

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY UNIFORM TAX EXEMPTION POLICY

Statement of Purpose:

Pursuant to Section 874(4)(a) of Title One of Article 18-A of the General Municipal Law (“the Act”), Essex County Industrial Development Agency (the “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. A uniform tax-exemption policy was adapted pursuant to a resolution enacted by the members of the Agency in 1995.

The Essex County Industrial Development Agency (ECIDA), in accordance with General Municipal Law Section S874 is exempt from real property, sales and mortgage taxes. “ It is hereby determined that the creation of the agency and the carry out of its corporate purposes is in all respect for the public purpose, and the agency shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall be required to pay no taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision or upon its activities.” By obtaining a passive interest in the property title of economic development projects, the Essex County IDA can confer on those projects the advantages of such tax abatements, thereby enhancing the projects’ ability to provide a positive impact to the economy of the County and the residents thereof. The provision of tax abatements by the Agency in this manner shall be governed by the content of this policy statement:

Policy and Process:

- A. The Agency shall assess and determine the economic impact of a project by use of market information, employment generation, taxation and assessment generation, economic generation, ancillary economic impact, and/or community support, and shall approve projects for Payment in Lieu of Taxes (PILOT) based upon this economic assessment.
- B. The Agency shall notify each affected taxing jurisdiction of a pending project. Said notification shall be in written form and include appropriate project information, in advance of the date of the voting on a resolution of inducement and/or acceptance by the Agency.
- C. The Agency will reserve the right to deviate from the “General Policy” in special circumstances to grant an exemption or PILOT greater than the schedules contained herein on projects which have unique significance based upon recommendations or agreement of the affected taxing jurisdictions or findings by Agency. In determining whether special circumstances exist to justify such a deviation the Agency may consider the magnitude of the deviation sought and the factors that might make it unusual, which factors might include but not to be limited to the following factors: (1) the magnitude and/or the importance of any permanent private sector job creation and/or retention related to the proposed project in question; (2) the impact of such 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 such project; (4) generated public support for the project; (5) the estimated value of the Tax Exemption requested; and (6) the extent to which such 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.
- D. The assessed valuation of the facility and any improvements shall be the determination of the taxing and assessing jurisdictions for the applicable year, and shall be based upon the percentage of completion of the facility and improvements as established by the assessing jurisdiction.

- E. The PILOT shall have: (1) A payment shall consist of the percentage of applicable project exemption entitlement reflected herein for the applicable year, applied to the “final assessment” resulting from new property acquisition, construction and/or facility improvements. The equivalent taxes shall be established by applying annual tax rate for each taxing jurisdiction, (2) An exemption for sales tax on taxable items incorporated into the project. No sales tax exemptions shall be given for the operation of a project and (3) Mortgage recording tax exemption will apply.
- F. As a means to establish the PILOT program as a reliable economic development tool and in accordance with the provisions of Article 18A of the General Municipal Law, the ECIDA has the authority to implement a PILOT with an eligible project, provided such implementation conforms with the procedures and provisions of this policy.

Procedures For Deviations From Uniform Tax Exemption Policy Under GML 874 (c):

The Agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The Agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefore. Such notice to the affected tax jurisdictions shall be given to the Chief Executive Officer of each affected tax jurisdiction at least thirty days prior to the meeting of the Agency at which the Agency shall consider whether to approve such proposed deviation. Prior to taking final action at said meeting, the Agency shall review and respond to any correspondence received from any affected tax jurisdiction regarding such proposed deviation. The Agency shall allow any representative of an affected tax jurisdiction present at such meeting to address the Agency regarding such proposed deviation.

Real Property Tax Abatements:

- A. General Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real estate taxes (but not exempt from special assessments and special ad valorem levies). However, 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.
- B. PILOT Requirement The project documents shall provide that, if the Agency and the Applicant and/or project occupant have entered into a Pilot Agreement, the terms of the Pilot Agreement shall control the amount of PILOT payments until the expiration or sooner termination of such PILOT Agreement.
- C. Required Filings As indicated in subsection (B) above, 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 (New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a) 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 Tax Jurisdiction, the real property tax exemption 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 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 Affected Tax Jurisdiction, and (4) the tax year to which such tax relates commences.

D. PILOT Agreement Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:

- (1) Amount of Abatement: The general policy of the Agency is to provide that the appropriate "Town Assessor" of the respective affected tax jurisdictions in which a project is located (each an "Assessor") will determine the interim assessment of the project as construction progresses thereon and a final assessment (the "Final Assessment") when construction is completed. Once the Final Assessment is fixed, this Final Assessment will be the basis of taxation of the project for an initial period (not to exceed 10 years) (the "Initial Period"). During this initial period, the Applicant will pay real estate PILOT payments determined by multiplying the final assessment by the applicable tax rates of the various affected tax jurisdictions. Except as otherwise provided by resolution of the Agency, all real estate PILOT payments are to be paid to the County Treasurer of Essex County for distribution to the affected tax jurisdictions. Upon expiration of the initial period as aforesaid, the assessment of the project shall revert to a normal assessment (i.e., the project will be assessed as if the project were owned by the Applicant and not by the Agency). Also, any addition to the project shall be assessed normally as aforesaid, unless such addition shall be approved by the Agency as a separate project following notice and a public hearing as described in Section 859-a of the Act. Other than fixing the final assessment for the initial period as aforesaid, the general policy of the Agency is to not provide the Applicant and/or project occupant with any abatement, other than abatements allowed under the Real Property Tax Law.
- (2) Special District Taxes. As indicated above, 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 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. However, Applicants and project occupants should be aware that the courts have ruled that an Agency-sponsored project is also eligible to apply for an exemption from special district taxes pursuant to Section 485-b of the Real Property Tax Law. If an Applicant or project occupant desires to obtain an exemption from special district taxes pursuant to said Section 485-b; it is responsibility of the Applicant and/or project occupant to apply for same.
- (3) Payee. Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an affected tax jurisdiction shall be assessed, billed and collected by the County Treasurer. 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.
- (4) 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.

