

## COUNTY OF OSWEGO INDUSTRIAL DEVELOPMENT AGENCY

### SUSPENSION, DISCONTINUATION AND RECAPTURE OF BENEFITS POLICY

#### I. STATEMENT OF PURPOSE

The County of Oswego Industrial Development Agency (the “*Agency*”) has adopted this Suspension, Discontinuation and Recapture of Benefits Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”) and Chapter 234 of 1973 of the Laws of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

#### II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- To which the project was not entitled;
- In excess of the amounts authorized by the Agency;
- For property or services not authorized by the Agency; and/or
- For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and 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.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing mandatory recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include any penalties and interest imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and determine State sales and use taxes due from the company under article twenty-eight

of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

### **III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to all other financial assistance (other than the State portion of sales and use tax exemptions), the Agency, at its sole discretion and on a case-by-case basis, shall have the right, to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that any of the following have occurred (each a “*Deficit*”) a:

- Sale or closure of facility;
- Significant employment reduction where the number of jobs is reduced below 60% of the number employed at the time of application;
- Actual job creation is below 60% of the employment projections provided by the company at the time of application;
- Significant change in use in facility;
- Significant change in business activities or project applicant or operator;
- 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; or
- No substantial future economic benefit is likely to accrue to the community.

If the Agency determines to provide for the recapture with respect to a particular project, the Agency shall use the following recapture schedule which will apply to PILOT Agreement benefits, sales and use tax benefits and mortgage recording tax benefits:

Within two years of the effective date of the PILOT/Lease:	75%
Within three years of the effective date of the PILOT/Lease:	60%
Within four years of the effective date of the PILOT/Lease:	40%
Within five years of the effective date of the PILOT/Lease:	20%
Six years or more:	0%

Any funds recaptured will be distributed proportionally to the affected tax jurisdictions.

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a Deficit has occurred.

At the time of any Deficit, 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 provided to a project, and shall consider the following in making its determination:

- Whether the company has 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.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company 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 financial assistance would create an adverse situation for the residents of the County of Oswego.
- 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 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 a company may remedy any Noncompliance Event upon which the Determination was based. The company 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 (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "***Project Agreement***") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

#### **IV. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 6, 2016