

TOWN OF GUILDERLAND INDUSTRIAL DEVELOPMENT AGENCY

UNIFORM TAX EXEMPTION POLICY

SECTION 1. PURPOSE AND AUTHORITY. Pursuant to Section 874(4)(a) of Title One of Article 18-A of the General Municipal Law (the "Act"), Town of Guilderland Industrial Development Agency (the "Agency") is required to establish a uniform tax exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars to any project. This uniform tax-exemption policy was adopted pursuant to a resolution enacted by the members of the Agency on September 26, 1996.

SECTION 2. DEFINITIONS. (A) All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent.

(B) The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(1) "Administrative Fee" shall mean a charge imposed by the Agency to an applicant or project occupant for the administration of a project.

(2) "Affected Tax Jurisdiction" means, with respect to a particular project, Albany County and each Municipality or School District in which such project is located which will fail to receive real property tax payments which would otherwise be due with respect to such project, due to a Tax Exemption obtained by reason of the involvement of the Agency in such project, unless the Affected Tax Jurisdictions shall agree in writing to add or subtract additional governmental entities thereto.

(3) "Agency Fee" shall mean the normal charges imposed by the Agency on an Applicant or a project occupant to compensate the Agency for the Agency's participation in a project. The term "Agency Fee" shall include not only the Agency's normal application fee and the Agency's normal Administrative Fee, but also may include (a) reimbursement of the Agency's expenses, (b) rent imposed by the Agency for use of the property of the Agency, and (c) other similar charges imposed by the Agency.

(4) "Applicant" shall mean an applicant for financial assistance.

(5) "Applicant Project" shall mean a project which is undertaken by the Agency for the benefit of an Applicant and which has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto.

(6) "Assessor" shall have the meaning set forth in Section 7(D)(1) hereof.

(7) "Municipality" shall mean the Town and each village located within the Town.

(8) "Non-Applicant Project" means a project which is undertaken by the Agency for the benefit of the Agency, and shall not include an Applicant Project.

(9) "Pilot" or "Payment in Lieu of Tax" shall mean any payment made to the Agency or an Affected Tax Jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an Affected Tax Jurisdiction with respect to a project but for Tax Exemption obtained by reason of the involvement of the Agency in such project, but such term shall not include Agency Fees.

(10) "School District" shall mean each school district located within the Town.

(11) "Tax Exemption" shall mean any financial assistance granted to a project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a project but for the involvement of the Agency in such project.

(12) "Town" shall mean the Town of Guilderland.

SECTION 3. GENERAL PROVISIONS. (A) General Policy. The general policy of the Agency is to grant Tax Exemption as hereinafter set forth to (1) any Applicant Project and (2) any Non-Applicant Project.

(B) Exceptions. Although the Agency has never deviated from the general policy enunciated under subsection (A) of this Section, the Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider the magnitude of the deviation sought and the factors which might make the project unusual, which factors might include but not be limited to the following factors: (1) the magnitude and/or importance of any permanent private sector job creation and/or retention related to the project; (2) whether the Affected Tax Jurisdictions will be reimbursed by the project occupant if the project does not fulfill the purposes for which Tax Exemption was granted; (3) the impact of the project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by the project; (5) demonstrated public support for the project; (6) the estimated value of the Tax Exemptions requested; and (7) the extent to which the proposed project will provide needed services and/or revenues to the Affected Tax Jurisdictions. In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

(C) Application. No request for a Tax Exemption relating to an Applicant Project shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and regulations of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project and of each Tax Exemption sought with respect to the project, the estimated value of each Tax Exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, the estimated date of completion of the project, and whether such financial assistance is consistent with this part.

(D) Notice to Affected Tax Jurisdictions. No request for approval of an Applicant Project by the Agency which involves the issuance of bonds, notes or other evidences of

indebtedness with respect thereto or any other application for Tax Exemptions or other financial assistance which may aggregate more than \$100,000, or which involves a proposed deviation from the provisions of this Uniform Tax Exemption Policy, shall be given final approval by the Agency unless and until (1) the Agency has sent written notice of said request to each Affected Tax Jurisdiction, and (2) has given each Affected Tax Jurisdiction a reasonable opportunity, both in writing and in person, to be heard by the Agency with respect to the proposed request. With respect to Non-Applicant Projects, the Agency shall comply with the provisions of Section 859-a of the Act, to the extent applicable. In addition, the Agency shall comply with all other notice provisions contained in the Act relative thereto.

