

**RULES
OF
GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS**

**CHAPTER 110-32-1
GEORGIA TOURISM DEVELOPMENT ACT PROGRAM**

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110-32-1-.01 Enabling Statute, Authority and Purpose

- (1) The enabling statute for this regulation is Title 48 Chapter 8 Article 6 otherwise known as the Georgia Tourism Development Act. Within this regulation, the reference may also be incorporated as “the Act”.
 - a) The legislative purpose contained in O.C.G.A § 48-8-272 includes the inducement of the creation of tourism attractions or 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 sales and use tax refund offered by the State of Georgia to approved companies. In addition to the economic development purposes, the preservation and creation of sources of tax revenues for the support of public services provided by the state is also described as a purpose of the Article.
- (2) Authority for Regulations -- Official Code of Georgia Annotated, Sections 48-8-273 and 48-8-274 as amended through HB 318 of the 2013-2014 Regular Session.
- (3) Purpose for Regulations
 - a) Pursuant to O.C.G.A. § 48-8-274, the Department of Community Affairs (DCA) will establish regulations for the application process including the provision of standards for the filing of tourism attraction project applications; the explanation of the conditions of eligibility; the methodology to be used in the analysis and rating of project applications; and the criteria to be used in making recommendations to the Commissioner of the Department of Economic Development and the Commissioner of the Department of Community Affairs, and the standards to be used in the administration of agreements for approved projects as authorized by O.C.G.A. § 48-8-275.
 - b) Pursuant to O.C.G.A § 48-8-273(e), The Department of Revenue (DOR) will establish regulations for the filing and administration of sales and use tax refunds.

Authority O.C.G.A. Secs. 50-8-3, 50-8-5, 48-8-270, 48-8-272

110-32-1-.02 Definitions

- (1) “Agreement” is defined in O.C.G.A § 48-8-271(1) as an agreement between the Department of Community Affairs and an approved company pursuant to Code Section § 48-8-275. Any Agreement is for content only. Such Agreement does not constitute approval of all items within the application or project plan. Any sales and use tax refunds authorized by an Agreement are subject to the review and recommendation for approval or ineligibility by the DOR.

- (2) “Annual Sales and Use Tax” is defined at O.C.G.A § 48-8-271(2) as state and local sales and use taxes generated by sales to the general public at the approved tourism attraction during the calendar year immediately preceding the date of filing the sales and use tax refund claim. The Sales and Use Tax definitions within Chapter 8 of Title 48 of the Official Code of Georgia Annotated along with applicable regulations promulgated by the Department of Revenue may be used to assist decisions.
- (3) “Applicant” means the entity (including, without limitation, any public development authority) that has submitted an application to undertake a tourism attraction project and become the Approved Company pursuant to O.C.G.A § 48-8-271(3).
- (4) “Complete Application” means a complete written proposal and site plan in a format prescribed by the Department where the Application and Processing Fee has been paid, where the application contains approved local government resolutions, public hearing notices and minutes, all required information, data, criteria and other documentation as described in section 110-32-1-.03 of this regulation. A Complete Application does not include the Independent Consultants Report which shall be provided by the Applicant through an Independent Consultant retained by the Department.
- (5) “Approved Tourism Attraction” is defined at O.C.G.A § 48-8-271(5) as a tourism attraction approved by the Commissioner of the Department of Economic Development and Commissioner of the Department of Community Affairs pursuant to O.C.G.A § 48-8-274 and has since opened to the public and become operational as a tourism attraction.
- (6) “Approved Company” is defined at O.C.G.A § 48-8-271(3) as any Applicant that is approved, pursuant to O.C.G.A § 48-8-274, by the Commissioner of the Department of Economic Development and Commissioner of the Department of Community Affairs. For each Approved Tourism Attraction Project, there may be only one Approved Company. In addition, this definition shall be used for purposes of implementing O.C.G.A § 48-8-273(f) related to the restriction on an Approved Company’s simultaneous receipt of the Sales and Use Tax refund under the Act while receiving other State Tax Incentives as outlined in section 110-32-1-.02(15) of this regulation.
- (7) “Approved Costs” is defined at O.C.G.A § 48-8-271(4) as :
 - a) For new tourism attractions: i) obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a new tourism attraction project; ii) the costs of acquiring real property or rights in real property and any costs incidental thereto; iii) all costs for construction materials and equipment installed at the new tourism attraction project; iv) 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 new tourism attraction project which is not paid by the vendor, supplier, deliveryman, or contractor or otherwise provided; v) 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 new tourism attraction project; vi) all costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a new tourism attraction project; vii) all costs required for the installation of utilities, including but not limited to water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company; and viii) all other costs which the

