



Schenectady County Industrial Development Agency Uniform Tax Exemption Policy

I. PURPOSE AND AUTHORITY

Pursuant to Section 874(4)(a) of Title One of Article 18-A of the General Municipal Law (the "Act"), the Schenectady County Industrial Development Agency is required to establish a uniform tax exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars to any Project.

II. DEFINITION OF TERMS

All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

"Administrative fee" shall mean a charge imposed by the Agency to an Applicant or Project occupant for the administration of Project.

"Affected Tax Jurisdiction" means, with respect to a particular Project, the City, County or School District in which a Project is located will fail to receive real property tax payments that would otherwise be due with respect to such Project due to a Tax Exemption obtained by reason of involvement of the Agency in such Project.

"Agency" shall mean the Schenectady County Industrial Development Agency.

"Agency fee" shall mean the normal charges imposed by the Agency to an Applicant or a Project occupant to compensate the Agency for the Agency's participation in a Project. The term "Agency fee" shall include not only the Agency's normal Administrative fee, but also may include:

- a) Reimbursement of the Agency's expenses,
- b) Rent imposed by the Agency for use of the property of the Agency, and
- c) Other similar charges imposed by the Agency.

"Applicant" shall mean an applicant for financial assistance.

“County” shall mean the County of Schenectady.

"PILOT" or "Payment in Lieu of Tax" shall mean any payment made to the Agency or an Affected Tax Jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an Affected Tax Jurisdiction with respect to a Project but for tax exemption obtained by reason of the involvement of the Agency in such Project, but such term shall not include Agency fees.

“Project” shall mean an activity which is undertaken by the Agency for the benefit of an Applicant which either (1) has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto, or (2) is a straight lease transaction (as defined under Section 845(15) of the Act) which the Agency has determined to undertake.

"School District" shall mean any school district located in the City.

"Tax Exemption" shall mean any financial assistance granted to a Project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a Project but for the involvement of the Agency, including but not limited to sales and use exemption, mortgage recording tax exemption and exemption from real property taxes.

III. GENERAL PROVISIONS

The general policy of the Agency is to grant Tax Exemption as hereinafter set forth to any Project which has been or will be (1) financed by the issuance of Agency bonds, notes or other evidences of indebtedness with respect thereto or (2) otherwise assisted by the Agency pursuant to a straight lease transaction (as defined under Section 845(15) of the Act).

- A. *Application* — No request for a Tax Exemption shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed Project and of each Tax Exemption sought with respect to the Project, the estimated value of each Tax Exemption sought with respect to the Project, the proposed financial assistance being sought with respect to the Project, the estimated date of completion of the Project, and whether such financial assistance is consistent with this part.
- B. *Exceptions* —The Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider factors which make the Project unusual, which factors might include but not be limited to the following factors:
 - 1. The magnitude and/or importance of any permanent private sector job creation and/or retention related to the Project;

2. The impact of the Project on existing and proposed businesses and/or economic development projects;
3. The amount of private sector investment generated or likely to be generated by the Project;
4. Demonstrated public support for the Project;
5. The estimated value of the Tax Exemptions requested; and
6. The extent to which the proposed Project will provide needed services and/or revenues to the Affected Tax Jurisdictions.

In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

IV. REAL ESTATE TAX EXEMPTION

Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction, supervision or control of the Agency is exempt from general real estate taxes, but not exempt from special assessments and special ad valorem levies. It is the general policy of the Agency that, notwithstanding the foregoing, every non-governmental Project will be required to enter into a payment in lieu of tax agreement (a "PILOT Agreement"), either separately or as part of the Project documents. Such PILOT Agreement shall require payment of PILOT payments in accordance with the provisions set forth below.

The general policy of the Agency is to allow the assessor of the City to ascertain the assessed value of a Project owned by or under the jurisdiction, supervision or control of the Agency.

