

UNIFORM TAX EXEMPTION POLICY  
TROY INDUSTRIAL DEVELOPMENT AUTHORITY

I. Sales and Use Tax Exemption

A. General Policy.

Purchases of tangible personal property by the Authority or by an agent of the Authority, and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Authority or an agent of the Authority, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law.

B. Period of Exemption.

Generally, the period of exemption commences with the issuance of the Authority's bonds and ends on the completion of the project. If the Authority's financial assistance is in the form of a sale/leaseback transaction, with no Authority bonds to be issued, the period of exemption generally commences upon execution of the sale/leaseback agreement and ends upon completion of the project.

Early commencement of the period of exemption is permitted, at the discretion of the Authority, provided (a) the Authority has complied with the requirements of Section 1963-a of the New York Public Authorities Law (the "Act"), (b) the Authority thereafter adopts a resolution determining to undertake the project and authorizing the granting of sales and use tax exemptions, and (c) the Authority and the applicant enter into a preliminary agreement pursuant to which the Authority and the applicant agree upon the terms and conditions of the Authority's financial assistance for the project.

C. Sales Tax Exemption Letter.

The final act of granting a sales and use tax exemption by the Authority shall be the execution by an unauthorized officer of the Authority of a sales and use tax exemption letter confirming the terms of the sales and use tax exemption.

D. Required Reports to Authority and State of New York.

Pursuant to Section 1964-a(9) of the Act, the applicant and/or project occupant is required to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the applicant and/or the project occupant and/or all agents, subcontractors, and consultants thereof. New York State presently requires that Form ST-340 be used for this purpose. The project documents shall require that (1) a copy of such statement

will also be filed with the Authority and (2) that the project occupant shall maintain, for a period ending seven (7) years after the last purchase made under the sales and use tax exemption, and make available to the Authority at the request of the Authority, detailed records which shall show the method of calculating the sales and use tax exemption benefit granted by the Authority.

Within 30 days after the Authority designates a project operator or other person to act as agent of the Authority for purposes of extending a sales tax exemption to such person, the Authority shall file a statement with the Department of Taxation and Finance identifying the agent and providing such other information as may be required by the Department of Taxation and Finance. The New York State Department of Taxation and Finance currently requires that Form ST-60 be used for this purpose. The Authority shall prepare and file Form ST-60, or such other forms as the Department of Taxation and Finance may require, in accordance with Section 1964-a(9) of the Act.

E. Required Filings with Vendors.

The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption. For example, TSB-M-87(7) outlines the materials that must be filed to establish entitlement to sales tax exemption as "agent" of the Authority. It is the responsibility of the applicant and/or project occupant to ensure that the proper documentation is filed with each vendor to obtain any sales tax exemptions

II. **Mortgage Recording Tax Exemption**

A. General Policy.

State law provides that mortgages recorded by the Authority are exempt from mortgage recording taxes imposed pursuant to Article 11 of the Tax Law. The Authority has a general policy of abating mortgage recording taxes for mortgages securing repayment of bonds issued by the Authority. In instances where the initial financing commitment provides for short-term construction financing to be replaced by Authority bonds upon completion of the project, the Authority's general policy is to abate the mortgage recording tax on both the construction financing and the permanent (i.e., bond) financing.

If the financial assistance to be provided by the Authority consists of a sale/leaseback transaction without the issuance of Authority bonds, the Authority has a general policy of abating mortgage recording taxes for mortgages securing financing obtained from third party lenders.

B. Refinancings.

If the Authority retains title to a project, it is the general policy of the Authority to abate mortgage recording taxes on any debt issued by the Authority or third party lenders for the purpose of refinancing prior debt issued by the Authority or third party lenders, and on any modifications, extensions and renewals thereof, so long as the Authority fees relating to same have been paid.

III. **Real Estate Transfer Taxes**

A. General Policy.

Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Authority are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Authority back to the same entity which transferred such property to the Authority are exempt from such tax. The general policy of the Authority is to impose no payment in lieu of tax upon any real estate transfer to or from the Authority.

B. Required Filings.

It shall be the responsibility of the applicant and/or project occupant to ensure that all documentation necessary relative to the real estate transfer tax are timely filed with the appropriate officials.

IV. **Real Estate Tax Exemption**

A. General Policy.

Pursuant to Section 1963 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Authority is exempt from general real estate taxes but not exempt from special assessments and special ad valorem levies. However, it is the general policy of the Authority that, notwithstanding the foregoing, every nongovernmental project will be required to enter into a payment in lieu of tax agreement (a "PILOT Agreement"), either separately or as part of the project documents. Such PILOT Agreement shall require payments in lieu of real estate taxes ("PILOT Payments") in accordance with the provisions set forth below.

B. PILOT Payment Requirements.

Unless the applicant and/or project occupant and the Authority shall have entered into a PILOT Agreement acceptable to the Authority, the project documents shall provide that the Authority will not file a New York State Department of Taxation

and Finance, Division of Equalization and Assessment Form EA-412-a (an "Exemption Form") with respect to the project, and the project documents shall provide that the applicant and/or the project occupant shall be required to make PILOT Payments in such amounts and at such times as would be required if the project were not owned by or under the jurisdiction or supervision or control of the Authority. The project documents shall provide that, if the Authority and the applicant and/or project occupant have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT Payments until the expiration or termination of such agreement.