Department of Community Affairs determines are comparable with those described in this subsection; or

- b) For existing tourism attractions, any approved costs otherwise specified in subsection (a) of this section; provided, however, that such costs are limited to the expansion only of an existing tourism attraction and not the renovation of an existing tourism attraction.
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- (8) (Reserved)
 - (9) “Expansion and not the Renovation of an Existing Tourism Attraction” - This restriction at O.C.G.A § 48-8-271(4)(B) and 6 means that Approved Costs may not include costs attributable to general maintenance, rehabilitation or repair of an existing Tourism Attraction. For an existing Tourism Attraction, Approved Costs attributable for additional equipment, facilities, or real estate to an existing Tourism Attraction for the purpose of increasing its size, scope, or visitor capacity will be considered allowable Expansions.
 - (10) “Incremental Sales and Use Tax” is defined at O.C.G.A § 48-8-271(7) as state and local sales and use taxes generated by sales to the general public at the approved tourism attraction from the date on which construction of the expansion project is completed through the end of the calendar year immediately preceding the date of filing the incremental sales and use tax claim, less the state and local sales and use taxes that were generated by sales to the general public at the approved tourism attraction during the 12 month period immediately preceding the commencement of construction of the expansion project.
 - (11) “Incremental Sales and Use Tax Refund” is defined at O.C.G.A § 48-8-271(8) as the amount equal to the lesser of the incremental sales and use tax or 2.5 percent of the total of all approved costs incurred at any time prior to January 1 of the year during which the claim for the incremental sales and use tax is filed. To the extent that local sales and use tax increments are to be included in the project, their inclusion must be legally specified in approved local government resolution(s) that includes language specifying the intended uses align with any authorizing referendum.
 - (12) “Local Sales and Use Tax” is defined at O.C.G.A § 48-8-271(9) as any sales and use tax, excluding the sales tax for educational purposes levied pursuant to Part 2 of Article 3 of Chapter 8 and Article VIII, Section VI, Paragraph IV of the Constitution, that is levied and imposed in an area consisting of less than the entire state, however authorized. To the extent that local sales and use tax increments are to be included in the project, their inclusion must be legally specified in approved local government resolution(s) that includes language specifying the intended uses align with any authorizing referendum .
 - (13) “Independent Consultant” means a legal entity or agent that pursuant to O.C.G.A § 48-8-274, works with DCA to provide through a written report, advice, recommendations and analyses of an Applicant’s proposal for a proposed Tourism Attraction. To insure independence, the Department’s agreement with any consultant may include language that prohibits the consultant from implementing any recommendations in a follow-on contract with the Applicant. Independent Consultants may include without limitation, non-profit corporations and entities attached to Research Universities that provide market research and fiscal impact services.
 - (14) “Independent Consultants Report” or “Report” means a written analysis specified in § 48-8-274(c). In addition to a general report regarding the Applicant’s proposal, the report shall include specific analyses on those items specified within O.C.G.A § 48-8-274(d) to include: a) a fiscal impact analysis to estimate net new state and local tax impacts of the proposed attraction; b) an economic impact analysis to estimate new job creation and new income to both the state

and the local jurisdiction resulting from the proposed development; c) estimates on the extent to which the proposed project will compete directly with existing tourism attractions and/or affect existing employment within the state; d) whether the proposed project will produce sufficient revenues and public demand to operate and be open to the public for a minimum of 100 days per year, including the first year of operation; e) an analysis of the volume and composition of likely tourists and whether the completed project, for each year following its third year of operation, will attract a minimum of 25 percent of its visitors from nonresidents of this state; and f) an analysis of any other item or information deemed appropriate by the Department or authorized agent of the State.