- A. *PILOT Requirements* — Unless the Applicant and/or Project occupant and the Agency shall have entered into a PILOT Agreement acceptable to the Agency, the Project documents shall provide that the Agency will not file a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a (an "Exemption Form") with respect to the Project, and the Project documents shall provide that the Applicant and/or the Project occupant shall be required to make PILOT payments in such amounts as would result from taxes being levied on the Project by the Affected Taxing Jurisdictions as if the Project were not owned by or under the jurisdiction, supervision or control of the Agency.

Applicants entering into a PILOT Agreement with the Agency also will be required to enter into a PILOT Mortgage that is a first lien on the Project Facility.

The value of the Project Facility for purposes of determining payments in lieu of taxes due (the "Assessed Value") shall be calculated as follows:

1. Commencing in the first taxable year after execution of the PILOT, the Assessed Value shall be determined by the Assessor as follows: The Assessor shall appraise the Project Facility in the same manner and using the same valuation method as other similar properties in the general area of the Project Facility. The Company shall be entitled to prompt written notice of the initial Assessed Value and of any change in the Assessed Value. If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, the Company shall have the right to contest the Assessed Value of the Project Facility made for purposes of determining any payments due under the Pilot Agreement and to seek a refund of any such payments made. The Company's challenge to the Assessed Value of the Project Facility and its determination to seek a refund of any payments made hereunder shall be made in accordance with New York Real Property Tax Law.
2. The payments in lieu of taxes to be paid by the Company to the various Receivers of Taxes annually on behalf of each Affected Tax Jurisdiction pursuant to the terms of the PILOT Agreement be computed separately for each Affected Tax Jurisdiction as follows:
 - (i) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Affected Tax Jurisdiction if the Agency did not have an interest in the Land by multiplying (a) the Assessed Value of the Land determined pursuant to (1) above, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Land if the Land were owned by the Company and the Agency did not have an interest therein.
 - (ii) In each tax year during the term of the PILOT, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Receiver of Taxes on behalf of each Affected Tax Jurisdiction as a payment in lieu of property tax pursuant shall be an amount equal to the sum of one hundred percent (100%) of the Normal Tax due each Taxing Entity for such tax year with respect to the Land.
 - (iii) Next, determine the amount of Normal Tax which would be payable to each Affected Tax Jurisdiction if the Facility and any portion of the Equipment assessable as real property pursuant to the New York State Real Property Tax Law (collectively, the "Improvements") were owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Improvements determined as provided above, by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.
 - (iv) In each tax year during the term of this Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on

the assessment roll of any Taxing Entity and commencing prior to the date of completion of construction of the Facility, the amount payable by the Company to the Receiver of Taxes on behalf of each Affected Tax Jurisdiction as a payment in lieu of property tax shall be an amount equal to the sum of one hundred percent (100%) of the Normal Tax due each Taxing Entity for such tax year with respect to the Improvements. In each Tax year during the term of the PILOT Agreement commencing on the first Tax year following the date on which construction of the Facility shall be complete, the amount payable by the Company to the Receiver of Taxes on behalf of each Affected Tax Jurisdiction as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Improvements shall be an amount equal to the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the table below:

<u>Tax Fiscal Year</u>	<u>Percentage of Exemption</u>
1	50%
2	45%
3	40%
4	35%
5	30%
6	25%
7	20%
8	15%
9	10%
10	5%
11 and thereafter	0%

- C. *Special District Taxes* — The Agency is not exempt from special assessments and special ad valorem levies, and accordingly these amounts are not subject to abatement by reason of ownership, jurisdiction, supervision or control of the Project by the Agency. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the Applicant and/or Project occupant to the appropriate entity. However, Applicant and Project occupants should be aware that the courts have ruled that an Agency-sponsored Project is eligible to apply for a tax-exemption under Section 485-b of the Real Property Tax Law. If an Applicant or Project occupant desires to obtain an exemption under Section 485-b, it is the responsibility of the Applicant and/or Project occupant to apply for same.
- D. *Payment* — Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an Affected Tax Jurisdiction shall be assessed, billed and collected directly by the same officials which assess, bill and collect normal taxes levied by such Affected Tax Jurisdiction. Pursuant to Section 874(3) of the Act, such

PILOT payments shall be remitted to each Affected Tax Jurisdiction within thirty (30) days of receipt of the bill therefor.

