

Guidance Document for Local Governments

PART I: OVERVIEW AND LEGAL REQUIREMENTS

The “**Tennessee Adventure Tourism and Rural Development Act of 2011**” creates a mechanism by which communities can apply to be certified as an adventure tourism district (“district”). Certification as a district allows certain businesses to qualify for a jobs tax credit specific to the Adventure Tourism Act. Certification of a district must be obtained by receiving approval from both the commissioner of the Department of Revenue (“DOR”) and the commissioner of the Department of Tourist Development (“TDTD” or “the department”) (collectively, “the departments”). This approval is based upon a “best interests of the state” determination made by DOR and approved by TDTD. This guidance document has been drafted to help local governments navigate the certification process. Items requiring action by local governments are noted as “Action Item” in **bold** below.

ACTION ITEM: To apply for certification as a district, a local governing body must authorize the creation of a district by a two-thirds (2/3) vote. Alternatively, two or more local governing bodies may enter into an intergovernmental agreement for a district that contains area within the boundaries of more than one local government. Adventure tourism professionals may petition local governing bodies for creation of a district. Such petition must include specific business plans based on quantifiable data demonstrating that the creation of an adventure tourism district would enhance sustainable economic development in the area. Upon approval by the local governing body as may be required, the district plan must be submitted to DOR and TDTD.

Upon receipt of the district plan by DOR and TDTD, the departments must make a determination as to whether the allocation of franchise and excise tax credits is in the “best interests of the state.” This determination consists of three criteria:

- 1) That the qualified business enterprise or enterprises made within an adventure tourism district are a result of the special allocation and tax credits provided for in § 67-4-2109(b)(2)(C);
- 2) That the adventure tourism district is a result of such qualified business enterprise or enterprises; and
- 3) That the district is not structured to create a competitive advantage for one business.

A “qualified business enterprise” is defined as “an enterprise in which the business has made the required capital investment necessary [*\$500,000 in accordance with § 67-4-2109(a)(7)*] to permit the

creation or expansion of [...] **tourism related businesses, including, but not limited to, restaurants, lodging establishments, or other tourism related attractions.**” Accordingly, any “tourism related business” including restaurants, lodging establishments and other tourism related attractions may form the basis of a local governing body’s application for creation of a district and may benefit from the tax credits provided for in the Adventure Tourism Act once a district is certified by DOR and TDTD.

If a district is certified by DOR and TDTD, “qualified business enterprises” in the district may receive special tax credits which are administered by DOR. The requirements to be eligible for the credit vary based upon the tier designation of the county in which the business resides.

§ 67-4-2109 (C) If the qualified business enterprise is located in an area designated as an adventure tourism district pursuant to § 11-11-204(c), an annual credit shall be allowed as follows: If the qualified business enterprise is located in a tier 1 enhancement county, the additional annual credit shall be allowed if the qualified business enterprise creates at least twenty-five (25) qualified jobs; If the qualified business enterprise is located in a tier 2 enhancement county, the additional annual credit shall be allowed if the qualified business enterprise creates at least nineteen (19) qualified jobs; If the qualified business enterprise is located in a tier 3 enhancement county, the additional annual credit shall be allowed if the qualified business enterprise creates at least thirteen (13) qualified jobs; If the qualified business enterprise is located in a tier 4 enhancement county, the additional annual credit shall be allowed if the qualified business enterprise creates at least ten (10) qualified jobs;

The additional annual credit shall be allowed for a period of three (3) years for a qualified business enterprise located in a tier 1 or tier 2 enhancement county, beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D); The additional annual credit shall be allowed for a period of five (5) years for a qualified business enterprise located in a tier 3 or tier 4 enhancement county, beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D);

Taxes, Exemption and Credits - As enacted, allows certain part-time and seasonal adventure tourism jobs, with or without minimum health care, created in adventure tourism districts on or after July 1, 2017, to be counted as half a job for purposes of allowing the employer to qualify for the jobs tax credit against franchise and excise taxes. - Amends TCA Title 11, Chapter 11, Part 2 and Title 67

Additionally, businesses in certified districts may receive promotional support from the Department of Tourism through its existing resources.

