

# **TENNESSEE CODE ANNOTATED**

## **Title 7: Consolidated Governments and Local Governmental Functions and Entities**

### **Chapter 40: Border Region Retail Tourism Development District Act**

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#### **TCA 7-40-101: Short title**

This chapter shall be known and may be cited as the "Border Region Retail Tourism Development District Act."

**History:** Acts 2011, ch. 420, § 2.

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#### **TCA 7-40-102: Purpose**

The purpose of this chapter is to increase tourism and the competitiveness of this state with bordering states by empowering local governments to encourage the development of extraordinary retail or tourism facilities, including shopping, recreational, and other activities.

**History:** Acts 2011, ch. 420, § 2.

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#### **TCA 7-40-103: Chapter definitions**

As used in this chapter, unless the context otherwise requires:

(1) "Base tax revenues" means the revenues generated from the collection of state sales and use taxes from all businesses within the applicable border region retail tourism development district as of the end of the fiscal year of this state immediately prior to the year in which the municipality or industrial development corporation is entitled to receive an allocation of tax revenue pursuant to this chapter. In no event shall the apportionment pursuant to this chapter be adjusted to reduce the economic benefit to the municipality as is provided in this chapter;

(2) "Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that:

(A) The economic development project or extraordinary retail or tourism facility within the district is a result of the special allocation and distribution of state sales tax provided for in § 7-40-106; and

(B) The district is a result of the project or extraordinary retail or tourism facility;

(3) "Border region retail tourism development district" or "district" means one (1) or more parcels of real property located within a municipality, some part of whose corporate limits borders a neighboring state, and which some boundary of a district is no more than one-half (1/2) mile from an existing federally-designated interstate exit, is no more than twelve (12) miles from a state border as measured by straight line, is no larger than a total area of nine hundred fifty (950) acres, and designated as a border region retail tourism development district by a municipal ordinance and certified by the commissioner;

(4) "Commissioner" means the commissioner of revenue;

(5) "Cost" means all cost of an economic development project in a district incurred by the municipality or industrial development corporation during the investment period, including, but not limited to, the cost of developing the district, as well as acquisition, design, construction, renovation, improvement, demolition, and relocation of any improvements; the cost of labor, materials, and equipment; the cost of all lands, property rights, easements and franchises required; financing charges, interest, and debt service prior to, during, or after construction; the cost of issuing bonds in connection with any financing, cost of plans and specifications, services and estimates of costs and of revenue; cost of direct or indirect assistance, including funds for location assistance; cost of site preparation, engineering, accounting, and legal services; all expenses necessary or incident to determining the feasibility or practicability of such acquisitions or constructions; salaries, overhead, and other costs of the municipality or industrial development corporation allocated to the project, including new development or subsequent phases of the project to be completed within the thirty-year period established in § 7-40-104(d), and administrative, legal, and engineering expenses and such other expenses as may be necessary or incident to such acquisition, design, construction, renovation, demolition, relocation, or the financing thereof, including any such costs incurred by a municipality or industrial development corporation relating to the development of an extraordinary retail or tourism facility within two (2) years prior to the municipality's designation of the proposed border region retail tourism development district for such project;

(6) "Economic development project" or "project" means the provision of direct or indirect financial assistance, including funds for location assistance, to an extraordinary retail or tourism facility and other retail or tourism facilities developed to accompany the extraordinary retail or tourism facility in a border region retail tourism development district by a municipality or an industrial development corporation including, but not limited to, the purchase, lease, grant, construction, reconstruction, improvement, or other acquisition or conveyance of land, buildings or equipment, or other infrastructure; public works improvements essential to the location of an extraordinary retail or tourism facility and other retail or tourism facilities developed to accompany the extraordinary retail or tourism facility; payments for professional services contracts necessary for a municipality or industrial development corporation to implement a plan or project; the provision of direct loans or grants for land, buildings, or infrastructure; and loan guarantees securing the cost of land, buildings, location assistance, or infrastructure in an amount not to exceed the revenue that may be derived from the sales and use tax transferred to the municipality as provided in this chapter. It also includes development of parks, plazas, sidewalks, access ways, roads, drives, bridges, ramps, landscaping, signage, parking lots, parking structures, and other public improvements constructed or renovated by the municipality or an industrial development corporation in connection with the project in the district and any related infrastructure and utility improvements for public or private peripheral development for the district and which is constructed, renovated, or installed by the municipality or an industrial development corporation;

