$1 million	25%
Arkansas Tourism Development Act	\$1 million; \$500,000 if in a high unemployment county	15% of eligible project costs; 25% of project costs in high unemployment counties	None
West Virginia Tourism Development Act	\$1 million	25% of approved project costs or 35% if meets specific requirements (adjacent to abandoned mine land, within five miles of state or federal recreation land, is in a National Historic District)	25%

Appendix D: Oklahoma Statute §68-2391-7

§68-2391. Short title - Oklahoma Tourism Development Act. This act shall be known and may be cited as the "Oklahoma Tourism Development Act". Added by Laws 2017, c. 196, § 1, eff. Nov. 1, 2017.

§68-2392. Legislative findings and purpose. The Legislature hereby finds: 1. That the general welfare and material well-being of the citizens of the State of Oklahoma depend, in large measure, upon the development of tourism attractions in this state; 2. That it is in the best interests of the citizens of this state to induce the creation of new or the expansion of existing tourism attractions within this state in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the inducements to be offered by this state to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by this state; 3. That the authority prescribed by this act, and the purposes to be accomplished under the provisions of this act, are proper governmental and public purposes for which public funds may be expended; and 4. That the inducement of the creation or expansion of tourism attraction projects is of paramount importance, mandating that the provisions of this act be liberally construed and applied in order to advance public purposes. Added by Laws 2017, c. 196, § 2, eff. Nov. 1, 2017.

§68-2393. Definitions. As used in the Oklahoma Tourism Development Act: 1. "Agreement" means an agreement entered into pursuant to Section 2396 of this title, by and between the Executive Director of the Oklahoma Tourism and Recreation Department and an approved company, with respect to a tourism attraction project; 2. "Approved company" means any eligible company or companies seeking to undertake a tourism attraction project and is approved by the Executive Director pursuant to Sections 2395 and 2396 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, b. the costs of acquiring real property or rights in real property in connection with a tourism attraction project, and any costs incidental thereto, 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 which are not paid by the vendor, supplier or contractor, or otherwise provided, d. e. f. g. 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, all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project, all costs required for the installation of utilities in connection with a tourism attraction project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including offsite construction of utility extensions paid for by the approved company, and all other costs comparable with those described in this paragraph; 4. "Director" means the Executive Director of the Oklahoma Tourism and Recreation Department or the Executive 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, whether owned or leased, within this state that meets the standards promulgated by the Executive Director pursuant to Section 2394 of this title and, with respect to an Entertainment District, shall also include any such entity that will acquire, construct, develop, equip, install, expand or operate all or any portion of the Entertainment District, whether owned or leased; 6. "Entertainment District" means a mixed-use planned development project, with approved costs of One Million Dollars (\$1,000,000.00) or more in the aggregate, encompassing more than one hundred thousand (100,000) square feet and including an entertainment or recreational component and at least three of the following categories: (a) retail; (b) housing; (c) office; (d) restaurants; (e) hotel, regardless of whether the hotel is a destination hotel; (f) grocery; (g) brewery facilities for a small brewer (as defined in the Oklahoma Alcoholic Beverage Control Act, Section 1-103 of Title 37A of the Oklahoma Statutes); or (h) structured parking. An Entertainment District may include a project that is anticipated to be completed in multiple phases; 7. "Entertainment District Tenant Party" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity operating within a tourism attraction project that is an Entertainment District pursuant to a lease or similar agreement with an approved company or otherwise; 8. "Final approval" means the action taken by the Executive Director authorizing the eligible company to receive inducements under Section 2397 of this title; 9. "Increased state sales tax liability" means that portion of an

entity's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction which exceeds the reported state sales tax liability for sales to its customers at the tourism attraction for the same month in the calendar year immediately preceding the certification as an approved company or an Entertainment District Tenant Party, as applicable; 10. "Inducements" means the sales tax credit or incentive payment as prescribed in Section 2397 of this title; 11. "Preliminary approval" means the action taken by the Executive Director conditioned upon final approval by the Executive Director upon satisfaction by the eligible company of the requirements of this act; 12. a. "Tourism attraction" means: (1) a cultural or historical site, (2) a recreational or entertainment facility, (3) an area of natural phenomena 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, (8) a cultural or educational center, (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, or (10) an Entertainment District. 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 or an Entertainment District, (2) facilities that are primarily devoted to the retail sale of goods, unless: (a) the goods are created at the site of the tourism attraction project, or (b) if the sale of goods is incidental to the tourism attraction project, or (c) such facilities are a part of an Entertainment District, (3) facilities that are not open to the general public, unless such facilities are a part of an Entertainment District wherein a substantial portion of the Entertainment District is open to the general public, as determined by the Executive Director, (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, unless such facilities are a part of an Entertainment District, (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 the Oklahoma Horse Racing Act, Sections 200 through 209 of Title 3A of the Oklahoma Statutes, shall be a tourism attraction for purposes of this 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 13. "Tourism attraction 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, and b. the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction and installation of a tourism attraction, including, but not limited to: (1) surveys, and (2) installation of utilities, which may include: Oklahoma Statutes - Title 68. Revenue and Taxation Page 923(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 shall be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract tourists. Added by Laws 2017, c. 196, § 3, eff. Nov. 1, 2017. Amended by Laws 2019, c. 443, § 1, eff. Nov. 1, 2019.

