



IDA Annual Compliance Report State Sales Tax Recapture

For IDA fiscal year ending _____
(mmdyy)

Due within 90 days of the end of each fiscal year.

IDA information

Name of IDA		
Street address	Telephone number ()	
City	State	ZIP code

Terms and conditions for the recapture of state sales tax exemption benefits for projects established, amended, or extended on or after March 28, 2013

- 1 Did the IDA provide state sales tax exemption benefits to any project established, amended, or extended during the fiscal year entered above? 1 Yes No
If Yes, continue below.
If No, skip to question 3.
- 2 When an IDA establishes a project, appoints an agent/project operator, or amends or extends a project established in a prior year, the IDA must include terms and conditions for the recapture of state sales tax exemption benefits in its resolutions and project documents. This applies to all projects established, amended, or extended on or after March 28, 2013 (see instructions).
Did the IDA use the same terms and conditions regarding the recapture of state sales tax exemption benefits in the project documents for each of its projects (as described above)? 2 Yes No
If Yes, attach a copy of the terms and conditions used.
If No, attach a copy of each version used. Be sure to identify the projects to which each version of the terms and conditions relate.
If the IDA did not include terms and conditions for the recapture of state sales tax exemption benefits in the project documents, attach a list of these projects (see instructions).

Activities and efforts to recapture state sales tax exemption benefits for projects established, amended, or extended on or after March 28, 2013

- 3 Did the IDA make efforts to recapture any state sales and use tax exemption benefits from an agent, project operator, or other person or entity (see instructions)? 3 Yes No
If Yes, continue below.
If No, skip question 4 and complete the Certification below.
- 4 Did the IDA file Form ST-65, IDA Report of Recaptured Sales and Use Tax Benefits, for each recapture, and remit the funds to the Tax Department? 4 Yes No
If Yes, you must keep a copy of Form ST-65 and supporting documentation related to the recapture activities.
If No, attach an explanation of the IDA's recapture efforts (see instructions).

Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of person signing on behalf of the IDA	Print title of person signing on behalf of the IDA		
Signature <i>Susanne Collins</i>	Date	Telephone number ()	

Mailing instructions

Mail completed form and attachments to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Instructions

Filing requirements

Every IDA must file this compliance report every year. The report must include:

- the terms and conditions for the recapture of state sales tax exemption benefits (as described in General Municipal Law (GML) section 875(3)) within all of the IDA's resolutions and project documents. This applies to:
 - projects established and agents or project operators appointed, and any financial assistance or agreement for payments in lieu of taxes provided, on or after March 28, 2013; and
 - any amendment or revision for additional funds or benefits made on or after March 28, 2013, to projects established, agents or project operators appointed, financial assistance provided, or payments in lieu of taxes provided, prior to March 28, 2013.
- information about efforts the IDA has made to recover, recapture, receive, or obtain any state sales tax exemption benefits and payments in lieu of state sales taxes from an agent/project operator, or other person or entity.

Every IDA must file Form ST-62 within 90 days of the end of each fiscal year.

The term *state sales tax* as used in this form includes both state sales tax and the state use tax.

For more information, see TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*.

Any IDA that fails to file or substantially complete this report may lose its authority to provide state sales tax exemption benefits.

Terms and conditions for the recapture of state sales tax exemption benefits

Line 2 – If the IDA:

- **used the same** standard terms and conditions for the recapture of state sales tax exemption benefits in the project documents for all projects covered by this report, attach a copy of the terms and conditions used. You are **not** required to attach the entire document. Attach only the sections describing the state sales tax recapture requirements described in GML section 875(3).
- **used different** terms and conditions for the recapture of state sales tax exemption benefits in the project documents for the projects covered by this report, attach a copy of the terms and conditions used and identify the project(s) to which they relate. Be sure to include the project name and address, and the legal name and EIN of the agent or project operator for each project identified.
- provided state sales tax exemption benefits **but did not include** terms and conditions for the recapture of those benefits, attach a list of these projects. Include the project name and address, the legal name and EIN of the agent or project operator, and the reason why terms and conditions regarding recapture were not included.