- (15) "State Tax Incentive" means any tax credit allowed under Chapter 7 of Title 48 and any state sales tax exemption allowed under Chapter 8, Article 1 of Title 48.
- (16) "Tourism Attraction" means: a) a cultural or historical site; b) a recreation or entertainment facility; c) a convention hotel and conference center; d) an automobile race track with other tourism amenities; e) a golf course facility with other tourism amenities; f) marinas and water parks with lodging and restaurant facilities designed to attract tourists to the State of Georgia; or g) a Georgia crafts and products center.
- i) With regards to hotels and lodging, such lodging must generally be located within a five (5) mile radius of the subject Tourism Attraction.
 - ii) "Amenities", for purposes of items within the definition of Tourism Attraction, means ancillary facilities, improvements or natural areas which the application documents and the Department determined enhance the Tourism Attraction. Such amenities may be cited in the Approved Agreement.
- (17) "Non-Qualifying Attraction" pursuant to O.C.G.A § 48-8-271(12) means facilities that are primarily devoted to the retail sale of goods, shopping centers, restaurants, or movie theaters;
- a) When determining the definition of "primarily" within O.C.G.A § 48-8-271(12), the DCA will consider the geographic area of the Tourism Attraction Project. Should the geographic area of the uses of these non-qualifying attractions exceed 50% of the area as determined by DCA, the facilities will be considered a Non-Qualifying Attraction. For purposes of these calculations, parking facilities will generally be prorated according to the proposed uses of the official site plan.
 - b) Tourism Attractions with less than 25% of their customers from out of state for each year following the third year of operation will be considered a Non-Qualifying Attraction.
- (18) "Tourism Attraction Project" or "Project" as defined at O.C.G.A § 48-8-271(13) includes:
- a) the real estate acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of 30 years as authorized by the Act;
 - b) the construction, and equipping of a Tourism Attraction as authorized by the Act;
 - c) as authorized by the Act, 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 surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company.
 - d) as required by the Act, the term "Project" shall not include the renovation of an existing Tourism Attraction.

- (19) "Sales and Use Tax Refund" as defined at O.C.G.A § 48-8-271(11) means the amount equal to the lesser of the annual sales and use tax or 2.5 percent of the total of all approved costs incurred at any time prior to January 1 of the year during which the claim for the sales and use tax refund is filed.
- (20) (Reserved)

Authority O.C.G.A. Secs. 50-8-3, 50-8-5, 48-8-270, 48-8-271

110-32-1-.03 Application Process

- (1) Eligible Applicants include those entities listed at section 110-32-1-.02(3) which are undertaking an eligible Project as described in section 110-32-1-.02(19) that will have Approved Costs in excess of \$1 million which result an eligible Tourism Attraction as described in section 110-32-1-.02(7) of these regulations.
- (2) Pre-Application Assistance – Should a potential applicant and/or local government wish to have a potential project assessed for general eligibility prior to paying the application fee, consultant fee, and submitting the formal application, the potential applicant may submit a pre-application for a preliminary assessment letter.
- (3) Application Submission -- Applicants must first submit their application to the governing authority of the city or county in which the Tourism Attraction will be located, as specified in O.C.G.A. section 48-8-273(h). Following a local public hearing to obtain public comments, upon approval of the Tourism Attraction and Project by resolution of the proper local government, the Applicant must submit the application and three copies with three maps to the Department, with supporting documentation and the approval or endorsement resolution from the local government as appropriate, in a format prescribed by the Department. Applications may be submitted in writing to the Department at:

Georgia Department of Community Affairs
Attn: Georgia Tourism Development Act Projects
Community Development & Financial Assistance Division
60 Executive Park South, NE
Atlanta, Georgia 30329-2231

or via the web at www.dca.ga.gov.

