# UNIFORM TAX EXEMPTION POLICY

ONTARIO COUNTY INDUSTRIAL DEVELOPMENT AGENCY

UNIFORM TAX EXEMPTION POLICY

ADOPTED APRIL 25, 2016

(AMENDED OCTOBER 28, 2019)

Pursuant to the authority vested in it by Article 18-A of the General Municipal Law of the State of New York, the Ontario County Industrial Development Agency (the "Agency") may provide financial assistance to qualified applicants for qualified projects in the form of issuance of its tax-exempt or taxable bonds or by participation in straight lease transactions.

The Agency has adopted this Uniform Tax Exemption Policy ("UTEP") to provide guidelines for the claiming of real property, sales and use tax and mortgage recording tax abatements and to provide the recapture of benefits from Projects that are in default or fail to meet their obligations to the Agency. To be eligible for such abatements, projects must meet the terms of this Uniform Tax exemption Policy; meet applicable requirements of the New York State General Municipal Law; and exhibit alignment with the Ontario County Economic Development Strategic Plan as adopted by the Ontario County Board of Supervisors, the Ontario County Industrial Development Agency, the Ontario County Economic Development Corporation, and the Ontario County Local Development Corporation.

Except as provided hereinafter in paragraph A.5, the Agency shall not provide financial assistance to retail projects (meaning locations for the retail sale of goods or services to persons who visit such facilities). Notwithstanding the foregoing, the Agency does reserve the right to deviate from such policy on the same basis for deviation with respect to its tax exemption policy as set forth in hereinafter in Paragraph D below.

A. Real Property Taxes.

1. The Agency's policy with respect to subleases to governmental entities and not-for-profit corporations is to grant 100% real property tax abatements for the full term of the lease or installment sale agreement.

2. With respect to vacant facilities, brownfields, urban renewal, or facilities which the Agency, in its sole discretion, determines to be in areas of economic distress or having higher than average unemployment or similar circumstances, the Agency may grant an applicant fixed payments in lieu of taxes for a period of up to ten years, with those payments based on the purchase price or fair market value of the facility. In exceptional circumstances in which such a project will create a significant numbers of permanent jobs in such facility, and in which this Uniform Tax Exemption Policy would otherwise incentivize the applicant to elect for new construction; the Agency may set the initial fixed PILOT payments on the facility at a point lower than the otherwise applicable taxes. A determination by the Agency to grant such abatements shall not be considered a deviation from this UTEP.

3. With respect to Affordable Housing Projects, the Agency may grant an applicant fixed payments in lieu of taxes for a period of up to twenty-five years. “Affordable Housing Projects” are those in which 20% or more of the units are occupied by households whose income are below 50% of the Ontario County median household income, or 40% or more of the units are occupied by households whose income are below 60% of the Ontario County median household income. Figures for Ontario County median income are to be taken from the American Community Survey for the most recent 12-month period for which an estimate is available, in inflation-adjusted dollars.

4. Market rate rental housing projects would be a deviation from this UTEP unless the developer agrees to set aside at least 10% of the units for households whose income is below 85% of the Ontario County median household income. In such facilities, the Agency may grant up to a fifteen year period of fixed PILOT payments. Figures for Ontario County median income are to be taken from the American Community Survey for the most recent 12-month period for which an estimate is available, in inflation-adjusted dollars.

5. With regard to technical, research, processing, commercial, industrial, manufacturing, and office facilities, as well as retail facilities that satisfy the criteria set forth in New York State General Municipal Law Section 862(2)(b) and tourism destination projects as defined in New York State General Municipal Law Section 862(2)(a)the policy shall be the following: The Agency may grant full tax exemption for an initial period up to five years, with stepped down exemption percentages for a period of five additional years.

6. The Agency may also grant up to full tax exemption for any period of time in its discretion with respect to facilities having a unique impact upon economic development in Ontario County. In addition, the Agency may grant enhanced benefits on a case-by-case basis for a project expected to have significant impact on the locality in which the project will be located. In making a determination to provide enhanced benefits, the Agency considers the factors listed in Paragraph D below, no one of which is determinative.

7. For any project to receive PILOT abatements described in Paragraphs A. 1-5 above, the project must satisfying the following criteria: .

> a) Projects using at least 80% Local Labor for the construction or renovation of new, expanded, or renovated facilities. “Local Labor” is defined as persons residing in Ontario, Monroe, Livingston, Seneca, Wayne, or Yates Counties. A waiver process will be available for projects requiring specialty contractors and/or involving significant cost increases due to local labor requirements (see October 28, 2019 ammendment).
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> b) Projects for which at least 80% of the building materials purchased by the applicant, its contractors or sub-contractors and used in connection with the acquisition, construction, and equipping of the facility are purchased from within Ontario, Monroe, Livingston, Seneca, Wayne, or Yates Counties. A waiver process will be available for projects involving significant cost increases due to local content requirements.

8. The Agency's general policy is to grant other qualified applicants not otherwise described in parapgraphs A.1 through A.6 real property tax abatements equal those provided by Section 485-b of the Real Property Tax Law regardless of whether such abatements would be available from the municipality and the school district in which the project is located.

9. Unless otherwise approved by the Agency, all exemptions described in this UTEP will commence in the first full tax year following the completion of the construction or renovation of the facility.

B. <u>Sales and Use Tax Exemptions</u>.

1. The Agency's policy is to permit project applicants, as agent of the Agency, to claim exemption from sales and use taxes on the construction and equipping of a project, including the purchase or leasing of equipment, tangible personal property, software and temporary rentals of equipment during construction to the full extent permitted by New York State Law.

2. The Agency's policy is to permit project applicants, as agent of the Agency, to claim exemption from sales and use taxes on information technology and communications equipment upgrades for a period of up to ten (10) years to the full extent permitted by New York State Law.