SECTION 4. SALES AND USE TAX EXEMPTION. (A) General. State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency, and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law. The Agency has a general policy of abating sales and use taxes applicable (1) only to the initial acquisition, construction and/or equipping of an Applicant Project, and (2) to any Non-Applicant Project. The Agency has no requirement for imposing a payment in lieu of tax arising from the exemption of an Applicant Project from sales and/or use taxes applicable to the initial acquisition, construction and/or equipping of such project, except (1) as described in subsection (E) below or (2) in the circumstance where (a) an Applicant Project is offered sales and use tax exemption on the condition that a certain event (such as the issuance of bonds by the Agency with respect to the project) occur by a certain date and (b) such event does not occur, in which case the Agency may require that the Applicant make payments in lieu of sales and use taxes to the New York State Department of Taxation and Finance.

(B) Period of Exemption. Except as set forth in subsection (A) above, the period of time for which a sales and use tax exemption shall be effective (the "Tax Exemption Period") shall be determined as follows:

(1) General. Unless otherwise determined by the Agency, the sales and use tax exemption for an Applicant Project shall be for the Tax Exemption Period commencing with the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to such project and ending on the date of completion of such project. The Tax Exemption Period for a Non-Applicant Project shall extend for such period of time as the Agency shall determine.

(2) Early Commencement. The Tax Exemption Period for an Applicant Project may, at the discretion of the Agency, commence earlier than the date of issuance by the Agency of the Agency's debt relating to the project, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the Agency thereafter adopts a resolution determining to commence such period earlier, (c) the Applicant agrees to the conditions of such resolution and supplies to the Agency the materials required to be supplied to the Agency thereunder, and (d) the Chairman of the Agency acknowledges satisfaction of all conditions to the granting of such Tax Exemption set forth in such resolution.

(3) Normal Termination. The Tax Exemption Period for an Applicant Project will normally end upon the completion of such project. On construction projects, the Agency and the Applicant shall agree on the estimated date of completion of the project, and the sales and use tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is six (6) months after the estimated date of completion of such project. On non-construction projects, the Agency and the Applicant shall agree on the estimated date of completion of the project, and the sales and use tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is three (3) months after the estimated date of completion of the project. If the Agency and the Applicant shall fail to agree on a date for completion of the project, the Agency shall on notice to the Applicant make the determination on the basis of available evidence.

(4) Later Termination. The Agency, for good cause shown, may adopt a resolution extending the period for completion of the project and/or extending the Tax Exemption Period.

(C) Items Exempted. The sales and use tax exemption granted by the Agency with respect to an Applicant Project shall normally extend only to the following items acquired during the Tax Exemption Period described in subsection (B) above:

(1) items incorporated into the real property;

(2) tangible personal property, including furniture, furnishings and equipment used to initially equip the project or otherwise forming part of the project, if purchased by the Applicant as agent of the Agency;

(3) the rental of tools and other items necessary for the construction and/or equipping of the project, if rented by the Applicant as agent of the Agency; and

(4) office supplies, fuel and similar items consumed in the process of acquiring, constructing and/or equipping the project, if purchased by the Applicant as agent of the Agency.

(D) Items Not Exempted. A sales and use tax exemption with respect to an Applicant Project shall not be granted by the Agency for the following:

(1) purchases occurring beyond the Tax Exemption Period described in subsection (B) above;

(2) repairs, replacements or renovations of the project, unless such repairs, replacements or renovations constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act; or

(3) operating expenses, unless such operating expenses constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act.

(E) Percentage of Exemption. Unless otherwise determined by resolution of the Agency, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and/or use taxes that would have been levied if the project were not exempt by reason of the Agency's involvement in the project. If an exemption of less than one hundred percent (100%) is determined by the Agency to be applicable to a particular Applicant Project, then the Applicant shall be required to pay a Pilot to the Agency equal to the applicable percentage of sales and/or use tax liability not being abated. The Agency shall remit such Pilot, within thirty (30) days of receipt by the Agency, to the Affected Tax Jurisdictions in accordance with Section 874(3) of the Act.