C. Amount of Abatement.

(1) Manufacturing and Industrial Projects. The applicant shall pay PILOT Payments equal to a percentage of the taxes that would otherwise be payable if the project were not owned by or under the jurisdiction or supervision or control of the Authority, as follows:

(a) 33 1/3% of such taxes through the fifth (5th) fiscal tax year covered by the PILOT Agreement;

(b) 66 2/3% of such taxes from the sixth (6th) through tenth (10th) fiscal tax year covered by the PILOT Agreement; and

(c) 66 2/3% of such taxes after the tenth (10th) fiscal tax year covered by the PILOT Agreement provided that the applicant employs in the project not less than the number of employees set forth in the table below in the designated years of the PILOT Agreement; and if the applicant does not employ at least such number of employees in the years designated the applicant shall then pay one hundred percent (100%) of such taxes in such years.

<u>Employees</u>	<u>Years</u>
25	10-12
75	12-14
125	14-16
225	16-18
325	18-20

(2) Commercial Projects. The applicant shall pay PILOT Payments equal to a percentage of the taxes that would otherwise be payable if the project were

not owned by or under the jurisdiction or supervision or control of the Authority, as follows:

(a) 50% of such taxes through the second (2nd) fiscal tax year covered by the PILOT Agreement;

(b) 75% of such taxes from the third (3rd) through the fifth (5th) fiscal tax year covered by the PILOT Agreement; and

(c) the full amount of such taxes after the fifth (5th) fiscal tax year covered by the PILOT Agreement.

(3) Existing Businesses. If the applicant is not acquiring real property, but is simply making improvements to existing real property, the applicant shall pay PILOT Payments equal to the full amount of such taxes based upon the assessed value of the existing real property; and with respect to any increase in assessment resulting from improvements that are made by the applicant as part of the project, PILOT Payments shall be made with respect to the increased assessment in accordance with the percentages set forth in paragraph (1) or (2) above.

D. Special District Taxes.

The Authority is not exempt from special assessments and special ad valorem levies, and accordingly these amounts are not subject to abatement by reason of ownership of the Project by the Authority. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the applicant and/or project occupant. However, applicant and the project occupants should be aware that the courts have ruled that an Authority sponsored project is eligible to apply for a tax-exemption under Section 485-b of the Real Property Tax Law. If an applicant or project occupant desires to obtain an exemption under Section 485-b, it is the responsibility of the applicant and/or project occupant to apply for same.

E. Required Filings.

Pursuant to Section 1953(14) of the Act and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an exemption form is filed with the assessor of each county, city, town, village and school district in which such project is located (each, a "Taxing Jurisdiction"). Once an exemption form with respect to a project is filed with a particular Taxing Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent

to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.

## V. Procedures for Deviation from this Uniform Policy

### A. General Policy.

In the case where the Authority determines that any policy of the Authority as herein established is inappropriate or unfair, the Authority may determine:

(1) the amount of the tax exemption, the amount and nature of the PILOT Agreement and PILOT Payments (if any), the duration of the exemption and of the PILOT Agreement and whether or not an exemption of any kind shall be granted, and the Authority shall impose such terms and conditions as the Authority deems just and proper; and

(2) the Authority shall give written notice to each affected Taxing Jurisdiction of the proposed deviation from the policy set forth herein, setting forth the terms and conditions of the deviation and the reasons therefor.

### B. Troubled Projects.

Where a project is owned and operated by the Authority or has been acquired by the Authority for its own account after a failure of a project occupant, the project shall at the option of the Authority be exempt from all taxes in accordance with law.

### C. Unusual Projects.

Where a project is unusual in nature or otherwise requires special considerations related to its successful operations, as demonstrated by appropriate evidence presented to the Authority, the Authority shall consider the granting of a deviation from the established exemption policy in accordance with the procedures provided in the Act. The Authority may authorize a minimum PILOT Payment or, in unusual circumstances, no PILOT Payment or such other arrangement as the Authority may deem appropriate.

## VI. Matters to be Considered Prior to Granting Tax Exemptions

### A. General Policy.

When considering an application for financial assistance that includes a request for tax exemptions, the Authority shall consider, to the extent the Authority deems appropriate, the following matters when determining whether tax exemptions will be granted:

(1) the extent to which a project will create or retain permanent, private sector jobs;

(2) the estimated value of any tax exemptions to be provided;

~~(3) whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided;~~

(4) the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity;

(5) the amount of private sector investment generated or likely to be generated by the proposed project;

(6) the demonstrated public support for the proposed project;

(7) the likelihood of accomplishing the proposed project in a timely fashion;

(8) the effect of the proposed project upon the environment;

(9) 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; and

(10) the extent to which the proposed project will provide additional sources of revenue for municipalities or school districts.