3. All project applicants must agree in writing to timely file with the New York State Department of Taxation an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in full compliance with Section 874(8) and Section 874(9) of the New York General Municipal Law, in the form and at the times required thereby.

C. <u>Mortgage Recording Tax Exemptions</u>.

1. The Agency's policy is to permit mortgage recording tax exemptions on all project-related financings and re-financings to the full extent permitted by New York State Law, whether or not the Agency has issued its bonds to finance the project.

2. The Agency may, in its sole discretion, permit mortgage recording tax exemptions on non-project related financings, e.g., second mortgages on the project to secure subordinated indebtedness of the project applicant. In determining whether to permit such exemptions on non-project related financings, the Agency, shall consider such factors as it deems appropriate, including but not limited to the use of the property, the degree of investment, the degree and nature of employment, and the economic condition of the area in which the facility is located.

D. <u>Deviations</u>.

In addition to or in lieu of the foregoing, the Agency may determine, on a case-by-case basis, to deviate from the guidelines described above or provide enhanced benefits for a project expected to have significant impact in the locality where the project will be located. Any deviations from the guidelines set forth above requires the written notification by the Agency to the chief executive officer of each affected tax jurisdiction. The Agency may consider any or all of the following factors in making such determination, no single one of which is determinative:

- The nature of the proposed project (e.g., manufacturing, commercial, civic, signature retail, or destination tourism).

- 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 and the economic multiplying effect that the project will have on the area.

- The extent to which a project will create or retain permanent, private sector jobs and the number of jobs to be created or retained and the salary ranges and benefits of such jobs.

- The estimated value of tax exemptions to be provided.

- The economic 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 vicinity.

- 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 and surrounding property.

- The fair market value of the land and buildings based upon an arm's length purchase contract.

- The extent to which the proposed project will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services.

- 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 a benefit (economic or otherwise) not otherwise available within the municipality in which the project is located.

- The extent to which the proposed project encourages charitable and/or governmental entities to remain, locate, or expand within the municipality in which the project is located or expand the services such not-for-profit or governmental entity provides to the municipality, and such other facts and circumstances as the Agency deems relevant, at its sole discretion.

E. Termination and/or Recapture of Benefits.

The Agency, in 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 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 termination and/or recapture may include, but shall not be limited to, the following:

(1) sale or closure of facility;
(2) significant employment reduction;
(3) significant change in use of facility;
(4) significant change in business activities of project applicant or operator; or
(5) 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 worker protection, tax, or environmental laws or regulations.
(6) an Event of Default under the Lease Agreement, Installment Sale Agreement, PILOT Agreement, Mortgage, Environmental Compliance and Indemnification Agreement and/or any other Agency documents.

If the Agency determines to provide for termination and/or 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 of termination and/or percentage of recapture.

In the case of the events listed above, the Agency may alternatively terminate exemptions and abatements without recapture, at its discretion.

F. Additional Termination and/or Recapture Provisions.

In addition to the provisions for recapture set forth in Paragraph E, the Agency may, in its sole discretion and on a case-by-case basis, terminate and/or require recapture of benefits with respect to any project or project applicant for:

(1) failure to respond to Agency inquiries concerning payments of principal and interest;
(2) failure to respond to Agency inquiries concerning insurance coverage or failure to provide insurance certificates when and as required by the Agency transaction documents;
(3) failure to respond to Agency inquiries regarding payment of monies in lieu of taxes;
(4) failure to respond to Agency inquiries or to provide facts requested by the Agency in connection with any proceedings or determinations pursuant to Paragraph D or Paragraph E of this Policy;

(5) failure to respond to inquiries of the Agency or failure to provide the Agency with any information or documents requested by the Agency in order to provide any federal, state or local agency with information or reports required under any applicable law, rule or regulation;

(6) failure to provide any other information concerning the project or the project applicant or any project operator requested by the Agency.

G. This Uniform Tax Exemption Policy shall apply to all projects for which the Agency has adopted or adopts an Inducement Resolution on or after April 25, 2016 and all re-financings of any project induced or closed before April 25, 2016.

H. The Agency, by resolution of its Members, and upon notice to all affected tax jurisdictions as may be required by law, may amend or modify the foregoing policy as it may, from time to time, in its sole discretion determine.

## October 28, 2019 AMMENDMENT

**A RESOLUTION OF THE ONTARIO COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") TO AMEND THE DEFINITION OF "LOCAL LABOR" AS SET FORTH IN THE UNIFORM TAX EXEMPTION POLICY OF THE AGENCY**

**WHEREAS** Section 7a of the Uniform Tax Exemption Policy ("UTEP") of the Agency provides as follows:

"a) Projects using at least 80% Local Labor for the construction or renovation of new, expanded, or renovated facilities. "Local Labor" is defined as persons residing in Ontario, Monroe, Livingston, Seneca, Wayne, or Yates Counties. A waiver process will be available for projects requiring specialty contractors and/or involving significant cost increases due to local labor requirements."; and

**WHEREAS** it has been determined to be in furtherance of the purposes and policies of the Agency to expand the definition of "Local Labor" to include persons residing in all counties located within the Western New York – Rochester Area Labor Market.

**IT IS RESOLVED** as follows:

1. Resolved that Section 7a of the UTEP is hereby amended to provide as follows:

"a) Projects using at least 80% Local Labor for the construction or renovation of new, expanded, or renovated facilities. "Local Labor" is defined as persons residing in Ontario, Monroe, Livingston, Seneca, Wayne, Yates, Steuben, Chemung, and Schuyler Counties. A waiver process will be available for projects requiring specialty contractors and/or involving significant cost increases due to local labor requirements."