(F) Confirmation Letter. The final act of granting a sales and/or use tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a confirmation letter by the Agency. Such confirmation letter may either be in the form of a letter for the expected time of construction of the proposed project (where the sales and use tax exemption is permanent, because the Agency is satisfied that any conditions precedent to such sales and use tax exemption, such as the issuance of bonds by the Agency, have been satisfied) or for a shorter period of time (where such sales and use tax exemption is tentative, because there remain conditions precedent to such sales and use tax exemption which have not been satisfied). Each such confirmation letter shall describe the scope and term of the sales and use tax exemption being granted.

(G) Required Filings. 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 and use tax exemption. For example, TSB-M-87(7) outlines the materials that must be filed to establish entitlement to a sales and use tax exemption as an "agent" of the Agency. 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 and use tax exemptions authorized by the Agency.

(H) Required Reports and Records. Pursuant to Section 874(B) 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. The project documents shall require that (1) a copy of such statement will also be filed with the Agency 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 Agency at the request of the Agency, detailed records which shall show the method of calculating the sales and use tax exemption benefit granted by the Agency.

SECTION 5. MORTGAGE RECORDING TAX EXEMPTION. (A) General. State law provides that mortgages recorded by the Agency are exempt from mortgage recording taxes imposed pursuant to Article 11 of the Tax Law. The Agency has a general policy of abating mortgage recording taxes for the initial financing obtained from the Agency with respect to each project with respect to which the Agency issues debt which will be secured by a mortgage upon real property. In instances where the initial financing commitment provides for a construction financing of the Agency to be replaced by a permanent financing of the Agency immediately

upon or shortly after the completion of the project, the Agency's general policy is to abate the mortgage recording tax on both the construction financing and the permanent financing.

(B) Refinancing. In the event that the Agency retains title to a project, it is the general policy of the Agency to abate mortgage recording taxes on any debt issued by the Agency for the purpose of refinancing prior debt issued by the Agency, and on any modifications, extensions and renewals thereof, so long as the Agency Fees relating to same have been paid. A refinancing of an Applicant Project shall not result in (1) any real property tax exemption beyond the ten (10) year period described in Section 7(D)(1) hereof or (2) any additional sales and use tax exemptions with respect to said project.

(C) Non-Agency Projects. In the event that the Agency does not hold title to a project, it is the policy of the Agency not to join in a mortgage relating to that project and not to abate any mortgage recording taxes relating to that project.

(D) Non-Agency Financings. Occasionally, a situation will arise where the Agency holds title to a project, the project occupant needs to borrow money for its own purposes (working capital, for example), and the lender will not make the loan to the project occupant without obtaining a fee mortgage as security. In such instances, the policy of the Agency is to consent to the granting of such mortgage and to join in such mortgage, so long as the following conditions are met:

(1) the documents relating to such proposed mortgage make it clear that the Agency is not liable on the debt, and that any liability of the Agency on the mortgage is limited to the Agency's interest in the project;

(2) the granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant; and

(3) the payment of the Agency Fee relating to same.

(E) Exemption Affidavit. The act of granting a mortgage recording tax exemption by the Agency is confirmed by the execution by an authorized officer of the Agency of an exemption affidavit relating thereto.

(F) Pilot Payments. If the Agency is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Agency (a "non-exempt mortgage"), then the applicant and/or project occupant or other person recording same shall pay the same mortgage recording taxes with respect to same as would have been payable had the Agency not been a party to said mortgage (the "normal mortgage tax"). Such mortgage recording taxes are payable to the County Clerk of the County, who shall in turn distribute same in accordance with law. If for any reason a non-exempt mortgage is to be recorded and the Agency is aware that such non-exempt mortgage may for any reason be recorded without the payment of the normal mortgage tax, then the Agency shall prior to executing such non-exempt mortgage collect a Pilot equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Agency to the Affected Tax Jurisdictions in accordance with Section 874(3) of the Act.