Activities and efforts to recapture state sales tax exemption benefits

The GML requires that each IDA recapture state sales tax exemption benefits that were claimed by a project operator or agent, or other person or entity, whenever the benefits were:

- not entitled or authorized to be taken,
- in excess of the amounts authorized,
- for unauthorized property or services, or
- for property or services not used according to the terms of the agreement with the IDA.

See Form ST-65, *IDA Report of Recaptured Sales and Use Tax Benefits*, for more information.

IDAs must remit recaptured state sales tax benefit amounts to the Tax Department within 30 calendar days, using Form ST-65.

Line 4: If the IDA made efforts to recapture sales tax exemption benefits during the fiscal year covered by this report and **has not filed** Form ST-65, attach an explanation.

The attachment must include:

- name and address of the project and project number;
- legal name, EIN, and address of the agent/project operator, or other person or entity;
- project beginning and end dates;
- the basis for recapture, as described above;
- date of recapture efforts;
- amounts identified as required to be recaptured; and
- amount recaptured, if different.

When identifying recapture amounts, be sure to break down the total dollar amount into the categories below:

- state tax,
- local tax,
- MCTD tax (if applicable),
- penalties, and
- interest.

If the amount recaptured was not paid in full, also include copies of correspondence exchanged between the IDA and the agent/project operator, or other entity or person regarding the recapture efforts.

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Visit our website at www.tax.ny.gov.

Exerpts of Agent + Equipment Lease Agreement

- (iii) Notwithstanding anything to the contrary contained herein, in any instance where the Company determines that any item of Project Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Project Equipment and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency, provided that such removal will not materially impair the value of the Project Facility. At the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Project Equipment free from the lien of this Agreement. The Company shall pay all costs and expenses (including counsel fees) incurred in transferring title to and releasing from the lien this Agreement any item of Project Equipment removed pursuant to this Section 2.1(e)(iii).

SECTION 2.2: Limitation on Sales Tax Exemption.

(a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project Activities shall be limited to purchases of Project Equipment effected by the Company as agent for the Agency, it being the intent of the parties that no operating expenses of the Company and no purchases of equipment or other personal property (other than Project Equipment) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project Activities. The Company acknowledges and represents that it is familiar with the laws of the State as applicable to Sales Taxes and the Sales Tax Documents, and it understands that a failure to comply with such applicable law (or with the terms and conditions of the Sales Tax Documents or this Agreement) may result in the loss by the Company of the exemption from Sales Taxes and other benefits hereunder.

(b) The Company covenants and agrees that after the date hereof and during the term of this Agreement it shall include the following language (through an attached rider or otherwise) in and as part of each contract, invoice, bill or purchase order entered into by the Company for Project Equipment as agent for the Agency in connection with the Project Activities:

"THIS AGREEMENT IS EXECUTED BY CENTURY LINEN & UNIFORM, INC. (THE "COMPANY"), THE DULY APPOINTED AGENT OF THE FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY"), A PUBLIC BENEFIT CORPORATION OF THE STATE OF NEW YORK HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 1 EAST MONTGOMERY STREET, JOHNSTOWN, NEW YORK. IN THE EVENT OF A DEFAULT BY THE COMPANY IN THE PAYMENT OF ANY MONIES DUE FOR WORK, LABOR, GOODS, SERVICES, MATERIALS OR EQUIPMENT FURNISHED IN ACCORDANCE WITH THIS AGREEMENT, SHOULD THE CONTRACTOR (OR VENDOR) SEEK PAYMENT FROM THE AGENCY, IT SHALL BE LIMITED TO A CLAIM AGAINST THOSE FUNDS REMAINING IN PROJECT ACCOUNTS THAT HAVE BEEN ESTABLISHED BY OR ON BEHALF OF THE AGENCY TO FINANCE THE PROJECT

FACILITY. THE CONTRACTOR (OR VENDOR) AGREES THAT IT SHALL HAVE NO RIGHTS IN OR CLAIM TO ANY PROPERTY OR ANY FUNDS IN ANY ACCOUNT OF THE AGENCY OTHER THAN THOSE FUNDS OR ACCOUNTS SPECIFICALLY ESTABLISHED BY OR ON BEHALF OF THE AGENCY FOR THE PROJECT FACILITY. THE CONTRACTOR (OR VENDOR) FURTHER AGREES THAT IT MAY NOT MAKE A CLAIM OR OBTAIN A JUDGMENT AGAINST THE AGENCY, ITS MEMBERS, OFFICERS OR EMPLOYEES FOR ANY MONIES OTHER THAN THOSE MONIES REMAINING IN ACCOUNTS ESTABLISHED BY OR ON BEHALF OF THE AGENCY FOR THE PROJECT FACILITY."

