

**INCENTIVE EVALUATION COMMISSION**  
**Regular Meeting Minutes**  
**Nov. 16, 2023; 10 a.m.**  
**Oklahoma State Capitol**  
**Senate Conference Room 4S.9**  
**Oklahoma City, OK 73105**

**MEMBERS PRESENT:**

Lyle Roggow, Chair designee of Select Oklahoma and Economic Development Partnership, Inc.  
Mandy Fuller, Auditor/CPA appointed by the Governor  
Earl Sears, appointed by the Speaker of the House of Representatives  
Mark Wood, Chair of the Oklahoma Tax Commission, Ex-Officio; Non-Voting  
Jon Chiappe, Secretary of Commerce designee, Ex-Officio; Non-Voting  
John Suter, Secretary of Operations and Government Efficiency, the State COO, and Director of the Office of Management and Enterprise Services

**MEMBERS ABSENT:**

Carlos Johnson, CPA, appointed by the Oklahoma Board of Accounting

**STAFF/GUESTS:**

Beverly Hicks, OMES  
Christy Keen, OTC, Counsel  
Randall Bauer, PFM  
Max McKnight, ODCTE  
Patrick Clanin, ODCTE  
Jeremy Stoner, ODFA  
Shawn Ashley, Quorum Call

♦ *Office of Management and Enterprise Services (OMES)* ♦ *Public Financial Management Group Consulting LLC (PFM)*  
♦ *OK Tax Commission (OTC)* ♦ *OK Department of Career and Technology Education (ODCTE)* ♦ *OK Development Finance Authority (ODFA)*

**1. Call to order and establish a quorum. [Chair]**

Chairman Roggow called this regular meeting to order at 10:03 a.m. A roll call was taken, and a quorum was established. A meeting notice was filed with the Secretary of State, and the agenda was posted in accordance with the Open Meeting Act.

**2. Approval of minutes from the October 26, 2023, Commission meeting:**

Rep. Earl Sears moved to approve the meeting minutes of October. Mandy Fuller seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

**3. Discussion and possible action on Year-Eight, 2023 Incentive Evaluations: [Chair]**

**3.1. Economic Development Pooled Finance – Recommendation: Retain.** [PFM recommends maintaining program continuity and efforts to advertise the availability of funds for this program to potential recipients around the state. Discussions with some external stakeholders suggest that the changes in the program have created some confusion related to program requirements. The

varying aspects of the program and their different eligibility requirements are not necessarily a problem, but they will require continued efforts to make eligible businesses aware of them.]

Mr. Bauer finds that it is a useful program but commented that because the program has changed significantly, including the names of parts of the program, there was some confusion in some of PFM's external stakeholder discussions regarding what programs might be most beneficial. He recognizes that the Department of Commerce provides that kind of outreach and feels that it is an area that they should continue to focus on to maintain the program in terms of continuity so that the business community will become even more comfortable with it going forward.

Mandy Fuller moved to accept PFM's recommendation to retain the program. Rep. Earl Sears seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

**3.2. Railroad Reconstruction or Replacement Expenditures – *Recommendation: Retain with modifications.*** [PFM recommends making the credits refundable instead of transferable. Selling the credits generally deflates their value, as those companies typically sell them at 85 to 90 cents on the dollar. Instead of making credits transferrable, making them refundable may be more impactful. Refundable credits provide a larger benefit to the original recipient at the same cost to the State, as these taxpayers would not sell them for less than full value. Standardized reporting to improve data collection and analysis should also be considered. The data the Office of Management and Enterprise Services (OMES) publishes on the State's data and statistics website, while useful, is difficult to summarize and analyze because there is no consistent identifier for unique taxpayers. One must use the taxpayer's name to analyze credits claimed by taxpayers, which may or may not be consistent. For example, Wal-Mart made three claims associated with this credit between FY2017 and FY2021; the records use two variations of the business name: "WAL-MART STORES INC" and WAL-MART STORES EAST, LP." Data must be cleaned and streamlined carefully and thoroughly before it can be used. This manual manipulation of the data increases the possibility of human error. To evaluate program success, require eligible recipients to provide additional information about eligible projects. To understand the full economic impact of the tax credit program and resulting improved transportation infrastructure, data regarding total eligible expenditures – as well as whether an eligible project was linked to an economic development project (retention or expansion) – would be required. Given the Oklahoma Department of Transportation's (ODOT) role in administering certain aspects of the program, it may be best suited to collect the information.]

Mr. Bauer commented it is a tax credit for private railroads for Class II & III railroads, the smaller railroads within the state. The Legislature did this by increasing the amount of the credit that is done on a per-mile basis. PFM feels that it is a credit that has benefits. It is infrastructure-related and is an important part of overall commerce, particularly in smaller cities.

