



Department of Taxation and Finance

IDA Annual Compliance Report State Sales Tax Recapture

ST-62

(1/18)

For IDA fiscal year ending 12 31 22
(mmdyy)

Due within 90 days of the end of each fiscal year.

IDA information

Name of IDA Hamburg Industrial Development Agency	
Street address 6122 South Park Avenue	
City Hamburg	Telephone number (716) 648-4145
State NY	ZIP code 14075

Terms and conditions for the recapture of state sales tax exemption benefits for projects established, amended, or extended on or after March 28, 2013

1 Did the IDA provide state sales tax exemption benefits to any project established, amended, or extended during the fiscal year entered above? 1 Yes No
If Yes, continue below.
If No, skip to question 3.

2 When an IDA establishes a project, appoints an agent/project operator, or amends or extends a project established in a prior year, the IDA must include terms and conditions for the recapture of state sales tax exemption benefits in its resolutions and project documents. This applies to all projects established, amended, or extended on or after March 28, 2013 (see instructions).

Did the IDA use the same terms and conditions regarding the recapture of state sales tax exemption benefits in the project documents for each of its projects (as described above)?..... 2 Yes No
If Yes, attach a copy of the terms and conditions used.

If No, attach a copy of each version used. Be sure to identify the projects to which each version of the terms and conditions relate.

If the IDA did not include terms and conditions for the recapture of state sales tax exemption benefits in the project documents, attach a list of these projects (see instructions).

Activities and efforts to recapture state sales tax exemption benefits for projects established, amended, or extended on or after March 28, 2013

3 Did the IDA make efforts to recapture any state sales and use tax exemption benefits from an agent, project operator, or other person or entity (see instructions)? 3 Yes No
If Yes, continue below.
If No, skip question 4 and complete the Certification below.

4 Did the IDA file Form ST-65, IDA Report of Recaptured Sales and Use Tax Benefits, for each recapture, and remit the funds to the Tax Department? 4 Yes No
If Yes, you must keep a copy of Form ST-65 and supporting documentation related to the recapture activities.
If No, attach an explanation of the IDA's recapture efforts (see instructions).

Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of person signing on behalf of the IDA Sean Doyle	Print title of person signing on behalf of the IDA Executive Director
Signature 	Date 2-27-2023
	Telephone number (716) 648-4145

Mailing instructions

Mail completed form and attachments to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Hamburg Industrial Development Agency

Language for New York State Recapture contained in all Project Agreements

(g) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture and/or termination of any and all Financial Assistance, as described below, if the Company receives, or its Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

- (1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Projects not entitled to the sales and-use-tax-exemption-benefits; or
- (2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or
- (3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or
- (4) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any 'information in the application or supporting documentation false or misleading in any material respect) on its application for Financial Assistance; or
- (5) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions including the Investment Commitment, the Construction Commitment, the Investment Commitment, the Employment Commitment and the Local Labor Commitment two (2) years following the construction completion date (the "Project Completion Date" and the two year period following the Project Completion Date being defined as the "Material Terms and Conditions Monitoring Period):

In order to accomplish the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance. The Company shall annually complete and submit to the Agency the Annual Certification Report in the form attached hereto as **EXHIBIT B**. Failure by the Company to complete and submit said form to the

Agency by February 15 of each year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and/or the PILOT Agreement and undertake a Recapture Event Determination.

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Recapture of Benefits Policy", attached hereto as **EXHIBIT C**, to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(g)(5) are hereby defined as a "Recapture Event Determination". If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or County Comptroller may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

Termination or Modification of Benefits. In addition to the recapture provisions as set forth in Exhibit C above, the Agency reserves the right to terminate the Lease Agreement and Leaseback Agreement and end the Payment-in-Lieu-of Tax benefits to the Company if the Company fails to comply with the Project Use Commitment, the Project Reporting Commitment, the Payment-in-Lieu-of-Taxes Commitment and the Insurance Commitment. In the event that it is determined that based upon the number of employees created or retained, the Company would have been eligible for Financial Assistance but for a less generous Payment-in-Lieu-of-Tax provision, the Agency reserves the right to modify the benefits to reduce the benefits to the benefits that would have been available based upon the actual employment numbers.

In Company acknowledges and understands that a Recapture Event Determination made with respect to Section 3(a)(4) of this Agreement, will, in addition to requiring the repayment of benefits, in addition immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

Hamburg Industrial Development Agency

Language for New York State Recapture contained in all Project Authorization/Inducement Resolutions

Section 13. The provisions of Section 875 of the General Municipal Law shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 14. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such challenge, including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 17. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance and Local Labor Policy shall be applicable to this Project.