NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
UNIFORM TAX EXEMPTION POLICY AND GUIDELINES

Pursuant to the authority vested in it by Article 18-A of the General Municipal Law of the State of New York, the Niagara County 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 County of Niagara ("County"). 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 promote economic development, prevent economic deterioration and advance job opportunities and the general prosperity and economic welfare of the people of the County through the creation or retention of jobs, and the expansion and diversification of the County's tax base.

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 County for the project or the services offered by the applicant; and/or

2. That the project will lead to the creation or retention of jobs and investment; the project will expand and diversify the County's tax base or the project will prevent economic deterioration in the County, or the project will add to the general prosperity and economic welfare of the people of the County; and/or

3. That the benefits derived by the transaction are necessary to induce and encourage the construction, expansion and retention of the project in the County.

The Agency has adopted this Uniform Tax Exemption policy to provide the applicant guidelines 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. 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 may be for new construction or renovation of the existing improvement. The payments under a PILOT Agreement will involve a phase in to a full tax equivalent over a period of twenty (20) years or less depending on the needs of the Project as determined solely by the Agency's Board of Directors ("Board").

Any deviations from the standard policy will be made only with the specific approval of the Agency's Board 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). The above factors are for Board member consideration only. 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 complete execution. Unless otherwise agreed 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 being 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 (each, a "Taxing Jurisdiction"). 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 on the date the Agent and Financial Services and Project Agreement are fully executed 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 (ie. 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. The Agency’s Mortgage Recording Tax Exemption will be granted for the life of the project commencing upon the initial closing.

In addition, the Agency may, in its sole discretion, permit mortgage recording tax exemptions on non-project related financings, (eg. 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. PILOT Mortgage

The Agency shall require the establishment of a PILOT Mortgage as a condition within the closing documents in order to create a secured position for PILOT payments versus an unsecured claim. The purpose of a PILOT Mortgage is to secure unpaid PILOT payments with a lien against the project real estate. The Agency may negotiate alternative forms of security to insure payments under the PILOT.

VI. Deviations

An Industrial Development Agency is required under Article 18-A of the New York General Municipal Law to establish a procedure for deviation from its uniform tax exemption policy. The Agency may determine, on a case-by-case basis, to deviate from the guidelines and policies established herein. In addition to those factors referenced herein in Section II, the Agency shall also consider the following:

(1) Economy: Local and regional economic conditions at the time of application;
(2) Jobs: The extent to which the project will directly create or retain permanent private sector jobs as well as "temporary" jobs during the construction period. In addition, the level of secondary "multiplier" jobs that will be created or retained as a result of the project.
(3) Project Cost/Payroll: Level of direct annual payroll that results from the project as well as secondary "multiplier" payroll and payroll during the initial construction period.
(4) Project Purpose: Type of industrial or commercial activity proposed for the facility.
(5) Site Alternatives: Likelihood that the project will locate elsewhere resulting in subsequent real economic losses for retention projects and possible failure to realize future economic benefits for attraction projects.
(6) Project Location: Nature of the property before the project (vacant land, vacant buildings, distressed community, Economic Development Zone).
(7) Project Benefits: Amount of private sector investment as a result of the project and the level of additional revenues for local taxing jurisdictions.
(8) Project Costs: Impact of the project and the proposed abatements/exemptions on local taxing jurisdictions and extent to which project will require additional services from local government entities.

The Agency shall set forth in writing the reasons for the deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

VII. Termination and Recapture of Benefits

The Agency, in its sole discretion and on a project-by-project basis, may determine (but shall not be required to do so) that a project has failed to meet its intended goals and may require the recapture of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. The Agency has adopted a Termination and Recapture Policy. 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 or failure to reach employment obligations;

3. Significant change in use of Facility;

4. Significant deficiencies in achievement of economic benefits as described in the Application (as defined in the Agent Agreement) and the failure of the Company to provide an explanation satisfactory to the Agency for such deficiencies;

5. Significant change in business activities or project applicant or operator; or

6. 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.

In the event that the Agency shall determine (i) that a project 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 project 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 applicant 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 amount of benefits recaptured shall be: (i) for real property taxes, the difference between the amount of payment 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.

IX. Effective Date

This Uniform Tax Exemption Policy is reaffirmed annually at the Agency's Annual meeting.

X. Amendments

The Agency, by resolution of its Board, 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 need.

*Last affirmed on March 27, 2024