

CHAPTER 104**(HB 493)**

AN ACT relating to tourism development tax incentives.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 148.851 is amended to read as follows:

As used in 148.851 to 148.860, unless the context clearly indicates otherwise:

- (1) "Agreement" means the tourism development agreement entered into between the authority and an approved company;
- (2) "Approved company" means any eligible company that has received final approval to receive incentives provided under KRS 148.853;
- (3) "Approved costs" means the amount of eligible costs approved by the authority upon completion of the project;
- (4) "Authority" means the Kentucky Tourism Development Finance Authority as set forth in KRS 148.850;
- (5) "Cabinet" means the Tourism, Arts and Heritage Cabinet;
- (6) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;
- (7) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism development project;
- (8) "Eligible costs" means:
 - (a) Obligations incurred for labor and amounts paid to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism development project;
 - (b) The costs of acquiring real property or rights include the acquisition of real property by a leasehold interest with a minimum term of ten (10) years, and any costs incidental thereto;
 - (c) The cost 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 development project which is not paid by the vendor, supplier, deliveryman, 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 development project;
 - (e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism development project;
 - (f) All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and
 - (g) All other costs comparable with those described in this subsection, excluding costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206, 154.20-208, and 154.20-210 or Subchapter 31 of KRS Chapter 154;
- (9) ***"Enhanced incentive county" has the same meaning as in KRS 154.32-010;***
- (10) "Entertainment destination center project" means a facility that meets the requirements of KRS 148.853(2)(b);
- ~~(11)~~(10) "Final approval" means the action taken by the authority authorizing the eligible company to receive incentives under KRS 139.536 and 148.851 to 148.860;

- ~~(12)~~~~(11)~~ "Full-service lodging facility" means a facility that provides overnight sleeping accommodations, including private bathrooms and all of the following:
- (a) On-site dining facilities;
 - (b) Room service;
 - (c) Catering; and
 - (d) Meeting space;
- ~~(13)~~~~(12)~~ "Incentives" means the Kentucky sales tax refund as prescribed in KRS 139.536;
- ~~(14)~~~~(13)~~ "Kentucky sales tax" means the sales tax imposed by KRS 139.200;
- ~~(15)~~~~(14)~~ "Lodging facility project" means a full-service lodging facility that:
- (a) Is located on recreational property owned or leased by the Commonwealth or the federal government;
 - (b) Involves the restoration or rehabilitation of a structure that:
 - 1. Is listed individually on the National Register of Historic Places; or
 - 2. Is located in the National Register Historic District; and
 is certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration of the structure has been approved in advance by the Kentucky Heritage Council;
 - (c) Is an integral part of a major convention or sports facility;
 - (d) Is located:
 - 1. Within a fifty (50) mile radius of a property listed on the National Register of Historic Places with a current function of recreation and culture; and
 - 2. In any of the one hundred (100) least-populated counties in the Commonwealth, in terms of population density, according to the most recent census;
 - (e) Is located on property:
 - 1. Owned by the Commonwealth, or leased by the Commonwealth from the federal government;
 - 2. Acquired for use in the state park system pursuant to KRS 148.028; and
 - 3. Operated by the Kentucky Department of Parks pursuant to KRS 148.021 or the Kentucky Horse Park Commission pursuant to KRS 148.258 to 148.320;
 - (f) Is located on property:
 - 1. Owned or leased by the federal government and under the control of the Department of the Interior; or
 - 2. Owned by the Commonwealth and in the custody of the State Fair Board as provided in KRS 247.140;
 - (g) Is part of a tourism attraction project, entertainment destination center project, or theme restaurant destination attraction project and the full-service lodging facility represents less than fifty percent (50%) of the total eligible costs; or
 - (h) Has not less than five hundred (500) guest rooms;
- ~~(16)~~~~(15)~~ "Net positive fiscal impact" means the amount by which increased state tax revenues will exceed the incentives given;
- ~~(17)~~~~(16)~~ "Preliminary approval" means the action taken by the authority conditionally approving an eligible company for the incentives under KRS 139.536 and 148.851 to 148.860;
- ~~(18)~~~~(17)~~ "Recreational facility" means a structure or outdoor area that:
- (a) Provides visitors recreational opportunities, including but not limited to amusement parks, boating, hiking, horseback riding, hunting, fishing, camping, wildlife viewing, live theater, rock climbing, and all-terrain vehicle trails; and

- (b) Serves as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the recreational facility;

~~(19)~~~~(18)~~ "Theme restaurant destination attraction project" means a restaurant facility that meets the requirements for incentives under KRS 148.853(2)(c);

~~(20)~~~~(19)~~ (a) "Tourism attraction project" means:

1. A cultural or historical site;
2. A recreational facility;
3. An entertainment facility;
4. An area of natural phenomenon or scenic beauty; or
5. A Kentucky crafts and products center;

- (b) "Tourism attraction project" does not include facilities that are primarily devoted to the retail sale of goods, other than a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction; and

~~(21)~~~~(20)~~ "Tourism development project" means:

- (a) A tourism attraction project;
- (b) A theme restaurant destination attraction project;
- (c) An entertainment destination center project; or
- (d) A lodging facility project.

➔Section 2. KRS 148.853 is amended to read as follows:

(1) The General Assembly finds and declares that:

- (a) The general welfare and material well-being of the citizens of the Commonwealth depend in large measure upon the development of tourism in the Commonwealth;
- (b) It is in the best interest of the Commonwealth to provide incentives for the creation of new tourism attractions and the expansion of existing tourism attractions within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the incentives offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth;
- (c) The authorities granted by KRS 148.851 to 148.860 are proper governmental and public purposes for which public moneys may be expended; and
- (d) That the creation or expansion of tourism development projects is of paramount importance mandating that the provisions of KRS 139.536 and KRS 148.851 to 148.860 be liberally construed and applied in order to advance public purposes.