- E. *Enforcement* — An Affected Tax Jurisdiction which has not received a PILOT payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such Affected Tax Jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the Project documents to enforce payment and, if such Affected Tax Jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.

If the Agency's approval of a particular Project is predicated upon achievement by the Applicant or Project occupant of certain minimum goals, i.e. creating and/or maintaining certain minimum employment levels, the PILOT Agreement may provide for the reduction or elimination of PILOT benefits, if, in the sole judgment of the Agency, the Project has failed to fulfill such minimum requirements.

If the Applicant or Project occupant, after reasonable notice, fails to comply with Project reporting required by the Agency including, but not limited to, annual verification of proper insurance coverage, employment reporting as required under the Act, the Agency may in its sole judgment terminate the PILOT Agreement and make no real estate tax exemption available.

- F. *Required Filings* — Pursuant to Section 874 of the Act 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 each Affected Tax Jurisdiction. Once an exemption form with respect to a particular Project is filed with a particular Affected Taxing Jurisdiction, the real property tax exception for such Project does not take effect until (1) a tax status date for such Affected Tax Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Affected Tax 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 Affected Tax Jurisdiction, and (4) the tax year to which such tax roll relates commences.

- G. *Real Property Appraisals* — Since the policy of the Agency is to base the value of a Project for payment in lieu of tax purposes on a valuation of such Project performed by the Assessor of the city, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if,

1. The assessor of any particular Affected Tax Jurisdiction requires one or
2. If the valuation of the Project for payment in lieu of tax purposes is based on a value determined by the Applicant or by someone acting on behalf of the Applicant, rather than by an assessor for a Taxing Jurisdiction or by the Agency.

If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

V. PROCEDURES FOR PILOT DEVIATION

- A. *Unusual Projects* — Where a Project is unusual in nature and requires special considerations related to its successful operations as demonstrated by appropriate evidence presented to the Agency, the Agency shall consider the granting of a deviation from the established exemption policy in accordance with the procedures below:

The Agency adopts a resolution (a) setting forth, with respect to the proposed deviation, the amount of the proposed tax exemption, the amount and nature of the proposed PILOT, the duration of the exemption and of the PILOT and whether or not an exemption of any kind shall be granted; (b) indicating the reasons for the proposed deviation in accordance with Section III (B) hereof; and (c) imposing such terms and conditions as the Agency shall deem just and proper;

The Agency shall give written notice of the proposed deviation from the Real Estate Tax Exemption policy set forth herein to each Affected Tax Jurisdiction, setting forth a general description of and reasons for the proposed deviation. Such notice to the Affected Tax Jurisdictions shall be given to the chief executive officer of each Affected Tax Jurisdiction at least twenty (20) days prior to the meeting of the Agency at which the Agency shall consider whether to approve such deviation. Prior to taking any final action on a proposed deviation, the Agency shall review and respond to any correspondence received from any Affected Tax Jurisdiction regarding the proposed deviation and allow any representative of an Affected Tax Jurisdiction present at such meeting to address the Agency regarding the proposed deviation.

- B. *Agency-owned Projects* — Where a Project has been acquired by the Agency for its own account after a failure of a Project occupant, or is otherwise owned and operated by the Agency, the Project shall at the option of the Agency be exempt from all taxes in accordance with law.

VI. Sales and Use Tax Exemption

State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency, and purchases of tangible personal property by a contractor for incorporation into, or improving, maintaining, servicing or repairing real property of the Agency, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law.

The Agency has a general policy of abating sales taxes applicable only to the initial acquisition, construction, reconstruction and/or equipping of each Project with respect to which the Agency grants financial assistance.

