Established June 27, 1994
Re-established March 31, 1999
Amended March 28, 2017

UNIFORM TAX EXEMPTION POLICY

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Section 1. Purpose

The New York Industrial Development Agency Reform Act of 1993 (Chapters 356 and 357 of the Laws of 1993) created a new General Municipal Law Section 874 (4) that requires an Industrial Development Agency ("IDA") to establish a uniform tax exemption policy ("UTEP"). This written policy shall provide guidelines for the claiming of real property, mortgage recording, and sales and use tax exemptions. The Herkimer Industrial Development Agency (the "Agency) is an IDA created for such purposes. The Agency may grant enhanced benefits on a case by case basis for a project expected to have significant economic impact on Herkimer County as determined by the Agency members.

Section 2. Project Eligibility Criteria

(a) *General Requirements*

The Agency considers the following general factors in determining whether a project is eligible for financial assistance:

- The nature of the proposed project (e.g., manufacturing, commercial, civic).
- The nature of the property before the project begins (e.g., vacant land, vacant buildings).
- The economic condition of the area at the time of the application.
- The extent to which a project will create or retain permanent, private sector jobs.
- The estimated value of tax exemptions to be provided.
- The impact of the project and the proposed tax exemptions on affected tax jurisdictions.
- The impact of the proposed project on existing and proposed businesses and economic development projects in the County.
- The amount of private sector investment generated or likely to be generated by the proposed project.
- The likelihood of accomplishing the proposed project in a timely fashion.
- The effect of the proposed project upon the environment.
- The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located.

- The extent to which the proposed project will provide benefit (economic or otherwise) not otherwise available within the County of Herkimer.

(b) ***Industrial and Manufacturing Projects***

(1) Industrial and manufacturing projects generally qualify for financial assistance, subject to the eligibility criteria set forth in Section 2(a) of this Policy.

(2) Due to the nature of work, companies performing back-office operations that are regional or national in nature and a majority of which operations support activities outside of Herkimer County will qualify as industrial and manufacturing. Research and development facilities and distribution centers that locate in Herkimer County may also qualify as industrial and manufacturing.

(c) ***Retail Projects***

The Agency will provide financial assistance to retail facilities only in accordance with the restrictions contained in New York State General Municipal Law Section 862(2), and subject to the eligibility criteria set forth in Section 2 of this Policy. The Agency will also consider the competitive impact of the project.

Retail projects are generally not eligible for Agency assistance, with the following exceptions:

(i) Retail businesses that primarily serve customers located in Herkimer County are generally not eligible for financial assistance unless located in a "highly distressed area" as defined in General Municipal Law Section 854(18), which includes projects located in an economic development zone or Empire zone (as defined by New York State statute or regulation), or the project meets one of the other requirements of this paragraph (c);

(ii) Retail projects operated for not-for-profit corporations may be eligible for financial assistance;

(iii) Retail projects may be eligible for financial assistance provided an appropriate market analysis demonstrates that a majority of the project's customers are expected to come from outside of Herkimer County and the project will not directly compete with existing businesses located in located in Herkimer County; and

(iv) Retail businesses that primarily provide a product or a service that is otherwise not reasonably available in Herkimer County may be eligible for financial assistance.

(d) ***Other Non-Industrial/Commercial Projects***

Non-industrial/commercial projects may qualify for financial assistance at the discretion of the Agency, based upon its evaluation of the eligibility requirements set forth in Part 1(a) of the Policy. The Agency confirms the following specific policies:

(i) Mixed or Multiple-Use Projects qualify for financial assistance, only with respect to that portion of the project that is used for purposes that qualify for financial assistance under this Policy.

(ii) Housing projects are generally not eligible for benefits, unless they

(a) Service the elderly, low-income, assisted living or other groups with special needs or,

(b) Promote employment opportunities and prevent economic deterioration, as confirmed by an appropriate market analysis, and such a determination is made by the Agency based upon all of the relevant facts.