PFM has raised the issue in the past of credits being refundable rather than transferrable on the basis that it dilutes the dollars that may be used by the industry you are trying to incent. Companies are typically going to transfer and sale the credits to insurance companies or banks who have gross receipts taxes, so they always have tax liability. The point made in recent years by the Incentive Evaluation Commission members is that perhaps better than only giving the option to refund or transfer the credits, businesses should have the option of choosing either a refund or a credit. For a business where a fundable credit will provide them resources, and they are not worried about issues of timing, it would provide a more significant benefit for them and the State in terms of incenting activity, but for a business where particularly the timing of waiting for receipt of refund may be an issue, they could still elect to transfer the credits. PFM is open to that as a modification of the recommendation.

Commissioner Wood believes the modification is a good idea to give taxpayers the maximum flexibility.

Chairman Roggow recognizes that this has come up multiple times, and part of him believes this is precisely where we should also be headed.

Rep. Earl Sears moved to accept PFM's recommendation to retain the tax credit with modifications. Mandy Fuller seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

Before moving to the next incentive, Commissioner Fuller commented that when reading through the incentives again in the report, she told Mr. Bauer that he had only listed one recommendation. Mr. Bauer agreed and apologized for not switching to the second page where the two additional recommendations were listed and agreed to run through them.

Ms. Fuller stated that, in thinking through it, some of the recommendations are specific to changes to the incentives, while others are more specific to administrative-type recommendations. Moving forward, she asked if it would be good to separate those items. Group things that require action from the Legislature separate from those items that are more administrative in nature.

Mr. Bauer acknowledged her point is well taken. It has been a process where PFM has figured it out along the way. PFM has split the categories into retained with minor modifications, which relate to the administrative aspect or reconfiguring where the Commission would be making what are likely statutory changes or then to repeal. He believes what Commissioner Fuller suggests as a framework makes sense and can be done moving forward.

Chairman Roggow supported Commissioner Fuller's point and agreed that legislative changes are one thing, and the administrative side is entirely different. He believes it is the Commission's responsibility to give good guidance and clear direction as much as possible, and any improvements, such as Commissioner Fuller's input, are always welcome.

**3.3. The Oklahoma Local Development and Enterprise Zone Incentive Leverage Act – Recommendation: Retain with modifications.** [PFM recommends increasing program appeal and usage throughout the State. The program’s primary user is Oklahoma City. The State should work with other cities to raise awareness of this program and its benefits so that it can be more widely used. Improve data collection and reporting is also recommended. With limited data available, a comprehensive evaluation of the incentive is difficult. The State should collect, store, and report data related to individual project employment, capital investment, industry, and other impacts, such as changes in assessed value within enterprise zones. It should also work to reconcile data differences so that comparisons of jobs and payroll for Leverage Act project impacts can be projected with a higher degree of confidence.]

Mr. Bauer informed members that local government is where the program is primarily providing the incentive. Still, there is some state incentive for those in an enterprise zone, primarily sales tax, but it can also be other taxes. There has been more program usage throughout the state. The first time PFM evaluated the program, it had been solely used in Oklahoma City. He believes that continued focus on finding places where projects could benefit from it statewide is a good one.

Mr. Bauer said the data is an issue and has spoken with Commerce and the Tax Commission about it. He believes they are working through some other ways to collect data. When you have a small number of projects, you must be concerned about the confidentiality of tax records and, perhaps, as the program grows, in terms of usage, may become less of an issue.

Mandy Fuller moved to accept PFM’s recommendation to retain the program with modifications. Rep. Earl Sears seconded the motion. The following votes were recorded, and the motion passed: Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

**3.4. Training for Industry Program (TIP) – Recommendation: Retain with minor modifications.** [To demonstrate company expansion, PFM recommends track trainings for new positions, not necessarily new hires. Currently, when companies apply for subsequent trainings, they must demonstrate to ODCTE (Oklahoma Department of Career and Technology Education) that they are training additional employees compared to the number they trained in the previous cycle. Companies could provide similar documentation to ODCTE to show whether the positions are the result of turnover or overall business expansion. Flexibility should also be retained in allocating funds. ODCTE currently imposes a deadline for trainings to occur after funds are approved. It works with companies to negotiate the timing of their trainings to maximize the use of funds across all applicants. ODCTE representatives meet with applicants in person to review documentation of their application requirements and understand their needs. These practices allow ODCTE to make informed choices surrounding the timing of their use of funds to ensure they do not overcommit resources. Consideration should be given to expanding program outcome metrics to include retained employees as well as new jobs. Business retention is as important as business attraction. Beyond the annual survey, ODCTE does not have a method to understand how

long the trained employees remain at the company upon receiving the state's investment of training funds. However, it is important to note that tracking an additional metric will require additional administrative resources. Further, this metric demonstrates increased company productivity by avoiding additional resources being spent to recruit and train new employees. Still, it does not necessarily factor into the immediate two-year ROI calculation ODCTE uses to determine eligibility.]

