



# IDA Annual Compliance Report State Sales Tax Recapture

For IDA fiscal year ending 12/31/2021  
(m/mddyy)

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

### IDA information

|  |             |                                      |
|--|-------------|--------------------------------------|
| Name of IDA<br>Onondaga County Industrial Development Agency |             |                                      |
| Street address<br>333 West Washington Street, Suite 130      |             | Telephone number<br>( 315 ) 435-3770 |
| City<br>Syracuse   | State<br>NY | ZIP code<br>13202                    |

### 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<br>Robert M. Petrovich |                    | Print title of person signing on behalf of the IDA<br>Executive Director |  |
| Signature<br>  | Date<br>03-22-2022 | Telephone number<br>( 315 ) 435-3770                                     |  |

### 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.

## Instructions

### Filing requirements

Every IDA must file this compliance report every year. The report must include:

- the terms and conditions for the recapture of state sales tax exemption benefits (as described in General Municipal Law (GML) section 875(3)) within all of the IDA's resolutions and project documents. This applies to:
  - projects established and agents or project operators appointed, and any financial assistance or agreement for payments in lieu of taxes provided, on or after March 28, 2013; and
  - any amendment or revision for additional funds or benefits made on or after March 28, 2013, to projects established, agents or project operators appointed, financial assistance provided, or payments in lieu of taxes provided, prior to March 28, 2013.
- information about efforts the IDA has made to recover, recapture, receive, or obtain any state sales tax exemption benefits and payments in lieu of state sales taxes from an agent/project operator, or other person or entity.

Every IDA must file Form ST-62 within 90 days of the end of each fiscal year:

The term *state sales tax* as used in this form includes both state sales tax and the state use tax.

For more information, see TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*.

Any IDA that fails to file or substantially complete this report may lose its authority to provide state sales tax exemption benefits.

### Terms and conditions for the recapture of state sales tax exemption benefits

**Line 2** – If the IDA:

- **used the same** standard terms and conditions for the recapture of state sales tax exemption benefits in the project documents for all projects covered by this report, attach a copy of the terms and conditions used. You are **not** required to attach the entire document. Attach only the sections describing the state sales tax recapture requirements described in GML section 875(3).
- **used different** terms and conditions for the recapture of state sales tax exemption benefits in the project documents for the projects covered by this report, attach a copy of the terms and conditions used and identify the project(s) to which they relate. Be sure to include the project name and address, and the legal name and EIN of the agent or project operator for each project identified.
- provided state sales tax exemption benefits **but did not include** terms and conditions for the recapture of those benefits, attach a list of these projects. Include the project name and address, the legal name and EIN of the agent or project operator, and the reason why terms and conditions regarding recapture were not included.

### Activities and efforts to recapture state sales tax exemption benefits

The GML requires that each IDA recapture state sales tax exemption benefits that were claimed by a project operator or agent, or other person or entity, whenever the benefits were:

- not entitled or authorized to be taken,
- in excess of the amounts authorized,
- for unauthorized property or services, or
- for property or services not used according to the terms of the agreement with the IDA.

See Form ST-65, *IDA Report of Recaptured Sales and Use Tax Benefits*, for more information.

IDAs must remit recaptured state sales tax benefit amounts to the Tax Department within 30 calendar days, using Form ST-65.

**Line 4:** If the IDA made efforts to recapture sales tax exemption benefits during the fiscal year covered by this report and **has not filed** Form ST-65, attach an explanation.

The attachment must include:

- name and address of the project and project number;
- legal name, EIN, and address of the agent/project operator, or other person or entity;
- project beginning and end dates;
- the basis for recapture, as described above;
- date of recapture efforts;
- amounts identified as required to be recaptured; and
- amount recaptured, if different.

When identifying recapture amounts, be sure to break down the total dollar amount into the categories below:

- state tax,
- local tax,
- MCTD tax (if applicable),
- penalties, and
- interest.

If the amount recaptured was not paid in full, also include copies of correspondence exchanged between the IDA and the agent/project operator, or other entity or person regarding the recapture efforts.