Section 3. Real Property Tax Abatements

A. General Policy. The Agency maintains a policy for the provision of real property tax abatements for qualified projects. This policy requires the Agency and the project owner or occupant to enter into a payment in lieu of taxes (PILOT) agreement, which provides for payments in lieu of taxes to the taxing jurisdictions generally in an amount less than what the real property taxes would be if Agency involvement did not cause the project to be tax exempt. The Agency's standard policy is to provide for a graduated abatement to county, municipal and school taxes. Such abatement will normally reflect the terms of Section 3E of this Policy. For Projects providing significant and substantial economic and community benefit to the country, as determined by the Agency, and in most circumstances the Agency at its sole discretion, may elect to provide up to 100% abatement for a period not to exceed twenty (20) years.

The Agency will not consider projects located on sites or facilities located on tax delinquent properties unless a tax payment plan is in effect between the property owner and the relative tax jurisdiction.

B. Valuation of Project. The value of the project for payment in lieu of taxes purposes is determined solely by the Agency and such valuation is provided to the applicant. The base assessment on the property shall be either the base assessment currently on the subject property or the amount that the buyer paid for the property in an arm's length transaction.

C. PILOT. Payments in lieu of taxes shall be described in detail in written PILOT Agreement between the Agency and the Project owner/sponsor. Project occupants shall pay to the Agency, or its designee, the amount calculated pursuant to the applicable PILOT Agreement according to a schedule determined by the Agency. Payment shall be allocated among the affected taxing jurisdictions according to the amount of real property taxes which would have been received by each affected taxing jurisdiction had the project not been tax exempt due to the status of the Agency involvement in the project. Variations in the proportions shall only be done with the consent of the all affected taxing jurisdictions. The approved agreement shall take effect during the tax year immediately following the taxable status.

D. Special Assessments and Levies. No project shall be exempt from special assessments and special ad valorem levies lawfully levied and/or assessed against the facility premises.

E. Exemptions. The Agency may grant benefits and enter into an agreement for benefits on a case-by-case basis for projects expected to have a significant importance to the local economy. The Agency will require PILOT payments equivalent to the taxes that would be owned by the applicant if the applicant owned the project and not the Agency (i.e, the percentage of the tax exemption would be zero), or PILOT payments consistent with written agreements with the Agency as described in Section 3E or Section 3 of this UTEP. PILOT payments generally are fixed payments based upon the Agency determined value of the project and other factors, including but not limited to, any increase in tax rate as determined by the Agency on a project by project basis. The following exemptions shall be applicable to the Agency PILOT agreements:

1. Basic PILOT Agreement. If the Agency determines that a project will receive real property tax abatements, a PILOT will be negotiated with each project owner (the "Company") and will substantially follow the following guidelines with the final determination to be made by the Agency.

2. PILOT Amount. The Agency will typically grant real property tax abatements equal to that provided pursuant to Section 485-b of the Real Property Tax Law. The following exemption percentages for the Basic PILOT shall apply:

Year	Exemption %
1	50
2	45
3	40
4	35
5	30
6	25
7	20
8	15
9	10
10	5
11	100% Taxable

Section 4. Sales Tax Exemptions

If, based on the eligibility criteria described in Section 2 of this Policy, the Agency determines a project is eligible for financial assistance, the Agency's financial assistance will include exemption from sales and use tax for costs of constructing, renovating and equipping the project.

Sales and use tax exemption, when available, will be authorized for the duration of the acquisition, construction and equipping of the project as described in the application for financial assistance. The Agency shall deliver a sales tax exemption letter which will expire one (1) year from the date of the project inducement. If construction, renovation or equipping is not complete at the expiration of the original sales tax exemption letter, upon request by the Company, the sales tax exemption letter may be extended at the discretion of the Agency.

All Companies receiving sales and use tax exemption benefits will be required to supply the Agency with a list of all contractors and sub-contractors that have been authorized to use the sales tax exemption letter. This list will be appended to the sales tax exemption letter by the Agency.

The Company must keep a record of the usage of the sales tax exemption letter, and must supply the Agency with the total amount of sales and use tax exemptions claimed by the project for each calendar year. The Company must submit this report to the Agency by February 1st of each year, until the exempt period comes to a conclusion. The Company shall also file all reports as may be required by applicable law, including Form ST-340 which shall be filed with the New York State Department of Taxation and Finance.