- A. *General* — The Agency has no requirement for imposing a payment-in-lieu-of-tax arising from the exemption of a Project from sales and/or use taxes applicable to the initial acquisition, construction and/or equipping of such Project, except
 - 1. As described in subsection (E) below or
 - 2. In the circumstance where (a) a Project is offered sales tax exemption on the condition that a certain event (such as the issuance of bonds by the Agency with respect to the Project) occur by a certain date, and (b) such event does not occur, in which case the Agency may require that the Applicant make payments in lieu of sales tax to the New York State Department of Taxation and Finance.
- B. *Period of Exemption* — Except as set forth in subsection (A) above, the period of time for which a sales tax exemption shall be effective (the "Tax Exemption Period") shall be determined as follows:
 - 1. *General* — Unless otherwise determined by the Agency, the tax exemption for sales and use taxes shall be for the Tax Exemption Period commencing with the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to the Project, or the execution and delivery by the Agency of a lease agreement relating to such Project, and ending on the date of completion of the Project.
 - 2. *Early Commencement* — The Tax Exemption Period may, at the discretion of the Agency, commence earlier than the date of issuance by the Agency of the Agency's bonds, notes or evidences of other debt relating to the Project or the execution and delivery by the Agency of a lease agreement relating to the Project, provided that:
 - (a) The Agency has complied with the requirements of Section 859-of the Act,
 - (b) The Agency thereafter adopts a resolution determining to commence such period earlier,
 - (c) The Applicant or Project occupant agrees to the conditions of such resolution and supplies to the Agency the materials required to be supplied to the Agency thereunder, and
 - (d) The Chairman or Executive Director of the Agency acknowledges satisfaction of all conditions to the granting of such tax exemption set forth in such resolution.

3. *Normal Termination* — The Tax Exemption Period will normally end upon the completion of the Project. On construction Projects, the Agency and the Applicant shall agree on the estimated date of completion of the Project, and the sales and use tax exemption shall cease on the earlier of
 - (a) The actual date of completion of the Project, or
 - (b) The date which is six (6) months after the estimated date of such Project.

On non-construction Projects, the Agency and Applicant shall agree on the estimated date of completion of the Project, and the sales and use tax exemption shall cease on the earlier of

- (i) The actual date of completion of the Project, or
- (ii) The date which is three (3) months after the estimated date of completion of the Project.

If the Agency and the Applicant shall fail to agree on a date for completion of the Project, the Agency shall on notice to the Applicant make the determination on the basis of available evidence.

4. *Later Termination* — The Agency, for good cause shown, may adopt a resolution extending the period for completion of the Project and/or extending the Tax Exemption Period.
5. *Items Exempted* — The sales and use tax exemption granted by the Agency shall normally extend only to the following items acquired during the Tax Exemption Period described in subsection (B) above:
 - a. Items incorporated into the real property;
 - b. The rental of tools and other items necessary for the construction and/or equipping of the Project, if rented as by Applicant as agent of the Agency;
 - c. Tangible personal property, including furniture, furnishings and equipment used to initially equip the Project or otherwise forming part of the Project, if purchased by Applicant as agent of the Agency; and
 - d. Office supplies, fuel and similar items consumed in the process of acquiring, constructing and/or equipping the Project, if purchased by Applicant as agent of the Agency.

C. *Items Not Exempted* — A sales and use tax exemption with respect to an Applicant shall not be granted for the following:

1. Purchases occurring beyond the tax exemption period described in subsection (B) above;
2. Repairs, replacements or renovations of the Project, unless such repairs, replacements or renovations constitute major capital-type expenses approved by the Agency as a separate Project in the manner contemplated by the Act; or
3. Operating expenses, unless such operating expenses constitute major capital-type expenses approved by the Agency as a separate Project in the manner contemplated by the Act.

D. *Percentage of Exemption* — Unless otherwise determined by resolution of the Agency, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and/or use taxes that would have been levied if the Project were not exempt by reason of the Agency's involvement in the Project. If an exemption of less than one hundred percent (100%) is determined by the Agency, then the Applicant shall be required to pay a PILOT to the Agency equal to the applicable percentage of sales and/or use tax liability not being abated. The Agency shall remit such PILOT within thirty (30) days of receipt by the Agency to the Affected Tax Jurisdictions in accordance with Section 874(3) of the Act.