### Need help?

Visit our website at [www.tax.ny.gov](http://www.tax.ny.gov).

SUSPENSION, DISCONTINUATION, RECAPTURE  
AND/OR TERMINATION OF FINANCIAL ASSISTANCE

Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Underlying Lease, the Lease Agreement, the PILOT Agreement, the Equipment Lease Agreement and this Project Agreement in order to provide Financial Assistance to the Company and the Sublessee for the Project Facility and to accomplish the public purposes of the Act.

(a) Each of the Company and the Sublessee attests that it understands and agrees to the recapture provisions of the Agency's Uniform Tax Exemption Policy (the "Policy").

(b) In accordance with Section 875(3) of the New York General Municipal Law, the Policy, and the Approving Resolution, the Company and the Sublessee covenant and agree that they are jointly and severally subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company, the Sublessee or their Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company, the Sublessee or their Subagents, if any; or

(3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between or among the Company, the Sublessee and/or 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.

(c) In addition to Section 6.01(b), in accordance with the Policy and the Approving Resolution, the Company and the Sublessee covenant and agree that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance:

(1) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, 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 ("Local Sales Tax Benefit Violation");

(2) the Company and the Sublessee fail to reach and maintain 75% of its Employment Commitment ("Job Deficit");

(3) the Company and/or the Sublessee fail to meet their Reporting Commitment (“Reporting Failure”); or

(4) there otherwise occurs any event of default under any Basic Document (each, an “Event of Default”) or a material violation of the terms and conditions of any Basic 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, 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 Basic Document in accordance with the terms of the Basic 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, and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- Whether the Company and the Sublessee have 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 and the Sublessee.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company and the Sublessee, such as the Company and/or and the Sublessee 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 the Financial Assistance would create an adverse situation for the residents of the County of Onondaga.
- The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- 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 the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and, based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate

all or any portion of the Financial Assistance (the "Determination"). The Determination shall provide terms, if any, by which the Company and the Sublessee may remedy any Noncompliance Event upon which the Determination was based. The Company and the Sublessee must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company and the Sublessee (which will be at the Agency's sole discretion).

(d) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company and the Sublessee agree and covenant that they will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and the Sublessee; 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 State of New York and/or appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company and the Sublessee further understand and agree that in the event that the Company and the Sublessee fail to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company and the Sublessee, together with any relevant penalties and interest due on such amounts.

(e) In the event (x) the Project Facility is sold or closed, the occurrence of a Noncompliance Event and (y) the Agency determines by resolution that no substantial future economic benefit is likely to accrue to the community, then the value of the Financial Assistance extended to the Company and the Sublessee by the Agency shall be subject to recapture as described below in this paragraph (e).

(1) The recapture payment required to be paid by the Company and the Sublessee to the Agency shall be equal to the (x) sum of (1) the difference between any PILOT payments made by the Company and the Sublessee and the real property taxes that have would be paid by the Company and the Sublessee if the Project Facility were not under the supervision, jurisdiction or control of the Agency, (2) the value of the Mortgage Recording Tax Exemption, if any, granted to the Company and the Sublessee, and (3) the amount of sales and use tax that would have been paid if sales and use tax exemption had not been granted; (y) multiplied by the Applicable Percentage as set forth in subparagraph (2) of this paragraph (e).

| (2) <u>Occurrence of Noncompliance Event</u>        | <u>Applicable Percentage</u> |
|---|------------------------------|
| Within two (2) years of Certificate of Occupancy    | 100%                         |
| Within three (3) years of Certificate of Occupancy  | 80%                          |
| Within four (4) years of Certificate of Occupancy:  | 60%                          |
| Within five (5) years of Certificate of Occupancy:  | 40%                          |
| Within six (6) years of Certificate of Occupancy:   | 30%                          |
| Within seven (7) years of Certificate of Occupancy: | 20%                          |
| Within eight (8) years of Certificate of Occupancy: | 10%                          |
| Eight years or more of Certificate of Occupancy:    | 0%                           |