

INDUSTRIAL DEVELOPMENT AGENCY/AUTHORITY FINANCIAL ASSISTANCE

An IDA can provide four basic forms of financial assistance:

1. Mortgage Recording Tax Exemption

Whenever a county clerk records a mortgage in New York State, the mortgagor must pay a .75% to 1.5% mortgage recording tax – a significant expense on large projects. In Cayuga County the charge is 1%. The IDA can, however, qualify a Company for a mortgage recording tax exemption. If an IDA is in title at the time the mortgage is recorded, the IDA will mortgage its interest in the property (exempt from the mortgage recording tax under GML §874) and the Company will simultaneously mortgage its alternative, the IDA and the Company can execute one mortgage with the IDA agreeing to pay the mortgage recording tax. Either arrangement can save a substantial amount of money for the Company – In Cayuga County for example, on a \$1 million mortgage the tax exemption savings would be \$10,000.

2. Sales and Use Tax Exemption

The Sales and Use Tax in New York State generally ranges from 7% to 8.5% with Cayuga County at 8%. Under GML §874, all purchases made by an IDA or its agents are exempt from the Sales and Use Tax. The IDA can issue a sales tax exemption letter to the Company, authorizing it to act as an agent for the IDA. The Company can then acquire the equipment, materials and services needed to acquire, construct, reconstruct and/or equip the project without having to pay sales or use taxes. The exemption is generally limited to the construction, reconstruction or installation period and cannot cover ongoing operational costs such as elevator or computer maintenance contracts.

The cost savings for the company under this arrangement is generally significant. In Cayuga County, on a project where \$1 million of the costs are subject to the Sales and Use Tax, the exemption can result in a savings of up to \$80,000. When the lease or installment sales agreement expires, the IDA transfers any personal property that is involved in the project to the Company without the payment of any Sales or Use Tax.

3. Real Property Tax Abatement

In New York State, property owners pay a real property tax based on the assessed value of improvements to a site. Any real property owned or controlled by an IDA is not subject to ad valorem real property taxes, under GML §874 and RPTL §412-a. The IDA is subject to special assessments and user fees. When an IDA takes title to or a leasehold interest in real property, the property becomes 100% exempt from ad valorem real property taxes. To accommodate the needs of the local taxing jurisdictions, however, the IDA generally negotiates a Payment In Lieu Of Tax Agreement (“PILOT Agreement”) with the Company. The IDA will then direct, or receive and forward, those payments in lieu of taxes to the affected taxing jurisdiction.

By law, IDAs have the authority to negotiate any PILOT Agreement they deem reasonable. There is no required formula for calculating the payments to be made under a PILOT Agreement. They are, however, required to have specific policies outlining the types of PILOT Agreements they are offering and procedures for deviation from those stated policies. If the IDA deviates from its uniform policy, it must notify the taxing jurisdictions. Although there is no statutory limit to the period or amount of the abatement, IDAs generally limit the period to between 10 and 20 years with the assumption that the abatement generally results in more revenue for the taxing jurisdiction than was generated by the property before the IDA’s involvement.

This benefit is generally referred to as a “Real Property Tax Abatement” rather than a real property tax exemption, given the interplay between the 100% exemption from real property taxes and the IDA policy of requiring a payment in lieu of taxes. Some PILOT Agreements are drafted to specify the dollar amount of payments. The mere predictability provided by such a PILOT Agreement can be invaluable to a developer. Since each PILOT Agreement is negotiated on a project-by-project basis, it is difficult to estimate the exact savings from the Real Property Tax Abatement. There is little doubt, however, that the abatement will save the Company a significant amount of money. As a reminder, certain projects may already qualify for a partial exemption from real property taxes for new improvement under RPTL §485-b or 485-e.

4. Lower Interest Rates for Debt Incurred as Part of the Project

IDAs are authorized by New York State law to issue bonds and notes. An IDA can issue tax-exempt bonds, subject to the limitations imposed by the Internal Revenue Code of 1986, as amended (the "Code"). The proceeds of these tax-exempt bonds can be used to fund all, or substantially all, of the costs of a project. If the project meets the rigorous qualification requirements contained in the Code, the Company should then determine if issuing tax-exempt bonds is a cost effective method of financing the project.

An IDA provides no credit enhancement and issues bonds on a non-recourse basis. For that reason, the ability to sell the bonds depends solely on the creditworthiness of the Company. The Company's rental payments under the lease agreement or the payments made under the installment sale agreement to the IDA are used to pay the bonds. The property involved is generally used as collateral and the Company's direct guaranty is generally required. It may be necessary to provide some form of credit enhancement, such as a letter of credit issued by a bank or other qualified financial institution, bond insurance, or FHA insurance, depending on the market where the tax exempt bonds are sold and on the creditworthiness of the Company.

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