(7) "Extraordinary retail or tourism facility" means a single store, series of stores, or other public tourism facility or facilities located within a border region retail tourism development district,

and shall include retail or other public tourism facilities that are reasonably anticipated to draw at least one million (1,000,000) visitors a year upon completion. The extraordinary retail or tourism facility shall reasonably be expected to require a capital investment of at least twenty million dollars (\$20,000,000) including land, buildings, site preparation costs, and is reasonably anticipated to remit at least two million dollars (\$2,000,000) in state sales and use tax, annually, when completed;

(8) "Industrial development corporation" means a corporation created or authorized by a municipality or county pursuant to chapter 53 of this title;

(9) "Investment period" means a period beginning two (2) years prior to the municipality's designation of the proposed border region retail tourism development district for the project and ending ten (10) years after certification of the district pursuant to § 7-40-104(a)(4);

(10) "Municipal governing body" means the city council, city commission, or board of mayor and aldermen of a city; and

(11) "Municipality" means an incorporated city located in this state.

**History:** Acts 2011, ch. 420, § 4; 2012, ch. 1092, §§ 1, 2.

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#### **TCA 7-40-104: Requirements for apportionment of state sales and use taxes**

(a) To be entitled to receive the apportionment of state sales and use taxes as provided in this chapter, the requirements set forth in subdivisions (a)(1)-(4) shall be met.

(1) A municipal legislative body shall adopt an ordinance designating the boundaries of the border region retail tourism development district; provided, however, that no municipality shall contain more than one (1) such district.

(2) The municipality shall then file a certified copy of the ordinance with the commissioner along with a request for certification of the district. The request shall include a master development plan for the proposed district containing such information as may be reasonably required by the commissioner.

(3) The commissioner shall promptly review the request to confirm that the proposed boundaries of the proposed border region retail tourism development district do not exceed the maximum size set forth in this chapter. If the commissioner determines that the boundaries of the proposed border region retail tourism development district exceeds the area allowed by this chapter, then the commissioner may adjust or reduce the boundaries of the proposed district in consultation with the municipality. In reviewing the request, the commissioner shall inform the commissioners of economic and community development and tourist development of the pending request.

(4) If the commissioner, with approval by the commissioner of economic and community development, determines that the special allocation of state sales tax, as authorized by § 7-40-106, is in the best interests of the state, then the commissioner shall approve the request and certify the district. Upon certification of the district, the commissioner shall provide prompt notice of the certification to the commissioner of economic and community development, the commissioner of tourist development, and the requesting municipal governing body.

(b) Upon certification of the district, state sales and use taxes shall be apportioned and distributed to the municipality as provided in this chapter.

(c) The apportionment and distribution of state sales and use taxes shall commence with the first fiscal year after the certification of the district for which the municipality has submitted a cost certification for that fiscal year as provided in this subsection (c). The base tax revenues shall be determined in accordance with the definition in § 7-40-103, irrespective of whether a municipality filed a cost certification for the first year for which the municipality was entitled to receive an allocation of tax revenue. Within thirty (30) days after the end of each fiscal year for which a municipality is requesting an allocation of sales and use tax revenues, the municipality shall submit to the commissioner a summary of the cost of the economic development project through the end of that fiscal year with supporting documentation certified by the chief financial officer of the municipality. The certification by the chief financial officer of the municipality shall be deemed an official act of that officer on behalf of the municipality, and that officer shall not be personally liable for any incorrect information in the certification. The commissioner shall review the cost certification to confirm that state sales and use taxes, in the amount determined by the commissioner, should be apportioned and distributed to the municipality pursuant to this chapter and shall notify the department of economic and community development of such.