E. *Appointment as Agency Agent* — The final act of granting a sales and/or use tax exemption by the Agency shall be confirmed by the appointment of the Project owner (the "Owner") as Agency agent, with the authority to purchase Project-related property and services using the Agency's sales tax exemption. The Agency must file Form ST-60 with the New York State Department of Tax and Finance within 30 days after the appointment.

The Owner must notify the Agency of each sub-agent appointment, so the Agency can sign the required Form ST-60 for the sub-agent. Contractors and subcontractors who have not been appointed Agency agent or sub-agent cannot use the sales tax exemption for equipment rentals, tools, supplies, and other items that do not become part of the finished project. All Project contractors and subcontractors must be appointed as agent or sub-agent of the Agency in order to use the sales tax exemption for Project-related purchases. Owners and other properly appointed Agency agents and sub-agents claim the sales tax exemption for all purchases by giving their vendors Form ST-123. All bills, invoices and other documents for Project-related purchases by Agency agents and sub-agents should specifically indicate the purchase is made as agent of the Agency (i.e., name of purchaser is "ABC Company, as agent of the Schenectady County IDA").

- F. *Required Filings* — The New York State Department of Taxation and Finance requires that all Agency agents and sub-agents Owner must file Form ST-340 with the Department and the Agency on or before the last day of February each year. The ST-340 reports the amount of Agency sales tax exemptions claimed for the prior calendar year. The Owner's agreements with its contractors and subcontractors should require the contractors and subcontractors to provide the annual information regarding the amount of sales tax exemptions claimed.

VII. Mortgage Recording Tax Exemption

State law provides that mortgages recorded by the Agency are exempt from mortgage recording taxes imposed pursuant to Article 11 of the Tax Law.

The Agency has a general policy of abating mortgage recording taxes for Applicants under the following circumstance:

1. Initial financing from the Agency with respect to which Agency issues debt secured by a mortgage upon real property;
 2. In instances where the initial financing commitment provides for a construction financing of the Agency to be replaced by a permanent financing of the Agency immediately upon the completion of the Project, the Agency's general policy is to abate the mortgage recording tax on both the construction financing and the permanent financing.
 3. Refinancing of 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.
- A. *Non-Agency Financings* — With respect to straight lease or installment sale transactions where the Project occupant needs to borrow money for purposes relating the Project, and the lender will not make the loan to the Project occupant without obtaining a fee mortgage as security, the policy of the Agency is to consent to the granting of such mortgage and to join in such mortgage, so long as the following conditions are met:
1. The documents relating to such proposed mortgage make it clear that the Agency is not liable on the debt, and that any liability of the Agency on the mortgage is limited to the Agency's interest in the Project;
 2. The granting of the mortgage is permitted under any existing documents relating to the Project, and any necessary consents relating thereto have been obtained by the Project occupant; and
 3. Payment of the Agency fee relating to the total Project cost.

- B. *Exemption Affidavit* — The act of granting a mortgage recording tax exemption by the Agency is confirmed by the execution by an authorized officer of the Agency of an exemption affidavit relating thereto.
- C. *PILOT Payments* — If the Agency is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Agency (a “non-exempt mortgage”) then the applicant and/or Project occupant shall pay the same mortgage recording taxes with respect to same as would have been payable had the Agency not been a party to said mortgage (the “normal mortgage tax”). Such mortgage recording taxes are payable to the County Clerk, who shall in turn distribute same in accordance with law.

If for any reason a non-exempt mortgage is to be recorded and the Agency is aware that such non-exempt mortgage may for any reason be recorded without the payment of the normal mortgage tax, then the Agency shall prior to executing such non-exempt mortgage collect a PILOT equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Agency to the affected tax jurisdiction in accordance with Section 874(3) of the Act.

VIII. Real Estate Transfer Taxes

Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax.

The general policy of the Agency is to impose no payment-in-lieu-of-tax upon any real estate transfers to or from the Agency.