Mr. Bauer informed members that these are standard programs nationwide among state companies focused on particular economic sectors. PFM finds that these programs are effective.

Mr. Bauer made known that, often, with incentives, you talk about job years in terms of what you are impacting. A job could turn over, and it may be a person coming into a position that is still the same and is not necessarily an increase in employment that you would score. Still, it will show up that way unless you have some method of capturing it. It would be helpful for it to show up as new positions versus not necessarily new hires but as a new person in the same position.

Mr. Bauer addressed funding allocation where there is a deadline for trainings to occur after the funds are approved. PFM believes it is important to maintain flexibility so the training does not drop off because of those particular deadlines. Lastly, PFM is looking for a complete picture of the training impacts.

Rep. Earl Sears moved to accept PFM's recommendation to retain the program with minor modifications. Mandy Fuller seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

**3.5. Rural Economic Action Plan – Recommendation: Retain.** [PFM recommends maintaining the program's flexibility and ease of operation. Currently, each COG administers its own application and approval process. While the Department of Commerce provides statutory rules on which types of projects should be prioritized, the COGs are responsible for selecting projects. They can use their local knowledge and contextual understanding to best evaluate needs. Consideration should be given to adding a qualitative measure of success. As the project grant funds are, by design, smaller in scope, their long-term economic impact may not be captured by traditional economic analyses. Each COG could potentially track and report the qualitative results of each project, such as through satisfaction surveys.]

Mr. Bauer informed members this is a grant program and is different in that it is not a tax incentive, as many programs are, and is one that the Legislature has doubled the appropriation for last year. It is infrastructure-related and is different in terms of measuring economic impact. The program is beneficial not only for the grant dollars, which are something that for these projects would most likely not happen without state dollars, but for the community in terms of morale in bringing people together around projects.

Mr. Bauer informed that each Central Oklahoma Government (COG) administers its own program, most likely has more resources than the local governments, and can determine whether a project is feasible and whether it would be workable or not for the state and is an essential part of the program.

Mr. Bauer spoke about how, when looking at the program from a quantitative basis, an IMPLAN model is not as helpful, so for the department to measure or identify qualitative impacts for the program, PFM believes that would be useful. Community surveys provide some method for capturing what the community considers the benefit.

Rep. Earl Sears moved to accept PFM's recommendation to retain the grant program. Mandy Fuller seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

**3.6. Aircraft Facilities Sales Tax Exemption – Recommendation: Reconfigure.** [PFM recommends simplifying or eliminating certain eligibility requirements. As currently structured, the exemptions have differing eligibility parameters and requirements. Loosening and/or streamlining certain provisions and/or eligibility requirements may increase program appeal. For example, if the goal of the incentives is to recruit new businesses to the state, eliminating or reducing the minimum spend, investment, and/or job creation requirements that accompany the exemptions may generate the desired activity. Integration of these sales tax exemptions as part of the State's portfolio of industry incentives would add value. The aerospace industry is critical to Oklahoma's economy, and the State provides a number of incentive programs intended to strengthen industry performance in the state. While they may not be the most significant incentives offered in terms of dollar value, they are still potentially beneficial to some companies, depending on their ability to utilize some of the other, more popular incentives. Outdated code references should also be updated. It appears that multiple references within the administrative sections of the statute are out of date, referencing sections that no longer pertain to the aircraft facility exemptions. Left uncorrected, this could potentially complicate the state's ability to administer the exemptions effectively, should the need arise.]

Mr. Bauer commented that this incentive is one that states had on the books for about thirty years of multiple sales tax exemptions for qualifying air maintenance for manufacturing facilities. Although these particular sets of exemptions are currently not being used, he does not see any reason to remove them, and given the industry's prominence, there is a chance they will be used in the future.

Mr. Bauer informed members that because the aircraft industry is such an essential component of Oklahoma's economy, PFM thinks it may be helpful to restructure the offerings that are available. The tax credits focused on aerospace engineers are found to be beneficial, and there is a way to pull these all together in a more useful way for the industry that will incentivize more activity than exists with the sales tax exemption that is not used right now.

Commissioner Chiappe commented that in Commerce's review of the statute, there are different parts of aerospace sales tax exemption in sections of the statute. Other aspects of the aerospace

sales tax exemptions are being utilized. There is no data being collected because they are not required to report, and given that it is an automatic exemption with the manufactured sales tax exemption permit (MSTEP), there is no way to collect data for the automatic exemption of sales taxes when a company has MSTEP. He recommends reconfiguring as indicated to clarify some of the aerospace exemptions and allow data collection associated with this going forward.