Unless other suitable language is agreed to by the Agency, if the Company shall fail to include, incorporate by reference or otherwise cause any new contract, agreement, invoice, bill or purchase order entered into after the date hereof to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Company shall not claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order and the Company shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of twelve percent (12%) per annum, from the date of such taking.

(c) (i) Concurrently with the execution and delivery of this Agreement, the Agency shall make available to the Company the Sales Tax Documents. The Agency, at the sole cost and expense of the Company, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Documents) as may be reasonably necessary to permit the Company to obtain the intended benefits hereunder.

(ii) The Sales Tax Documents dated as of February 12, 2019 shall be effective for a term expiring upon the earliest of (A) the termination of this Agreement or (B) the termination of the Sales Tax Documents pursuant to Section 3.2 hereof.

(iii) The authorizations set forth in the Sales Tax Documents shall automatically be suspended after notice to the Company that the Company shall be in default beyond any applicable grace period under this Agreement until the Company shall pay any amounts due, and/or perform all of its obligations, with respect to any such default.

(iv) The sales and use tax exemption to be provided pursuant to the Sales Tax Documents:

(A) shall only be utilized for items of Project Equipment which shall be purchased or leased for incorporation into or use (i) at the Project Facility, and (ii) solely by the Company and its Affiliates (and not with any intention to sell, transfer or otherwise dispose of any such items of Project Equipment to a Person as shall not constitute the Company or an

Affiliate);

(B) shall be available only for the purchase of tangible personal property having a useful life of not less than one year and which is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure, and for the leasing of tangible personal property having a useful life of not less than one year, which, if purchased, would be capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure;

(C) shall not be available for any date subsequent to which the Sales Tax Documents shall have been suspended as provided in Section 2.2 (c)(iii) hereof; provided, however, that in the event the Company shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver; and

(D) shall not be available subsequent to the termination of this Agreement.

(v) In the event that the Company shall knowingly utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Documents in violation of the provisions of Section 2.2(c)(iv) hereof, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company.

(vi) Upon request by the Agency of, and reasonable notice to the Company and subject to the Company's confidentiality requirements, the Company shall make available at reasonable times to the Agency all such books and records of the Company and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency, as shall be necessary to indicate in reasonable detail those costs to which the Company shall have utilized the Sales Tax Documents and the dates and amounts so utilized.

(vii) The Company shall use commercially reasonable efforts to obtain covenants to the Agency from each materialman, supplier, vendor or laborer to whom the Sales Tax Documents is presented by the Company to the effect that such materialman, supplier, vendor or laborer shall not utilize the Sales Tax Documents for any purpose other than for the Project Activities.

(d) The Company shall observe and comply with the terms and conditions of

the Sales Tax Documents.

(e) The Sales Tax Documents shall not be delivered by the Agency unless the Company shall have completed and submitted to the Agency Form ST-60 and Form ST-123 in the form provided by the Tax Department. In addition, the Company shall not permit any sub-contractor or sub-agent to avail itself of the Sales Tax Documents until the Company shall have submitted to the Agency a completed Form ST-60 and Form ST-123 in respect to such sub-contractor or sub-agent. Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be the agent for the Agency in connection with the Project Activities (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Company shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Project Equipment on the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Documents issued to the Company by the Agency which is in the Company's possession or in the possession of any agent of the Company. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project Activities is or shall be exempt from sales taxes or use taxes under the laws of the State. At the time of execution of this Agreement, the Company shall deliver to the Agency copies of all such annual reports filed with the Department of Taxation and Finance prior to the date hereof.

(f) If desired, the Company shall enter into a sub-agent indirect appointment agreement(s) with its contractors and subcontractors or other third party agents, as the case may be, in a form attached hereto. Said indirect appointment agreement shall include a copy of the contract between the Company and the contractor/subcontractor and shall also require the contractor/subcontractor to provide proof of insurance as may be required by this Agent and Equipment Lease Agreement. The indirect appointment agreement shall also require the contractor/subcontractor to provide the Company with the information concerning the sales tax exemptions claimed on an annual basis. The Company must promptly provide the Agency with the appointment agreement and the NYS Form ST-60 so that it may be filed with the NYS Department of Taxation and Finance within thirty (30) days of appointment.

