

**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**  
**UNIFORM TAX EXEMPTION POLICY AND GUIDELINES**

**Adopted March, 2009**

Pursuant to the authority vested in it by Article 18-A of the General Municipal Law of the State of New York, the Town of Lockport Industrial Development Agency (the Agency) is exempt from real property, sales and mortgage taxes. The Agency may participate in certain projects and confer on those projects the advantages of such exemptions to encourage project success and enhance a project's ability to provide a positive impact on the economy and people of the Town of Lockport. The Agency may provide financial assistance in the form of issuance of its tax exempt or taxable bonds or by participation in straight lease transactions. The general policy of the Agency is to grant applicants financial assistance in the form of real property tax abatements and exemptions from sales, use and mortgage recording taxes to encourage the attraction, expansion, and retention of business and industry in the Town of Lockport.

**I. Qualifications**

In order to be eligible for agency benefits the applicant must demonstrate to the satisfaction of the Agency's Board of directors the following:

1. That there is a need within the Town for the project or the services offered by \_\_\_\_\_ the firm; and
2. That the project will lead to the creation or retention of a substantial number of \_\_\_\_\_ jobs and investment; and
3. That the benefits derived by the transaction are necessary to make the project \_\_\_\_\_ economically feasible.

The Agency has adopted this Uniform Tax Exemption policy to provide policies for the claiming of real property, sales and use tax and mortgage recording tax abatements.

**II. Exemption from Real Property Taxes: Payments in Lieu of Taxes**

The Agency maintains a policy for the provision of real property tax exemptions with a corresponding PILOT Agreement to mimic abatements for qualified projects. Each project receiving an abatement will be subject to a Payment In Lieu Of Tax Agreement ("PILOT Agreement") in a form acceptable to the Agency. The abatement

will generally be limited to value added by construction or renovation of the existing parcel involved. The payments under a PILOT Agreement will involve a phase in to a full tax equivalent over a period of up to twenty (20) years or longer depending on the needs of the Project. The Payment-In-Lieu-of-Taxes (PILOT) does not apply to special assessment district charges or ad valorem taxes which cannot be abated.

Any deviations from the standard policy will be made only with the specific approval of the Agency's members after giving consideration to one or more factors listed in Section VI, below, and those described in the New York State General Municipal Law Section 874(4)(a). Additionally, the Agency shall notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefore.

The Agency will use existing tax data to negotiate the payment in lieu of tax agreement and, therefore, appraisals will not normally be required.

A copy of the PILOT Agreement will be forwarded to each of the affected taxing jurisdictions within fifteen (15) days of execution. Unless otherwise agreed to by the affected taxing jurisdictions, such payments shall be allocated among the affected taxing jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected taxing jurisdiction had the project not been tax exempt due to the status of the Agency involved in the project.

Pursuant to Section 874 of the New York General Municipal Law and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an Exemption Form is filed with the assessor of the county, city, town, village, and school district in which such project is located. Once an Exemption Form with respect to a particular project is filed with a particular Taxing Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.

### **III. Exemption from Sales and Use Taxes**

The Agency maintains a policy for the provision of sales and use tax exemptions.

Personal property that is purchased in connection with a qualified project shall be exempt from local and State sales and use taxes

for the period commencing with the closing and ending on the date (as such date may be extended in the sole discretion of the Agency) by which project documents require completion to occur in respect of the undertaking of the project or other project activities. For purposes of this exemption, "personal property" may include building materials, fixtures, furnishings and equipment, as well as certain services that may relate to any of the foregoing, provided that such purchases and equipment rentals and services are made by an entity as agent for the Agency. As such, such purchases will then be afforded full exemption from local and New York State Sales and Use Taxes until the project is completed (i.e.: certificate of occupancy). Operating and maintenance expenses of projects are not incurred as agent of the Agency, and no sales tax exemption is provided thereof.

All project applicants must agree in writing to file with the New York State Department of Taxation, in form and at times required, an annual statement of the value of all sales and use taxes exemption claimed in connection with the facility in full compliance with Section 874(8) of the General Municipal Law.

#### **IV. Exemption from Mortgage Recording Taxes**

The Agency maintains a policy for the provision of a mortgage recording tax exemption.

The Agency's Mortgage Recording Tax Exemption policy is to permit mortgage recording tax exemptions on all project related financing to the full extent permitted by New York State Law, whether or not the Agency has issued its bonds to finance the Project.

In addition, the Agency may, in its sole discretion, permit mortgage recording tax exemptions on non-project related financings, (e.g. second mortgages on the project to secure subordinated indebtedness of the project applicant). In determining whether to permit such exemptions on non-project related financing, the Agency shall consider such factors as it deems appropriate, including but not limited to the use of the property, the degree of investment, the degree and nature of the employment and the economic condition of the areas in which the facility is located.

#### **V. Refinancing**

1. In the event that the Agency retains title to a project, it is the general policy of the Agency to abate mortgage recording taxes on any debt issued by the Agency for the purpose of refinancing prior debt issued by the Agency, and

on any modifications, extensions, and renewals thereof, so long as the Agency fees relating to same have been paid. All PILOT payments, special assessments and bond payments shall be current before this occurs.

2. Any refinancing of a project is subject to the public hearing requirements for the project and financial assistance approval as discussed above.