- A. *Property Transfer Gains Tax* — Article 31-B of the Tax Law provides for the imposition of a tax upon gains derived from the transfer of certain real estate in New York State. Certain transfers are exempt from such tax. It is the policy of the Agency to comply with the law, and to file the appropriate documentation with the New York State Department of Taxation and Finance to obtain preclearance by that department for any documents transferring real property to or from the Agency.
- B. *Required Filings* — It shall be the responsibility of the Applicant and/or Project occupant to ensure that all documentation necessary relative to the real estate transfer tax and the real estate transfer gains tax are timely filed with the appropriate officials.

IX. Project Approval Policy

This policy shall be consistent with Section 859-a(5) of the New York State General Municipal Law and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the

Consolidated Laws of New York, as amended and Chapter 389 of the 1978 Laws of New York, as amended, constituting Section 925-h of said General Municipal Law. Prior to the adoption of a resolution approving the grant of financial assistance for a project seeking financial assistance, the following shall be accomplished:

- A. *Assessment* — The Agency members shall assess material information included in connection with the application for financial assistance submitted by or on behalf of the company seeking such financial assistance in order to afford a reasonable basis for the decision by the Agency to provide financial assistance for a proposed project.
- B. *Cost Benefit Analysis* — The assessment material shall include a staff-prepared cost-benefit analysis identifying:
 - 1. Extent to which a project will create or retain permanent jobs.
 - 2. Estimated value of tax exemptions and support.
 - 3. Amount of private sector investment.
 - 4. Likelihood of timely project completion.
 - 5. Extent of “new revenue” provided to local taxing jurisdictions.
 - 6. Other public benefits.

The members shall consider the cost-benefit analysis as part of the assessment.

- C. *Company Confirmation of Compliance* — The Agency must receive from the company a written statement that, as of the date of the application, the proposed project is in substantial compliance with all provisions of General Municipal Law Article 18-A, including but not limited to Sections 859-a and 862(1).
- D. *Notification* — If a proposed project involves the removal or abandonment of a facility or plant within New York State, the Agency shall notify the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located. If applicable, such notice shall be sent within 10 days following the adoption of a Public Hearing Resolution.

X. Annual Assessment Policy

This policy shall be in accordance with Section 874(12) of the New York State General Municipal Law. This Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling

Act”) and Chapter 389 of the 1978 Laws of New York, as amended, constituting Section 925-h of said General Municipal Law.

The Agency shall annually assess the progress of each project for which bonds or notes remain outstanding, or straight-lease transactions have not terminated, or which continue to receive financial assistance, or are otherwise active toward its achievement of the investment, job retention or creation, or other objectives of the active project indicated in the active project’s application for financial assistance, or otherwise considered by the Agency in its approval of the active project.

- A. *Field Reports* — To perform its assessments, the Agency shall at least annually solicit information from each active project’s representatives regarding investment, job retention or creation or other objectives of each active project and such additional information as the Agency may find helpful in its assessment or which is required for the Agency to meet its reporting requirements under the Act. The Annual Project Information shall consist of information for the period of January 1 through December 31, except that the period for the first year of an active project shall be the date of closing through December 31.
- B. *Remediation* — As part of its collection of annual project information, staff may perform random or annual site visits of active projects. Staff shall review the annual project information of each active project for completeness and, if necessary, communicate with an active project’s representatives to obtain any necessary information not initially provided. If the annual project information demonstrates that an active project has not met its goals, Agency staff shall meet with active project’s representatives to assess project performance and its ability to fulfill the original project goals (a “Project Evaluation Meeting”).
- C. *Project Assessment Reporting* — Using the annual project information and the findings from the Project Evaluation Meeting, if any, a written assessment shall be completed for each active project by staff. An assessment for each active Project shall be provided annually to each member of the Agency. Each such assessment shall be completed no later than March 31 in order for the Agency to comply with its annual reporting requirements under the Act and the New York State Public Authorities Law.

XI. Suspension, Discontinuation, Recapture, Or Termination of Benefits Policy

The Agency has adopted this Suspension, Discontinuation or Recapture of Benefits Policy (the “Policy”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 389 of the 1978 Laws of New York, as amended, constituting Section 925-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), and any other applicable law.

