

TITLE 725 OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS
SUBCHAPTER 33. OKLAHOMA TOURISM DEVELOPMENT ACT TAX CREDIT PROGRAM

PREAMBLE:

Under the The Emergency Rule Documentation for Emergency Rules Oklahoma Tourism Development Act, 68 O.S. 2391 *et seq.* The Department is requesting approval of Emergency Rules as they are necessary to ‘avoid serious prejudice to the public interest’ in delaying such adoption would severely delay the tax revenue benefit to the state, delay investment in Tourism Development Projects, and hurt business and tax revenue of the surrounding communities.

RULEMAKING ACTION:

Emergency adoption.

RULES:

725:15-33-8. Necessity, function, and conformity [NEW]

725:15-33-9. Definitions [NEW]

725:15-33-10. Standards for preliminary approval [NEW]

725:15-33-11. Oklahoma Tourism Development Act Tax Credit Program application [NEW]

725:15-33-12. Final Approval [NEW]

725:15-33-13. Application form [NEW]

725:15-33-14. Appeals [NEW]

725:15-33-8. Necessity, function, and conformity [NEW]

68 O.S. § 2394 requires that the Director, 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 production and development facility project by the promulgation of rules in accordance with the Administrative Procedures Act.

725:15-33-9. Definitions [NEW]

"Act" or "this act" means the Oklahoma Tourism Development Act found in 68 O.S. § 2391 - § 2397;

"Agreement" means an agreement entered into pursuant to Section 2357.39 of Title 68 of the Oklahoma Statutes, by and between the Director of the Oklahoma Tourism and Recreation Department and an approved company, with respect to a tourism attraction project or and development facility project.

"Approved company" means any eligible company that is seeking to undertake a tourism attraction development facility project and is approved by the Director pursuant to Sections 2357.38 and 2357.39 of Title 68 of the Oklahoma Statutes.

"Approved costs" means:

(A) obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in connection with the acquisition, construction, equipping and installation of a tourism attraction project or development facility project,

(B) the costs of acquiring real property or rights in real property in connection with a tourism attraction project or development facility project, and any costs incidental thereto,

(C) the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project or development facility project which is not paid by the vendor, supplier, contractor, or otherwise provided,

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

(E) all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project or development facility project,

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

(G) all other costs comparable with those described in this paragraph.

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

"Eligible company" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project or undertake a development facility project, whether owned or leased, within this state that meets the standards promulgated by the Director pursuant to Section 2357.37 of Title 68 of the Oklahoma Statutes.

"Final approval" means the action taken by the Director authorizing the eligible company to receive inducements under Section 2357.40 of Title 68 of the Oklahoma Statutes.

"Increased state sales tax liability" means that portion of an approved company's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding the certification;

"Inducements" means the income tax credit or sales tax credit as prescribed in Section 2357.40 of Title 68 of the Oklahoma Statutes.

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

"Tourism Attraction" means:

- (i) a cultural or historical site,
- (ii) a recreational or entertainment facility,
- (iii) an area of natural phenomenon or scenic beauty,
- (iv) a theme park,
- (v) an amusement or entertainment park,
- (vi) an indoor or outdoor play or music show,
- (vii) a botanical garden,
- (vii) a cultural or educational center,
- (viii) a destination hotel whose location and amenities, including but not limited to upscale dining, recreation and entertainment, make the hotel itself a destination of tourists.

(B) shall not include:

(i) lodging facilities, unless;

(I) 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

(II) a lodging facilities are a part of a destination hotel,

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

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

(iv) 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,

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

(vi) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under Section 200 et seq. of Title 3A of the Oklahoma Statutes shall be a tourism attraction for purposes of the Oklahoma Tourism Development Act for any approved project as outlined in subparagraph a of this paragraph or for an approved project

relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; and

"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:

(i) surveys, and

(ii) installation of utilities, which may include:

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

(II) 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.

725:15-33-10. Standards for preliminary approval NEW]

When a written application is submitted to the Director for consideration of preliminary approval of the eligible company and its tourism attraction project, the Director shall base approval of the request upon the information in the application, recommendations from staff and advisory review committees, any written or oral communications with the eligible company, and all requirements as set forth in paragraph B of 68 O.S. §2394.

725:15-33-11. Oklahoma Tourism Development Act Tax Credit Program application [NEW]

(a) An eligible company wishing to participate in the Oklahoma Tourism Development Act Tax Credit Program shall file three (3) copies of an application with the Director. If the application does not contain all information and materials identified below it shall be returned to the applicant and will not be considered.