Commissioner Fuller cautioned to be careful about saying the sales tax exemption is not in use. Mr. Bauer said this was coming from the Tax Commission but clarified that they could revise that paragraph to Commissioner Chiappe's point.

Commissioner Wood commented that the American Airlines representative at the public hearing indicated they were utilizing it and found it valuable.

Commissioner Chiappe said Commerce does not want to add an administrative burden to the Tax Commission or the industry, but it is difficult to evaluate without data. It is something that, if there was any commerce associated with it, they could estimate based on what they could see industry averages for purchasing materials, but that would be an estimate and not an actual figure.

Chairman Roggow said we need to figure out how to collect more data in the future.

PFM plans to have joint conversations with Commerce and Tax to figure out ways of estimating with existing data.

Mandy Fuller moved to accept PFM's recommendation to reconfigure the sales tax exemption. Rep. Earl Sears seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

### **3.7. Computer Services and Data Processing Tax Exemption – Recommendation: Retain.**

[The Computer Services, Data Processing, and Research and Development Tax Exemption was established by two different additions to Oklahoma state statute. One section, § 68-54001 - 54006, was repealed effective November 1, 2022. This section provided a refund of state and local sales and use taxes to qualified purchasers primarily engaged in computer services and data processing or research and development. The other section of the computer services and data processing sales tax exemption, § 68 -1357v2 - 21, remains active but has not been used. This program exempts state sales and use taxes on purchasing machinery and equipment by persons and establishments primarily engaged in computer services and data processing. Retain § 68 - 1357v2 – 21 to allow for its potential use for larger data centers and other computer services companies. Given the low cost of electricity in Oklahoma relative to benchmark states and the increasing number of data centers nationwide, retaining the program could allow for companies to potentially relocate to or expand in the state, as it is a competitive location.]

Mr. Bauer commented on the section of the statute § 68 -1357v2 - 21 for machinery equipment for computer services and data processing that is still active but has not been used and believes this section should be retained. The data services industry is a significant sector nationwide and very capital-intensive, with several supportive vendors.

Rep. Earl Sears moved to accept PFM's recommendation to retain the tax exemption code. Mandy Fuller seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

**3.8. Construction Materials Tax Refund – Recommendation: Retain with modifications.**

[PFM recommends expanding the qualifications beyond manufacturing companies, as expanding eligibility might increase the use of the exemption. Consideration should also be given to revising the construction materials.]

Mr. Bauer commented that this incentive requires businesses to maintain records of purchases that qualify for this tax exemption. It is not a bi-rate exemption and is one where they have specific requirements regarding the amount of employees or capital investment to be made for them to receive it.

Commissioner Chiappe shared his thoughts on the incentive and commented that there is a disconnect in utilizing this tax refund. When visiting with companies, they are confused as to why it is even in the books, and there may be some options to reconfigure it to where it might be better utilized in other parts of the statute under a different program makeup. He compared it to Louisiana, where there is a part of their enterprise zone program with a geographic focus in its qualification.

Commissioner Roggow commented that the program is not being utilized, and we need to do something to make it where it is better utilized to its potential.

Rep. Earl Sears moved to accept PFM’s recommendation to retain the tax refund with modifications and moved that the additional comments and recommendation that were put forth by the Commission today and to accept PFM’s additional modification, “To consider a revision to the construction materials program along the lines of the State of Louisiana, which offers an option for a refundable tax credit or a sales tax exemption.” Mandy Fuller seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

**4. Discussion and possible action to authorize the Office of Management and Enterprise Services to award a contract to the highest-scoring respondent to the request for proposals for an evaluator to assist the Commission in evaluating economic incentives.**

Mandy Fuller moved to authorize OMES to award the contract to the highest-scoring respondent to the request for proposals. Rep. Earl Sears seconded the motion. The following votes were recorded, and the motion passed:

Ms. Fuller, aye; Mr. Roggow, aye; Mr. Sears, aye.

**5. Discussion and announcement of change to time of December 7, 2023, meeting.**

Chairman Roggow explained the reason for the request for the time change from 10 a.m. to the proposed time of 1:00 p.m. is to accommodate the Commission’s contractor, Mr. Bauer’s schedule conflict. The members present agreed to the new time of the December 7<sup>th</sup> meeting at 1 p.m.



Mr. Bauer made known at the December meeting he will have a report to the members on the requirement in the statute that the Commission reports to the Governor and Legislature on changes to the statute/practice related to the Incentive Evaluations for the last four years of 2020 and 2023.

**6. New Business.**

Commissioner Sears announced that today's meeting occurred on the great State of Oklahoma's birthday!

**7. Adjournment**

There being no further business, Rep. Sears made the motion to adjourn. Ms. Fuller seconded the motion. Seeing no opposition, the Chair adjourned the meeting at 11:08 a.m.