PART II: DEFINITIONS

“Adventure tourism” means outdoor recreational opportunities such as equine and motorized trail riding, white water rafting and kayaking, rappelling, road biking, rock climbing, hang-gliding, spelunking, shooting sports, mountain biking, canoeing, paragliding, rowing, zip lining and other such activities;

“Adventure tourism district” means a defined geographic area identified and authorized by a two-thirds (2/3) vote of a local governing body and approved by the department and the department of environment and conservation as an area where the promotion of adventure tourism is encouraged;

“All-terrain vehicle” means either:

A motorized vehicle with not less than four (4) nonhighway tires, nor more than six (6) nonhighway tires, that is limited in total dry weight up to two thousand pounds (2,500 lbs.), and is eighty inches (80") or less in width;

A motor vehicle as defined in § 55-1-103, which possesses a four-wheel drive capability and that is designed and suitable for operation off the highway on natural terrain; or

A motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, or other natural terrain and not intended for use on public roads traveling on two (2) wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control;

"Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of tourist development, that:

The qualified business enterprise or enterprises made within or adjacent to an adventure tourism district is a result of the special allocation and tax credits provided for in § 67-4-2109(b)(2)(C);

The adventure tourism district is a result of such qualified business enterprise or enterprises; and

The zone is not structured to create a competitive advantage for one business;

"Canoeing" means the use of canoe for navigation of waterways;

"Department" means the department of tourist development; 2

"Hang-gliding" means an air sport in which a pilot flies a light and un-motorized aircraft launched by foot;

"Kayaking" means the use of a kayak for navigation of waterways;

"Local governing body" means the elected legislative body of a municipal, metropolitan or county government;

"Motorized trail riding" means the exploration of trails and natural areas by use of all-terrain vehicles;

"Mountain biking" means the exploration of trails and natural areas by the use of bicycles;

"Paragliding" means the air sport in which a pilot flies a light motorized aircraft that uses a parachute to stay airborne;

"Qualified Business Enterprise" means an enterprise which the business has made the required capital investment necessary [\$500,000 in accordance with T.C.A. § 67-4-2109(a)(5)] to permit creation or expansion of [...] tourism related businesses, including, but not limited to, restaurants, lodging establishments, or other tourism related attractions.

"Rappelling" is the controlled descent down a rope by climbers used to explore cliffs or slopes that are too steep to descend without protection;

"Road biking" means both noncompetitive and competitive bicycling events that take place on improved roads;

"Rock climbing" means the recreational sport of climbing up or across natural rock formations;

"Rowing" means the propelling of a boat by means of oars;

"Shooting sports" means the recreational sport of firing handguns, rifles or shotguns at moving or fixed targets;

"Spelunking" means the recreational sport of exploring noncommercial cave systems;

"Triathlon" means the recreational activity of sporting contests involving open waters swimming, bicycle riding, and running, whether on trails or improved roads;

"Tourism related business" includes restaurants, lodging establishments and other tourism related attractions.

"White water rafting" means the recreational activity of using an inflatable raft or kayak to navigate rough water; and

"Zip lining" means the exploration of natural areas by use of above-ground cable systems.

T.C.A. § 11-11-202, effective April 19, 2016; 2018 Pub.Acts, c. 585, effective July 1, 2018, T.C.A. § 67-4-2109.

PART III: INITIAL CERTIFICATION APPLICATION PROCESS

Application Requirements: Interested local governments will find TDTD’s streamlined application for certification of an adventure tourism district online at: industry.tnvacation.com. The application will require local governments to provide TDTD with certain information regarding the proposed district. All questions on the application must be answered thoroughly and completely in order to be considered for certification.

