



## **SUSPENSION, DISCONTINUATION AND RECAPTURE OF BENEFITS POLICY**

The Chemung County IDA (the “*IDA*”) shall annually review project performance and determine if a project meets the obligations required and stated in the IDA approval and project agreements. Specific material factors listed in the original application for financial assistance will serve as the benchmark for determining project compliance.

Material factors should be explicit and measurable and include items such as capital investment, job creation, job retention and other factors as determined by the board including:

- Use of sales and use tax exemptions in excess of what was approved or for property or services not authorized by the IDA;
- 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;
- the total capital investment actually made with respect to the project at the project’s completion date is less than 60% of the capital investment set forth in the application;
- Significant change in use in facility;
- Significant change in business activities or project applicant or operator; or
- Material noncompliance with or breach of terms of IDA transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations; or (each a “*Material Factor*”).

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

The IDA 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 IDA;
- For property or services not authorized by the IDA; 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 IDA.

Each of the foregoing four events are hereinafter referred to as a “*State-Mandated Recapture Event*”. The IDA shall evaluate, annually as of December 31, or at any time information is brought to the IDA’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. The failure to pay over such amounts to the IDA 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 IDA 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 IDA 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.

## **II. 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), if a company is found to be non-compliant with one or more of the Material Factors, the IDA, in 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.

The IDA 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 IDA 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 IDA's rights were not exercised.
- Whether the enforcement by the IDA 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 Chemung.
- The assessment prepared in accordance with the IDA's Annual Assessment Policy.
- Such other criteria as the IDA 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 IDA shall document its evaluation of the above criteria in writing and based upon its evaluation, the IDA shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the "**Determination**"). If the Determination is to suspend, discontinue, recapture or terminate all or any portion of the financial assistance, the company shall first be provided an opportunity to cure, if applicable. The Determination shall provide terms, if any, by which a company may remedy any Material Factor upon which the Determination was based. The company must submit written documentation to the IDA of compliance with all terms and conditions of the Determination, within the time specified therein. Upon receipt, the IDA will consider whether to terminate or continue with some or all of the financial assistance to the company (which

will be at the IDA's sole discretion). Failure of the company to cure shall result in suspension, discontinuance, recapture or termination of the financial assistance.

The project agreement entered into between the IDA and the company (the "**Project Agreement**") shall include the terms and conditions of the foregoing provisions. The IDA shall also include in the Project Agreement a requirement that the company comply with the IDA'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 IDA to the company pursuant to any Determination.

### **III. 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 IDA's Annual Assessment Policy during the term of the Project Agreement.

Readopted on: 10/31/17