(2) To qualify for incentives provided in KRS 139.536 and 148.851 to 148.860, the following requirements shall be met:

(a) For a tourism attraction project:

1. The total eligible costs shall exceed one million dollars (\$1,000,000), *except for a tourism attraction project located in a county designated as an enhanced incentive county at the time the eligible company becomes an approved company as provided in KRS 148.857(6), the total eligible costs shall exceed five hundred thousand dollars (\$500,000)*;
2. In any year, including the first year of operation, the tourism attraction project shall be open to the public at least one hundred (100) days; and
3. In any year following the third year of operation, the tourism attraction project shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;

(b) For an entertainment destination center project:

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1. The total eligible costs shall exceed five million dollars (\$5,000,000);
 2. The facility shall contain a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction project or a major convention facility;
 3. The incentives shall be dedicated to a public infrastructure purpose that shall relate to the entertainment destination center project;
 4. In any year, including the first year of operation, the entertainment destination center project shall:
 - a. Be open to the public at least one hundred (100) days per year;
 - b. Maintain at least one (1) major theme restaurant and at least three (3) additional entertainment venues, including but not limited to live entertainment, multiplex theaters, large-format theater, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure-time activities; and
 - c. Maintain a minimum occupancy of sixty percent (60%) of the total gross area available for lease with entertainment and food and drink options not including the retail sale of tangible personal property; and
 5. In any year following the third year of operation, the entertainment destination center project shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;
- (c) For a theme restaurant destination attraction project:
1. The total eligible costs shall exceed five million dollars (\$5,000,000);
 2. In any year, including the first year of operation, the attraction shall:
 - a. Be open to the public at least three hundred (300) days per year and for at least eight (8) hours per day; and
 - b. Generate no more than fifty percent (50%) of its revenue through the sale of alcoholic beverages;
 3. In any year following the third year of operation, the theme restaurant destination attraction project shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth; and
 4. The theme restaurant destination attraction project shall:
 - a. At the time of final approval, offer a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;
 - b. In any year, including the first year of operation, maintain seating capacity of four hundred fifty (450) guests and offer live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public; or
 - c. Within three (3) years of the completion date, the attraction shall obtain a top two (2) tier rating by a nationally accredited service and shall maintain a top two (2) tier rating through the term of the agreement;
- (d) For a lodging facility project:
1.
 - a. The eligible costs shall exceed five million dollars (\$5,000,000) unless the provisions of subdivision b. of this subparagraph apply.
 - b.
 - i. If the lodging facility is an integral part of a major convention or sports facility, the eligible costs shall exceed six million dollars (\$6,000,000); and
 - ii. If the lodging facility includes five hundred (500) or more guest rooms, the eligible costs shall exceed ten million dollars (\$10,000,000); and
 2. In any year, including the first year of operation, the lodging facility shall:

- a. Be open to the public at least one hundred (100) days; and
 - b. Attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth; and
- (e) An expansion of any tourism development project shall in all cases be treated as a new stand-alone project.
- (3) The incentives offered under the Kentucky Tourism Development Act shall be as follows:
- (a) An approved company may be granted a sales tax incentive based on the Kentucky sales tax imposed on sales generated by or arising at the tourism development project; and
 - (b) 1. For a tourism development project other than a lodging facility project described in KRS 148.851(14)(e) or (f), *or a tourism attraction project described in subparagraph 2. of this paragraph*:
 - a. A sales tax incentive shall be allowed to an approved company over a period of ten (10) years, except as provided in subparagraph ~~5.4.~~ of this paragraph; and
 - b. The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed twenty-five percent (25%);
 - 2. *For a tourism attraction project located in an enhanced incentive county at the time the eligible company becomes an approved company as provided in KRS 148.857(6):*
 - a. *A sales tax incentive shall be allowed to the approved company over a period of ten (10) years; and*
 - b. *The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed thirty percent (30%);*
 - 3. For a lodging facility project described in KRS 148.851(14)(e) or (f):
 - a. A sales tax incentive shall be allowed to the approved company over a period of twenty (20) years; and
 - b. The sales tax incentive shall not exceed the lesser of total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed fifty percent (50%);
 - ~~4.3.~~ Any unused incentives from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire specified percentage of the approved costs has been received through sales tax incentives; and
 - ~~5.4.~~ If the approved company is an entertainment destination center that has dedicated at least thirty million dollars (\$30,000,000) of the incentives provided under the agreement to a public infrastructure purpose, the agreement may be amended to extend the term of the agreement up to two (2) additional years if the approved company agrees to:
 - a. Reinvest in the original entertainment destination project one hundred percent (100%) of any incentives received during the extension that were outstanding at the end of the original term of the agreement; and
 - b. Report to the authority at the end of each fiscal year the amount of incentives received during the extension and how the incentives were reinvested in the original entertainment destination project.

➔SECTION 3. A NEW SECTION OF KRS 148.851 TO 148.860 IS CREATED TO READ AS FOLLOWS:

New applications shall not be accepted or considered before August 1, 2014, or after May 1, 2018, for the sales tax incentive provided in subsection (3)(b)2. of Section 2 of this Act. All projects with preliminary or final approval under KRS 148.851 to 148.860 on July 31, 2018, shall continue to be governed by KRS 148.851 to 148.860.

Signed by Governor April 10, 2014.