- (4) Application Fee -- A nonrefundable application and processing fee of one-half of one percent (0.50%) of the proposed cumulative annual total sales tax rebate amount or \$10,000, whichever is less is required with each application. Applicants should include payment for such amount, made out to the Georgia Department of Community Affairs, with its application.
- (5) Application Format - The initial form of the "Application" which may be revised from time to time by the Department may be inspected, copied or obtained at the Department of Community Affairs, 60 Executive Park South, NE, Atlanta, GA 30329; (404) 679-4940 or downloaded from the Department's website at www.dca.ga.gov.
- (6) Application Review - The Department's review shall consist of an examination and analysis of the following information to include, but not be limited to:
 - a) Applicant name, address, phone number, website address and e-mail address, contact person and federal employer tax identification number;

- b) Ownership, form of organization of Applicant, resumes for principals of the applicant and evidence that Applicant is legally in good standing to do business in Georgia;
- c) Attorney for applicant, including address, phone number and e-mail address;
- d) Accountant for applicant, including address, phone number and e-mail address;
- e) Approval and endorsement resolution(s) from the proper local government as appropriate;
 - i. For local governments that propose the use of LOST or SPLOST revenues, there must be specific language in a resolution committing those resources along with language specifying that the intended uses align with any authorizing referendum for the LOST or SPLOST.
- f) A description and location of the Tourism Attraction Project, including evidence of compliance with zoning and land use development regulations;
- g) A copy of the local public hearing notice and minutes from the hearing(s);
- h) An easily legible site plan or map that contains a title and legend that clearly identifies the Project along with the local government's name, date of map preparation, scale shown graphically, name and contact information of the Applicant, and all facilities and buildings contained or proposed within the Tourism Attraction's legal boundaries.
- i) Marketing plans for the tourism attraction project, including details regarding the plans to target individuals who are not residents of this state. The marketing plans should also include an affirmation agreeing to cooperate with the Independent Consultant's analysis of the market and supply all requested data.
- j) Certified Cost Estimate and/or Construction Contract(s) with specifications for the Tourism Attraction Project, including address, phone number and e-mail address, and contact person;
- k) Total number of permanent jobs projected to be created, including anticipated wages to be paid, (i) upon completion of the tourism attraction project, (ii) within two (2) years after completion of the tourism attraction project and (iii) within five (5) years after completion of the tourism attraction project;
- l) Business plans which indicate (i) months of the year and (ii) the average number of days in a year in which the tourism attraction project will be in operation and open to the public;
- m) Five (5) year attendance projections for the Tourism Attraction Project, including projected visitors from nonresidents of this state;
- n) For expansion of existing tourism attractions, five (5) year history of attendance at tourism attraction project, including estimated visitors from nonresidents of this state;
- o) The anticipated revenues to be generated by the tourism attraction project, including (i) ten (10) year estimated state and local sales tax generated by sales to the general public at the approved tourism attraction and (ii) ten (10) year estimated additional revenue the tourism attraction project will generate to the local community;
- p) Estimated state and local sales tax generated by sales to the general public during the first three (3) fiscal years after commencement of operations of the tourism attraction project;
- q) For expansion of existing tourism attractions, (i) state and local sales tax collected for the past three (3) fiscal years and (ii) federal and state income tax liability of the Applicant for the past three (3) fiscal years.

- r) For all proposed projects, the applicant must include a description and documentation to assist the state in its analysis related to section 110-32-1-.02(9) of this regulation. For all proposed costs, the applicant must segment and explain the specific costs as either “Expansion Costs” or “Renovation Costs”.
 - s) Documentation that all required sources of capital and funding for the undertaking are available; and
 - t) Any other information requested by the DCA, GDEcD, GDOR or the Independent Consultant, or an authorized agent of the state.
- (7) Retention of Independent Consultant - Upon the Department’s approval of a pre-application or other determination that the Applicant is eligible and where the proposed Tourism Attraction and Project meet the Statute’s basic threshold requirements, the Department may acknowledge the Applicant’s submission of its Application to the Independent Consultant to produce a Report to assist the Department in developing its recommendations. In accordance with O.C.G.A. § 48-8-274(c), payment of the consultant is the responsibility of the Applicant. The Independent Consultant payment is nonrefundable.
- (8) Independent Consultants Review, Opinion and Report – following the submission of the Application to its Independent Consultant, the Consultant shall provide the Department an opinion on the proposed Tourist Attraction or Project’s compliance pursuant to the criteria outlined in 110-32-1-.02(14) this regulation.