E. Real Property Appraisals. Since the policy of the Agency stated in subsection (c)(1) is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the respective Assessors, normally a separate real property appraisal is not required.

Sales and Use Tax Exemption:

- (A) General 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 by 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 and use taxes applicable (1) only to the initial acquisition, construction and/or equipping of an Applicant Project and (2) to any Non-Applicant Project.
- (B) Period of Exemption The period of time for which a sales and use tax exemption shall be effective (the "Tax Exemption Period") shall be determined as follows:
- (1) General Unless otherwise determined by the Agency, the sales and use tax exemption for an Applicant Project 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 such project, or the execution and delivery by the Agency of a lease agreement relating to such project pursuant to the Lease Policy, and ending on the date of completion of the project. The Tax Exemption Period for a Non-Applicant Project shall not extend for such period of time, as the Agency shall determine.
 - (2) Early Commencement The Tax Exemption Period of an Applicant Project may, at the discretion of the Agency, commence earlier than the date of issuance by the Agency of the Agency's debt relating to the project, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the Agency thereafter adopts a resolution determining to commence such period earlier, (c) the Applicant 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 Chairperson 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 for an Applicant Project will normally end upon the completion of such 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 completion of such project. On non-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 three (3) months after the estimated 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.
- C. Items Exempted The sales and use tax exemption granted by the Agency with respect to an Applicant Project shall normally extend only to the following items acquired during the Tax Exemption Period described in subsection (B) above: items incorporated into the real property, tangible personal property, including furniture, furnishings and equipment used to initially equip the project or otherwise forming part of the project, if purchased by the Applicant as agency of the Agency; the rental of tools and other items necessary for the construction and/or equipping of the project, if rented by the Applicant as agency of the Agency; and office supplies, fuel and similar items consumed in the process of acquiring, constructing and/or equipping the project, if purchased by the Applicant as agency of the Agency.

- D. Items Not Exempted. A sales and use tax exemption with respect to an Applicant Project shall not be granted by the Agency for the following: purchases occurring beyond the Tax Exemption Period described in subsection (B) above; 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 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.
- E. Confirmation Letter. The final act of granting a sales and/or use tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a confirmation letter by the Agency. Such confirmation letter may either be in form of a letter for the duration of the anticipated construction period relating to the project (where the sales and use tax exemption is permanent, because the Agency is satisfied that any conditions precedent to such sales and use tax exemption, such as the issuance of bonds or the execution of a lease agreement by the Agency, have been satisfied) or a letter having a shorter duration (where such sales and use tax exemption is tentative, because there remain conditions precedent to such sales and use tax exemption which have not been satisfied).
- F. Required Filings. The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a purchaser's entitlement to a sales and use tax exemption. For example, TSB-M-87(7) outlines the materials that must be filed to establish entitlement to a sales and use tax exemption as an "agent" of the Agency. It is the responsibility of the Applicant and/or project occupant to ensure that the proper documentation is filed with each vendor to obtain any sales and use tax exemptions authorized by the Agency.
- G. Required Reports and Records. Pursuant to Section 874(B) of the Act, the Applicant and/or project occupant is required to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the Applicant and/or the project occupant and/or all agents, subcontractors and consultants thereof. The project documents shall require that (1) a copy of such statement will also be filed with the Agency and (2) that the project occupant shall maintain, for a period ending seven (7) years after the last purchase made under the sales and use tax exemption, and make available to the Agency at the request of the Agency, detailed records which shall show the method of calculating the sales and use tax exemption benefit granted by the Agency.
- H. 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 the initial financing obtained from the Agency with respect to each project with respect to which the Agency issues debt which will be secured by a mortgage upon real property. 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 or shortly after 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.

Recapture of Benefits:

The Agency, at 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 to 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 that the Agency may determine will trigger recapture may include, but not be limited to: (1) Sale or closure of

facility, (2) Significant employment reduction, (3) Significant change in use in facility, (4) Significant change in business activities or project applicant or operator, or (5) Material noncompliance with or breach or terms of Agency transaction documents or of zoning 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.

Annual Review of Policy:

At least annually, the Agency shall review this Tax Exemption Policy to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. The Executive Director shall be responsible for conducting an annual review of this tax exemption policy and for an evaluation of the internal control structure established to ensure compliance with the tax exemption policy, which review shall be submitted to the Agency for consideration by the Agency.