§68-2394. Inducements for tourism attraction projects - Criteria - Consultant's report. A. The Executive 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 by the promulgation of rules in accordance with the Administrative Procedures Act. B. With respect to each eligible company making an application to the Executive Director for inducements, and with respect to the tourism attraction described in the application, the Executive 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, including a description and boundary of the area encompassing the Entertainment District, if applicable; 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, which for an Entertainment District that is anticipated to be completed in multiple phases may include capital and other anticipated expenditures for all phases of the project; 4. The anticipated employment and wages to be paid at the project, which may include employment and wages to be paid by the eligible company and any tenants of the tourism attraction project; 5. Business plans which indicate the average number of days in a year in which the project or any component thereof will be in operation and open to the public, if applicable; and 6. The anticipated revenues and expenses generated by the project, which for an Entertainment District may include the anticipated revenues and

expenses generated by each of the different phases or components of the Entertainment District. Based upon a review of these materials, if the Executive Director determines that the eligible company and the tourism attraction may reasonably be expected to satisfy the criteria for final approval in subsection C of this section, then the Executive Director may consider granting a preliminary approval of the eligible company and the tourism attraction project pursuant to subsection B of Section 2395 of this title.

C. For a tourism attraction project, after granting a preliminary approval, the Executive Director shall engage the services of a competent consulting firm which shall submit to the Executive 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:

1. Attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of this state;
2. Have costs in excess of Five Hundred Thousand Dollars (\$500,000.00);
3. 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 inducements allowed pursuant to Section 2397 of this title;
4. Produce sufficient revenues and public demand to be operating and open to the public on a regular and persistent basis; and
5. Not adversely affect existing employment in this state.

D. For a tourism attraction project that is an Entertainment District and is anticipated to be completed in multiple phases, the consulting firm's report may include the data and information for the entire Entertainment District including any and all components or phases of the Entertainment District and a separate report for each component or phase of the Entertainment District shall not be required.

E. 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 pursuant to this section. Added by Laws 2017, c. 196, § 4, eff. Nov. 1, 2017. Amended by Laws 2019, c. 443, § 2, eff. Nov. 1, 2019.

§68-2395. Preliminary and final approval of projects. The Executive Director of the Oklahoma Tourism and Recreation Department, with the approval of the Oklahoma Tourism and Recreation Commission, shall establish standards for preliminary approval and final approval of eligible companies and their projects by the promulgation of rules in accordance with the Administrative Procedures Act.

B. The Executive Director may give preliminary approval by designating an eligible company as a preliminarily approved company and preliminarily authorizing the undertaking of the tourism attraction project.

C. The Executive Director shall review the report of the consultant prepared pursuant to subsection C of Section 2394 of this title and other information that has been made available to the Executive Director in order to assist the Executive Director in determining whether the tourism attraction project will further the purposes of this act.

D. The criteria for final approval of eligible companies and tourism attraction projects shall include, but shall not be limited to, the criteria set forth in subsection C of Section 2394 of this title.

E. After a review of the relevant materials, the consultant's report, other information made available to the Executive Director, and completion of other inquiries, the Executive Director may give final approval to the eligible company's application for a tourism attraction project and may grant to the eligible company the status of an approved company. The decision reached by the Executive Director may be appealed by the eligible company to the Tourism and Recreation Commission. The decision of the Tourism and Recreation Commission shall constitute the final administrative decision of the Oklahoma Tourism and Recreation Department. Added by Laws 2017, c. 196, § 5, eff. Nov. 1, 2017. Amended by Laws 2019, c. 443, § 3, eff. Nov. 1, 2019.

§68-2396. Approved projects - Agreement terms and provisions. A. Upon granting final approval, the Executive Director of the Oklahoma Tourism and Recreation Department 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 Oklahoma Statutes - Title 68. Revenue and Taxation Page 926 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 be 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. c. d. 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, 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 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 passthrough 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 consultant's report (referred to in subsection C of Section Oklahoma Statutes - Title 68. Revenue and Taxation Page 9282394 of this title) for each individual component or phase of the Entertainment District, but only one consultant's report for the entire Entertainment District. Added by Laws 2017, c. 196, § 6, eff. Nov. 1, 2017. Amended by Laws 2019, c. 443, § 4, eff. Nov. 1, 2019.

§68-2397. Inducement claim forms - Sales tax credits. A. Upon receiving notification from the Executive Director of the Oklahoma Tourism and Recreation Department 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 passthrough 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 this 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 as determined by the 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 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 as determined by the Tax Commission. Sales tax credits allowed pursuant to the provisions of this 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 passthrough 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 this 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 as determined by the 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 Tax Commission. 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 as determined by the Tax Commission; 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 Oklahoma Statutes - approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the Tax Commission. 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 this act shall not exceed Fifteen Million Dollars (\$15,000,000.00) 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 Oklahoma Statutes - 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 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 this 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 this act. The Oklahoma Tax Commission shall demand the repayment of any inducements taken or received in excess of the inducements allowed by this 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 Tourism and Recreation Department 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. Added by Laws 2017, c. 196, § 7, eff. Nov. 1, 2017. Amended by Laws 2019, c. 443, § 5, eff. Nov. 1, 2019.