(d) The certified district shall be dissolved following the expiration of thirty (30) years, or upon the date on which the cost of the project has been fully paid, whichever is sooner; provided, that the thirty-year period in this subsection (d) shall be concurrent with the time limitation established in § 7-40-106.

(e) Not later than June 30, 2015, any municipality in which a district has been certified may exclude, on a one-time basis, from the district for the remainder of the term that the district is certified, any property or properties initially included in the certified district by designating the exclusion of the property or properties by resolution of the legislative body of the municipality. A certified copy of the resolution shall be filed with the commissioner not later than sixty (60) days after adoption by the legislative body of the municipality. Upon exclusion, and except as provided in this subsection (e), the excluded property or properties shall be treated as if the property or properties were never included in the district for all purposes, including the calculation of base tax revenues, commencing with the fiscal year ending June 30, 2015, and the municipality shall not be entitled to receive any future incremental increases in tax revenues relating to businesses located on the excluded property or properties. Notwithstanding this subsection (e), the adoption of the resolution shall not affect any prior distribution relating to the district for any fiscal year ending on or before June 30, 2014.

(f) For purposes of determining whether a business is located in the district, the commissioner shall rely on the address of the business as shown on the business's tax return.

**History:** Acts 2011, ch. 420, § 5; 2012, ch. 1092, § 3; 2015, ch. 405, §§ 1, 2.

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### **TCA 7-40-105: Annual adjustments**

Annual adjustments to the sales and use tax revenues collected in the district shall be made by the department of revenue within ninety (90) days of the end of each fiscal year and shall be effective immediately upon notification of such adjustment from the department of revenue to the municipality or industrial development corporation.

**History:** Acts 2011, ch. 420, § 6.

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**TCA 7-40-106: Conditions for and duration of apportionment and distribution of state sales and use taxes**

(a) Notwithstanding the allocations provided for in § 67-6-103(a), if a municipality or industrial development corporation finances, constructs, leases, equips, renovates, assists, incents, or acquires an extraordinary retail or tourism facility or a project in a certified district, then seventy-five percent (75%) of state sales and use tax collected in the district in excess of base tax revenues shall be apportioned and distributed to the municipality in an amount equal to the incremental increase in state sales and use taxes derived from the sale of goods, products, and services within the district in excess of base tax revenues.

(b) Apportionment and distribution of such taxes shall continue for a period of thirty (30) years, or until the date on which all the cost of the economic development project, including any principal and interest on indebtedness, including refunding indebtedness of the municipality or industrial development corporation related to the development of the project have been fully paid, whichever is sooner. Following the expiration of this thirty-year period, or upon the date on which such cost has been fully paid, whichever is sooner, all amounts that would have otherwise been distributed to the municipality or retained in lieu of distribution shall be allocated as provided elsewhere without regard to this chapter.

(c) Tax revenue distributed to the municipality pursuant to this chapter shall be for the exclusive use of the municipality or the industrial development corporation formally designated by the municipality for payment of the cost of the economic development project, including principal and interest on indebtedness, including refunding indebtedness of the municipality or industrial development corporation related to the development of the project. The apportionment and payment shall be made by the department of revenue to the municipality within ninety (90) days of the end of each fiscal year for which the municipality is entitled to receive an allocation and payment pursuant to this chapter. If the commissioner determines that any cost included in a certification of a municipality submitted pursuant to § 7-40-104(c) is not a qualifying cost within the meaning of § 7-40-103, the commissioner shall promptly give notice of the determination to the municipality. Upon receipt of the notice, the municipality may contest the determination following the procedures set forth in § 4-5-223. If the commissioner determines that any cost is not a qualifying cost, the commissioner may not recoup, on such basis, any payment that has already been made by the commissioner to the municipality or industrial development board. However, the amount of the unqualified cost shall offset and reduce the amount of any future distribution of tax revenues to the municipality or industrial development board. The chief financial officer of the municipality may rely on certifications and documentation of third parties in connection with making any certification under this chapter unless the chief financial officer has actual knowledge that the certification or documentation by the third party is false.