## **VI. PILOT Mortgage**

The Agency may require the establishment of a PILOT Mortgage as a condition within the closing documents where a mortgage is involved, in order to secure the position of the PILOT payments versus other secured and unsecured claims.

The purpose of a PILOT Mortgage is to secure unpaid PILOT payments with a lien against the real estate, if they are not paid, that mimics a real property tax lien. The lender agrees that the PILOT Mortgage will have priority over any mortgage given to secure the rights of bondholders or to secure any conventional financing. This would make the PILOT a secured obligation. The Agency may negotiate alternative forms of collateral to insure payments under the PILOT.

## **VII. Deviations**

In addition to or in lieu of the foregoing the Agency may determine, on a case by case basis, to deviate from the guidelines described above or to provide enhanced benefits for a project expected to have significant impact in the Town of Lockport where the project will be located. Any deviations from the guidelines set forth above require the written notification by the Agency to the chief executive officer of each affected taxing jurisdictions at least 30 days prior to the meeting of the Agency at which the proposed deviation will be considered. Prior to taking final actions at such meeting, the Agency must review and respond to any correspondence received from any affected tax jurisdiction, and must allow any representative of an affected tax jurisdiction present at such meeting to address the Agency regarding the proposed deviation.

The Agency may consider any or all of the following factors in making such determination, no single one of which is determinative:

1. The nature of the proposed project (e.g. manufacturing,

commercial, civic, etc.);

2. The nature of the property before the project begins (e.g. vacant land, vacant building, etc.);
3. The economic condition of the area at the time of the application and the economic multiplying effect the project will have on the area;
4. The extent to which the project will create or retain permanent, private sector jobs, the number of jobs to be created/retained and/or the salary ranges of such jobs;
5. The estimated value of tax exemptions to be provided;
6. The economic impact of the project and the proposed tax exemptions on affected taxing jurisdictions;
7. The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity;
8. The amount of private sector investment generated or likely to be generated by the proposed project;
9. The likelihood of accomplishing the proposed project in a timely fashion;
10. The effect of the proposed project upon the environment and surrounding property;
11. The extent to which the proposed project will require the provision of additional services including, but not limited to, educational, transportation, emergency medical or police and fire services;
12. The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located;
13. The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the Town of Lockport in which the project is located.

## **TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY POLICY FOR RECAPTURE, TERMINATION, OR MODIFICATION OF FINANCIAL ASSISTANCE**

**Purpose:** The purpose of this policy is to establish and provide a fair procedure compliant with Sections 874 and 875 of the New York

State General Municipal Law for the recapture, termination, or modification of all or a portion of Agency Financial Assistance.

**Annual Review:** The Agency staff will review annual reports it receives from companies receiving financial assistance to determine compliance with the Material Factors or other Significant Factors as set forth in the Inducement Resolution, Project and Agent Agreement, or other Project documents. If the Agency staff determines that a company appears to be in violation of a Material or Significant Factor, the project will be referred to a review committee consisting of the Agency's Executive Director, Chairman, and one additional Board member selected by the Chairman for full review.

**Non-Compliance Process:**

1. The Agency shall notify the company in writing that in the Agency's determination they are or have violated a Material or Significant Factor. The notification will include the Factor(s) violated and seek an explanation from the company that may include economic or natural factors that led to the violation. These factors should be discussed and analyzed to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company.
2. The company shall be given an opportunity to remedy the violation and will have thirty (30) days to provide a written response or seek an extension of such response.
3. Upon receipt of the company's response, the Agency staff will review the same with the review committee. The company shall be provided the opportunity to present before the review committee any information in the written response outlined above regarding why the Factor was not achieved.
4. Upon hearing the company's position, the review committee will make a recommendation for proposed action and forward the matter to the full Town of Lockport IDA Board of Directors for consideration. The full IDA Board of Directors may, at its discretion, give the company an opportunity to appear before the Board to provide information relevant to the Board's determination. A determination will be made by the IDA Board of Directors clearly stating the reason to, or not to, recapture and/or modify and/or reduce financial assistance, and the same

will be entered into the minutes of a meeting of the Board of Directors.

5. Notwithstanding the foregoing, the IDA Board of Directors, acting through its staff, retains the right to terminate Agency benefits for other significant factors. Cause for such termination of Agency benefits include, but are not limited to, failure to make PILOT payments, failure to make reports to the IDA as detailed in transaction documents, failure to maintain insurance requirements, or other uncured breaches of IDA transaction documents.

**Distribution of Recaptured Financial Assistance:**

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by a local taxing jurisdiction.

**VIII. Recapture of Benefits**

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so), with respect to a particular project, that a project has failed to meet its intended goals and may require the project applicant to agree to the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. Events, in the sole determination of the Agency, that trigger recapture may include, but are not limited to, the:

1. Sale or closure of facility;
2. Significant employment reduction;
3. Significant change in use in facility;
4. Significant change in business activities of project applicant or operator; or
5. Material noncompliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations.

If the Agency determines to provide for the recapture with respect to a particular project, the Agency also shall, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture.

#### **IX. Effective Date**

This Uniform Tax Exemption Policy shall apply to all projects for which the Agency has adopted or adopts an inducement Resolution after April 15, 2009 and all refinancing of any project induced or closed before said date.

#### **X. Amendments**

The Agency, by resolution of its members, and upon notice to all affected taxing jurisdictions as may be required by law, may amend or modify the foregoing policy as it may, from time to time, in its sole discretion determine.