ACTION ITEM: All interested local governments must submit their completed applications to TDTD by August 30, 2018. The department will then review all completed applications. Approved applications will receive certification for a period of three (3) years. Upon expiration of the three (3) year period, a local government may elect to request recertification of the previously granted status. The previously certified district may do so if the following condition exists, being, if the application were to be submitted in the present time all of the information previously contained would be true and correct in the present day. If this is the case, the local government mayor or executive may submit correspondence to the departments confirming the same.

Initial Certification Application: Local governments should thoroughly complete the entire application. The proposed district must be assigned a name by which it will be identified for certification and tax credit administration purposes. The preparer should provide the name of the mayor or executive as well as contact information for the local government. If the local government petitioned by an adventure tourism professional, the preparer will be required to provide information concerning that professional, including the company’s FEIN and headquarters address. The application will require the local government to list one or more eligible adventure tourism activities that can or will be conducted in the proposed district. The list of eligible activities can be found at T.C.A. § 11-11-203.

ACTION ITEM: The local government will also be required to upload four supporting documents in order to complete its application: 1) a copy of the resolution from the local governing body authorizing creation of the district (T.C.A. § 11-11-204); 2) a parcel map of the proposed district (in order to administer tax credits if a district is approved, DOR requires a parcel map of the proposed district); 3) a business plan based on “quantifiable data demonstrating that the creation of an adventure tourism district would enhance sustainable economic development in the area” (T.C.A. § 11-11-204(b)); and 4) a notarized letter from the local government mayor or executive that contains the following statement: *“I, [local government mayor or executive], hereby confirm that this application, including all attachments, does not contain any representations of fact which are false or misleading in any respect.”*

Applicant Recertification

Prior to the conclusion of the initial certification period, applications may elect to request recertification of the previously granted status. The previously certified district may do so if the following condition

exists, being, if the application were to be submitted in the present time all of the information previously contained would be true and correct in the present day. If this is the case, the local government mayor or executive may submit correspondence to the departments confirming the same.

The correspondence should in pertinent part provide: [I, [local government mayor or executive], hereby confirm that this district, certified as an adventure tourism district on (insert date), does not have any changes to report that would alter any responses on the initial application approved].

If the previous certified adventure tourism district does not request recertification in the manner described directly above prior to the certification period concluding or if the circumstances that were included in the initial application have changed, the previously certified adventure tourism district will need to submit a new application for consideration.

PART IV: POST-CERTIFICATION REPORTING AND PROCEDURES

Claiming Tax Credits: Qualified business enterprises located within the certified adventure tourism district must apply to DOR in order to claim tax credits under the Adventure Tourism Act. DOR will provide forms to enable those qualified business enterprises to apply for credits for which they may be eligible.

ACTION ITEM:

Each local government which has received certification of an adventure tourism district must submit an annual report to the department that includes the following information: a complete list of any new adventure tourism business in the district, including the location, contact information and whether the entity has / will qualify for the tax credit. This report is due to the department on July 1st of the year following certification and on July 1 of each year thereafter throughout the period of certification.

Redrawn Districts. Once certified, a district will not be redrawn or altered during the three (3) year period. A district may only be redrawn or altered in a new application for certification following the end of the three (3) year period.

Revocation of Certification. If at any time during the three (3) year period the departments find that any of the representations made by the local government in its application were false or misleading, the departments may, in their discretion, revoke the certification of the district.

Annual Report. Each local government which has received certification of an adventure tourism district must submit an annual report to the department that includes the following information: a complete list of any business in existence after the district was certified or new business that could potentially meet the definition of “adventure tourism” or “tourism related” business in the district, including the location, contact information and whether the entity has/will qualify for the tax credit. This report is due to the department on July 1 of the year following certification and on July 1 of each year thereafter throughout the period of certification.

PART V: NEED ASSISTANCE?

If you have any questions regarding Adventure Tourism and Rural Development Act of 2011 or the application process, please contact Ramay Winchester at 615-975-4237 or ramay.w.winchester@tn.gov.