

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Policy for Termination and Recapture of Financial Assistance

I. Purpose

The purpose of this Policy is to establish a procedure, compliant with state law, to be utilized by the Niagara County Industrial Development Agency (the “Agency”) to modify, suspend, and/or terminate Agency Benefits, as hereinafter defined, provided to an applicant and to establish a procedure to recapture Agency Benefits already provided to an applicant.

II. Termination and Recapture of Agency Benefits

A. Termination of Agency 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 applicant, that an applicant has failed to meet its intended goals and may require the applicant to agree to the termination and/or recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the applicant by virtue of the Agency’s involvement. For purposes of this policy, Agency Benefits include exemptions from New York State and local tax sales and use tax, an exemption from mortgage recording tax, and/or a partial abatement from real property tax provided by the Agency to an applicant in order to induce such applicant to undertake a project. Events, in the sole determination of the Agency, that trigger termination and/or the recapture of Agency Benefits may include, but are not limited to, the:

- a. Sale or closure of facility;
- b. Significant employment reduction or failure to reach permanent employment obligations;
- c. Significant deficiencies in achievement of economic benefits as described in the applicant’s application and the failure of the applicant to provide an explanation satisfactory to the Agency for these deficiencies;
- d. Significant change in use in facility;
- e. Significant change in business activities or project applicant or operator;
- f. Failure to comply with any annual reporting requirement or to provide the Agency with request information;
- g. Sale or closure of a project within the time period the applicant receives Agency Benefits; or
- h. Material non-compliance with or breach of terms of the project agreement, Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations.

In the event that the Agency determines that an event occurred that triggered termination of the Agency Benefits, the Agency may take any of the following enforcement actions, including the recapture of Agency Benefits:

- a. Requesting cure of the deficiency by a final notice letter;
- b. Forwarding an event of default notice as set forth in the project agreements and documents;
- c. Notifying the appropriate New York State Agencies of the applicant's failure to comply with any reporting requirements;
- d. Terminating any or all of the project agreements;
- e. Terminating any future Agency Benefits; and/or
- f. Requiring that the value of all of the Agency Benefits utilized to date be repaid in full or in part, with interest.

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. All recaptured Agency Benefits shall be redistributed to the appropriate affected tax jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

B. Recapture of Agency Benefits

The Agency is required to recapture Agency Benefits in the event that it determines that: (i) an applicant has submitted an application, or documentation in support of an application, which contained a false or misleading statement as to any fact which is material to the applicant's application for benefits or which omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, and (ii) that such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining financial assistance, then the project beneficiary shall forfeit any future tax exemptions or abatements and shall be required to pay to the appropriate taxing authority the amount of any real property, mortgage or sales tax abatements or exemptions received. The applicant must forfeit any future tax exemptions or abatements and shall be required to pay to the appropriate taxing authority the amount of any real property, mortgage or sales tax abatements or exemptions received. The amount of the recaptured benefits shall be: (i) for real property taxes, the difference between the amount of payments in lieu of taxes paid and the amount that would have been paid in real estate taxes if the Agency did not have an interest in the project; (ii) for sales taxes, the value of the sales tax exemption received; and (iii) for the mortgage tax, the value of any mortgage recording tax for which an exemption was granted.

The Agency shall recapture Agency Benefits when it is determined that: (i) the applicant is not entitled to sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency as part of the project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the project; or (iv) the sales and use exemption benefits are utilized when the applicant has failed to comply with a material term or condition to use property or services in manner approved by the Agency.

Reaffirmed 3/27/24

All recaptured Agency Benefits shall be redistributed to the appropriate affected tax jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

Reaffirmed 3/27/24