**History:** Acts 2011, ch. 420, § 7; 2015, ch. 405, § 3.

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**TCA 7-40-107: Delegation to industrial development corporation**

An eligible municipality in which a district is located is authorized to delegate to any industrial development corporation within the county or counties where the municipality is located the authority to carry out all or part of the project and to issue revenue bonds to finance a project within a district and to incur cost for the project; provided, that the municipality may enter into an agreement with an industrial development corporation in which the municipality shall agree to promptly pay to the industrial development corporation the tax revenues received pursuant to this chapter sufficient to service the repayment of such bonds and costs incurred by the industrial development corporation for the project. Upon receipt, that portion of such tax revenues shall be held in trust by the municipality for the benefit of the industrial development corporation.

**History:** Acts 2011, ch. 420, § 8.

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**TCA 7-40-108: Indebtedness**

Any bonds, notes, refunding bonds, or other indebtedness relative to the cost of an economic development project shall not be issued for a term longer than thirty (30) years and the municipality or industrial development corporation is authorized to pledge all proceeds or taxes received by it pursuant to this chapter to the payment of principal of and interest on such bonds, notes, or other indebtedness; provided, that the thirty-year period in this section shall be concurrent with the time limitation established in § 7-40-106.

**History:** Acts 2011, ch. 420, § 9.

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**TCA 7-40-109: Issuance of bonds**

Prior to the issuance of any bonds to finance the cost of an economic development project that will be repaid in whole or part from apportionments under this chapter, the municipality or industrial development corporation issuing such bonds shall submit a proposed debt amortization schedule for such bonds to the commissioner for approval. Such schedule shall show the anticipated contribution to be made to the annual debt service for such bonds from the apportionment of sales and use taxes pursuant to this chapter and all other sources. After the date of issuance of such bonds, the municipality shall continue to contribute each year thereafter until such bonds are retired or a sufficient sinking fund has been established for their retirement.

**History:** Acts 2011, ch. 420, § 10.

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**TCA 7-40-110: Incentives and financial support**

A municipality may, including through an industrial development corporation, limit, condition, or provide incentives or financial support in the district as it deems appropriate, including the requirement that the benefited property owners participate in the repayment of such in an amount equal to twenty-five percent (25%) of the property tax for the real property owned by the property owner in the district each year, for such length of time as the municipality receives an appropriation of sales and use tax in accordance with this chapter and the property owner provides a lien on the property for such repayment; provided, however, that a municipality may not provide financial assistance to the location or relocation of existing retailers located within a fifteen-mile radius of the district, provided such existing location is inside the borders of this state, unless the sales floor space is increased by thirty-five percent (35%) or greater from such existing store. Furthermore, a municipality may allocate some or all of the incremental increase in property tax revenue directly as a result of the development within the district to pay for some costs associated with the district formation as well as economic development projects or extraordinary retail or tourism projects within the district.

**History:** Acts 2011, ch. 420, § 11.

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**TCA 7-40-111: Exercise all powers and rights**

Notwithstanding any law to the contrary, the municipality and the industrial development corporation are authorized to exercise all power and rights, express or implied, granted by this chapter.

**History:** Acts 2011, ch. 420, § 12.

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**TCA 7-40-112: Application of chapter to certain border region retail tourism development districts**

This chapter shall only apply to border region retail tourism development districts for which a certified copy of the ordinance required by § 7-40-104(a)(1), along with the request for certification required by § 7-40-104(a)(2), has been filed with the commissioner before January 1, 2012.

**History:** Acts 2012, ch. 1092, § 4.