The Agency reserves the right to deviate from the sales tax exemption policy on a case by case basis at its sole discretion.

Section 5. Mortgage Recording Tax Exemption

If, based on the project eligibility criteria described in Section 2 of this Policy, the Agency determines a project is eligible for financial assistance, the Agency will provide an exemption from New York State mortgage recording tax for the financing of project costs.

The Agency reserves the right to deviate from the mortgage recording tax exemption policy on a case by case basis at its sole discretion.

Section 6. Recapture of Agency Benefits

Agency financial assistance is granted based upon the Company's representation that the project will create and/or maintain the employment levels described in its application for financial assistance (the "Employment Obligation"). If a Company fails to achieve and/or maintain is Employment Obligation, it could result in recapture of all or a portion of tax benefits granted by the Agency.

A. Information to be Provided by Companies. The Companies that receive benefits from the Agency agree, whenever requested by the Agency, to provide and certify or cause to be certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. The Company also agrees to provide and certify information concerning its finances and other topics as the Agency considers appropriate. This is primarily done through an annual survey.

B. Recapture of Benefits. It is the policy of the Agency recapture the value of Payment in lieu of taxes, State and County Sales Tax and Mortgage Recording Tax Exemptions in accordance with the provisions contained herein and the Laws of the State of New York. Before receiving benefits, projects of the Agency must attest in writing to their understanding of and agreement to the Recapture Provisions of the Agency UTEP. The recapture provision contained herein may be modified from time to time by the Board at its sole discretion.

C. Recapture of PILOT, Sales Tax and Mortgage Recording Tax Exemptions. In the event the facility is sold or closed, or the number of jobs is reduced below 75% of the number of employed or projected to be employed at the time the application to the Agency or there are material violations of the project agreements and no substantial future economic benefit is likely to accrue to the community, then the value of the Property Tax, Sales Tax and Mortgage Recording Tax benefits extended to the project by the Agency shall be subject to recapture.

1. Recapture Payment. The Recapture payment paid by the Project to the Agency shall be determined (1) by the difference between any PILOT payments made by the Project and the property taxes that would be paid by the Project, if the property were not in ownership or control of the Agency, (2) the value of any Mortgage Recording Tax Exemption, if awarded to the Project, and (3) the amount of sales tax that would have been paid if an exemption was not granted.

2. Recapture of PILOT, Sales Tax and Mortgage Recording Tax. The Recapture Schedule for a Payment in Lieu of Taxes Agreement, Sales Tax or the Mortgage Recording Tax is as follows:

Within two (2) years of Certificate of Occupancy:	100%
Within three (3) years:	80%
Within four (4) years:	60%
Within five (5) years:	40%
Within six (6) years:	30%
Within seven (7) years:	20%
Within eight (8) years:	10%
Eight years or more:	0%

3. Distribution of the Recapture Payment. Any funds recaptured as the result of an Agreement with the Agency shall be distributed to the affected taxing jurisdictions in the same proportion as if the payments were paid or owed by the Project on the date of recapture.

D. Additional Conditions for Recapture of Sale and Use Tax. As of April 1, 2003, New York State law requires Industrial Development Agencies to recapture sales tax benefits where:

- A project is not entitled to receive the benefits
- Exemptions received exceed the amount authorized by the Agency
- Exemptions are claimed by the Project for unauthorized property or services
- A project fails to use property in the manner required by its IDA agreements

1. Distribution of Sales Tax. Project operators must cooperate with the Agency in its effort to recapture all sales tax benefits received by the Company by promptly paying the recapture amount as determined by the Agency. The amount to be recaptured will be dictated by NYS Law or IDA Policy, which ever may be applicable. The Agency must remit the recaptured sales tax benefits to the State of New York within thirty (30) days of receipt.

Section 7. Deviations

Deviations from this Policy shall be infrequent. The Agency reserves the right, at its sole discretion, to deviate from this Policy on a case by case basis. The Agency will provide written notice to the chief executive officer of each affected tax jurisdiction of any deviation from this Policy and will comply with the deviation requirements of the General Municipal Law.