(b) The following information and materials shall be submitted as a part of the application:

(1) Eligible company name, address, phone and telefax numbers, contact person and federal employer tax identification number;

(2) Location of tourism attraction project or film or music production and development facility project;

(3) Form of organization of eligible company;

(4) Previous participation of eligible company in Oklahoma tax incentive programs;

(5) Ownership of eligible company;

(6) Bankruptcy history of eligible company;

(7) Governmental denial, suspension or revocation of licenses of eligible company;

(8) Attorney for eligible company, including address, phone and telefax numbers;

(9) Contact person of bank for eligible company, including address, phone and telefax numbers and contact person;

(10) Accountant for eligible company, including address, phone and telefax numbers;

(11) Tourism attraction project and development facility project description;

(12) Eligible company ownership or leasing of tourism attraction project and development facility project;

(13) Estimated tourism attraction project and development facility project costs;

(14) Proposed sources of financing tourism attraction project and development facility project;

(15) Contractor for tourism attraction project and development facility project, including address, phone and telefax numbers and contact person;

(16) The total number of jobs projected upon completion of and within two (2) years after completion of the tourism attraction project and development facility project;

(17) Five (5) year history of attendance at tourism attraction project and development facility project for an expansion;

(18) Five (5) year attendance projections for tourism attraction project and development facility project;

- (19) Months of the year during which the tourism attraction project and development facility project is open;
- (20) Marketing plans and media type to be used for the tourism attraction project and development facility project, including five (5) year proposed advertising budget;
- (21) Value of Oklahoma tangible property before and after completion of the tourism attraction project and development facility project;
- (22) Ten (10) year estimate of tourism attraction project and development facility project payroll;
- (23) Estimated federal and state income tax liability of eligible company for first ten (10) fiscal years of the eligible company after commencement of operations of the tourism attraction project and development facility project;
- (24) Estimated state sales tax liability of eligible company for first ten (10) fiscal years of the eligible company after commencement of operations of the tourism attraction project or film or music production and development facility project;
- (25) If the tourism attraction project or film or music production and development facility project is an expansion, federal and state income tax liability of eligible company for the past three (3) fiscal years;
- (26) Ten (10) year estimated revenue of eligible company subject to Oklahoma income tax from the tourism attraction project and development facility project; and
- (27) Ten (10) year estimated additional revenue the tourism attraction project and development facility project will generate to the community.
- (28) Type of tax credit desired.
- (29) A signed and dated Certification of Application.

725:15-33-12. Final Approval [NEW]

The Director shall provide his/her final approval required by Title 68 O.S. Supp. 2005, § 2357.38 based upon:

- (1) The eligible company's satisfaction of statutory requirements of Title 68 O.S. Supp. 2005, § 2357.34 to 2357.40;
- (2) The findings of the consultants report required by paragraph C of Title 68 O.S. Supp. 2005, § 2357.37; and
- (3) The application submitted to the Director under Section 3 of this administrative regulation, and written and oral communications with the eligible company.

725:15-33-13. Application form [NEW]

- (a) The "Application for the Oklahoma Tourism Development Act Income Tax Credit Program (11/2000)" is incorporated by reference.
- (b) A copy of the form of application may be inspected, copied or obtained at the Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma, between 8 a.m. and 4:30 p.m., Monday through Friday.

725:15-33-14. Appeals [NEW]

An applicant may appeal the denial of final approval by the Executive Director to the Oklahoma Tourism and Recreation Commission.

- (1) **Applicant notification.** An applicant shall submit a written appeal to the Chairman of the Oklahoma Tourism and Recreation Commission within ten (10) days of the date of denial. The appeal shall state all facts and reasons for the appeal.
- (2) **Director actions and determination.** The Chairman of the Commission shall assign the appeal to an administrative law judge retained by the Commission. The administrative law judge shall conduct an administrative hearing pursuant to the provisions of 75 O.S., Section 309 et seq. The administrative law judge shall establish necessary procedures for the administrative hearing. The administrative law judge shall provide proposed findings of fact and conclusions of law to the Commission. The Commission shall sustain or deny the applicant's appeal.
- (3) **Applicant appeal of Commission denial.** If the Commission denies an applicant's appeal, the applicant may further appeal pursuant to provisions of 75 O.S., Section 309 et seq.