A. *Mandatory Recapture of the New York State Portion of Sales and Use Tax* — The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- To which the project was not entitled;
- In excess of the amounts authorized by the Agency;
- For property or services not authorized by the Agency; and/or
- For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

Each of the foregoing four events are hereinafter referred to as a “State-Mandated Recapture Event”. The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State-Mandated Recapture Event has occurred.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing mandatory recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include any penalties and interest imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to effectuate the recapture of New York State sales and use tax benefits the Agency shall:

- Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

B. *Suspension, Discontinuation, Recapture, Or Termination of Other Forms of Financial Assistance* — With respect to all financial assistance other than the State portion of sales and use tax exemptions, the Agency shall have the right to suspend, discontinue, recapture, or terminate some or all of the financial assistance if:

- The project utilized local sales and use tax exemptions for which it was not entitled, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “Local Sales Tax Benefit Violation”);
- The company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“Job Deficit”);
- The total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“Investment Deficit”);
- The company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“Reporting Failure”); or
- There otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “Material Violation”).

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure, Event of Default, or Material Violation (each a “Noncompliance Event”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture, or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- Whether the company has proceeded in good faith;
- Whether the project has not performed as required due to economic issues, changes in market conditions, or adverse events beyond the control of the company;
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture, or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or

declaring bankruptcy, which would not occur if the Agency's rights were not exercised;

- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture, or terminate all or any portion of financial assistance would create an adverse situation for the residents of Schenectady County; or
- Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture, or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria and based upon its evaluation, the Agency shall determine, at its sole discretion, whether to suspend, discontinue, recapture, or terminate all or any portion of the financial assistance. The determination shall provide terms, if any, by which a company may remedy any Noncompliance Event upon which the determination was based. The company must submit written documentation to the Agency covering compliance with all terms and conditions of the determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "Project Agreement") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture, or terminate financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting recovered or recouped tax exemptions shall be distributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

- C. *Recapture Period* — Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) [five] years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

XII. Review of Policy

At least every three years, the Agency shall review its tax exemption policies to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate.

Unless otherwise provided by resolution, such review shall take place at the regular June meeting of the Agency, notice for comments on such policies shall be circulated twenty (20) days prior to

such meeting to Chief Executive Officers of the Schenectady County and the other Affected Tax Jurisdictions, and adoption of any changes shall take not effect upon approval by the Agency.

The twenty-day comment period shall not apply to the adoption of the original policies of the Agency which said policies shall become effective as herein provided.

The Executive Director shall be responsible for conducting an annual review of the tax exemption policy and for an evaluation of the internal control structure established to ensure compliance with the tax exemption policy which shall be submitted to the Agency for approval.

XIII. Miscellaneous

- A. *Application Fee* — A non-refundable application fee of One Thousand dollars (\$1,000.00) must accompany all applications submitted to the Agency.
- B. *Administrative Fee* — The Agency's administrative fee on transactions involving issuance of Agency bonds, notes or other evidences of indebtedness shall be one half of one percent (.5 %) of the principal amount of the bond issue.

The Agency's administrative fee for lease or installment sale transactions shall be one percent (1.0%) of the total Project cost as determined by the Executive Director.

The Agency's administrative fee for refinancing Agency bonds, notes or other indebtedness shall be one-quarter of one percent (.25 %) of the principal amount of the bond issue.

- C. *Closing Fees* — A minimum closing fee of five hundred dollars (\$500.00) is required on all transactions completed and securing Agency financial assistance as determined by the Executive Director. Transactions requiring more than one closing are subject to additional closing fees on a per closing basis.

Projects requiring that the Agency take other than routine action with respect to evaluating the environmental impacts of a proposed Project may result in the Applicant being additionally responsible for all costs incurred by the Agency in securing all necessary Project environmental approvals.

- D. *Counsel Fees* — At closing, Applicant shall pay additional fees of Agency's Counsel and Bond Counsel. Applicant shall pay counsel fees of the bond purchaser, bond underwriter and bond trustee, as necessary.