Authority O.C.G.A. Secs. 50-8-3, 50-8-5, 48-8-270, 48-8-274

110-32-1-.04 Recommendations to Commissioners

- (1) Upon receipt of a Consultant's Report, the staff of DCA shall combine the Department’s analyses of the Application with the opinions conveyed in the Consultant’s Report to prepare a Preliminary Recommendation for the Commissioner of GDEcD’s and Commissioner of DCA’s consideration. The Preliminary Recommendation shall give DCA’s staff’s opinions regarding:
- a) The Project’s and Attraction’s compliance with the individual statutory requirements;
 - b) The Applicant’s capacity to undertake the Project considering whether financing has been obtained; in addition, the Department will consider the Applicant’s operating history, financial standing and market success for similar Projects and Attractions.
 - c) Contributions to a significant and positive economic impact on the state considering, among other factors, the extent to which the Tourism Attraction Project will compete directly with tourism attractions in this state;
 - d) The amount by which state and local tax revenues will increase and the amount by which increased state and local tax revenues from the tourism attraction project will exceed the refund to be given to the approved company;
 - e) The production of sufficient revenues and public demand to be operating and open to the public for a minimum of 100 days per year, including the first year of operation;
 - f) Adverse affects to existing employment in the state;

- g) For each year following the third year of operation, whether the Attraction will attract a minimum of 25 percent of its visitors from nonresidents of this state; and
- h) Any other issues the Commissioners request to be included in the Department's analysis and report.

- (2) The staff's preliminary recommendation to the Commissioners shall include either a recommendation to approve or deny the Application.

Authority O.C.G.A. Secs. 50-8-3, 50-8-5, 48-8-270, 48-8-274

110-32-1-.05 Final Approval

- (1) As indicated in the Act, both Commissioners must approve an application in order to obtain final approval. The Commissioners may, at their discretion, grant approval to a tourism attraction project if the project shall satisfy the criteria for approval as outlined in the authorizing statute and this regulation; and
- (2) The decision reached by the Commissioners shall be final and no appeal shall be granted.

Authority O.C.G.A. 50-8-3, 50-8-5, 48-8-270

110-32-1-.06 Approval Agreement

(1) Terms of Agreement -- Following approval, the Department of Community Affairs shall enter into an agreement with any approved company which may also include as a partner any public development authority, and the terms and provisions of each agreement shall include, but not be limited to:

a) The projected amount of approved costs, provided that any increase in approved costs incurred by the approved company and agreed to by the Department of Community Affairs shall apply to subsequent tax filings and refunds;

b) A date certain by which the approved company shall have completed the tourism attraction project and begun operations. Upon request from time to time from any approved company that has received final approval, the Department of Community Affairs shall grant an extension or change, which in no event shall exceed in the aggregate 18 months from the date of approval, to the completion date as specified in the agreement with an approved company; and

c) A statement specifying the term of the agreement in accordance with subsection (c) of O.C.G.A. § 48-8-273.

(2) Failure to Abide by Terms of Agreement -- In the event an approved company fails to abide by the terms of the agreement, then such agreement shall be void and all sales and use tax proceeds which were refunded shall become immediately due and payable back to the state and to the governing authority of any county or municipality that would otherwise have received the sales and use tax had it not been refunded under the Act.

(3) Transfer of Rights -- An approved company may, in the discretion of the Commissioners or specifically authorized official, transfer its rights, duties, and obligations under the agreement to a successor company if the successor company meets the qualifications of an approved company and,

upon such approval by the Commissioners or specifically authorized official, such successor approved company shall be authorized to receive the sales and use tax refunds for the remaining duration of the agreement if it abides by the terms of the agreement. No Transfer of Rights shall be effective unless expressly authorized in writing, and signed by, the Governor or specifically authorized official.

Authority O.C.G.A. 50-8-3, 50-8-5, 48-8-270, 48-8-275, 48-8-276, 48-8-277