(g) Contractors and subcontractors that have been duly appointed as Agency subagents shall claim the sales tax exemption for all authorized construction material purchases by providing each vendor with NYS Form ST-120.1.

(h) The Company must file Form ST-340 with the NYS Department of Taxation and Finance, on or before the last day of February each year, reporting the amount of Agency sales tax exemptions claimed for the prior calendar year.

(i) If requested by the Agency, the Company agrees to submit to the Agency appropriate schedules or registries, in such form as the Agency shall reasonably require, regarding all Project Equipment that has been purchased under the Sales Tax Documents. Said registries are to be submitted within ninety (90) days after the Commencement Date for all prior purchases, and thereafter on February 28 for purchases of items made for the preceding calendar year. Said schedules or registries will contain items such as identification and description of

each item of Project Equipment, the cost of each such item and the corresponding amount of sales tax exemption availed of by the Company.

SECTION 2.3 Taxes, Assessments and Charges. The Company shall pay all taxes and governmental charges and assessments which are required to be paid by the Company in respect of the Project Facility and the Company's activities at the Project Facility (all such taxes shall hereinafter be referred to as "Impositions"), other than those Sales Taxes and other taxes, fees and impositions from which the Project Activities and the Project Equipment are duly exempted pursuant to the Sales Tax Letter and the terms and conditions of this Agreement. The Company may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

SECTION 2.4: Lease of the Project Equipment. The Agency hereby leases to the Company, and the Company hereby leases from the Agency, for a term (the "Term") commencing on the Commencement Date and expiring on August 31, 2020, the Project Equipment in its entirety, including, without limitation, any Project Equipment acquired after the date of this Agreement pursuant hereto. Upon the acquisition, furnishing, installation or replacement of the Project Equipment, such property shall become subject to the leasehold interest of the Company under this Agreement.

SECTION 2.5: Rental Provisions.

(a) **Base Rent.** The Company shall pay to the Agency, on the Commencement Date, base rental for the leasing of the Project Equipment ("Base Rent") for the entire Term in the amount of One Dollar (\$1.00).

(b) **Excess Benefits Rent.** [Reserved]

(c) **Additional Rent.** Throughout the term of this Agreement, the Company shall pay to or for the benefit of the Agency any additional amounts required to be paid (i) by the Agency which arise under this Agreement and/or (ii) by the Company to or for the account of the Agency under this Agreement (including, without limitation, all amounts expended by the Company as agent for the Agency in connection with the furnishing and equipping of the Project Facility), and any such additional amounts shall be paid as, and shall represent payment of, additional rent (such payments "Additional Rent"). Within fifteen (15) days after receipt of a demand therefor from the Agency, the Company shall pay to or for the benefit of the Agency the Additional Rent, including the sum of the reasonable expenses of the Agency and the officers, members, agents and employees thereof (including reasonable attorney's fees and expenses) incurred pursuant to this Agreement and as required to carry out the Agency's duties and obligations under this Agreement, and any other fee or expenses of the Agency with respect to the Project Facility and/or the lease of the Project Equipment to the Company, for which payment is not otherwise provided for under this Agreement. All notices, bills, charges, invoices, notices of liens, and correspondence received by the Agency (and payable by (or otherwise affecting) the Company under this Agreement) shall be immediately delivered to the Company (to the extent the Company is not already an addressee of the same).

IDA' UTEP

j. Recapture Policy:

i. BASIS TO PURSUE RECAPTURING BENEFITS:

1. It shall be the policy of the Agency to consider recapturing benefits (Financial Assistance) for a project if any of the following conditions apply:
 - a. Sale or closure of the facility and departure of the company from the County of Fulton (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance).
 - b. Significant change in the use of the facility and/or the business activities of the company.
 - c. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions.
 - d. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency.
 - e. Failure to meet or comply with specified Material Factors, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the Inducement Resolution and/or Preliminary/Project Agreement. Material Factors may include but not be limited to the following (each project is not required to include all of the Material Factors listed below, as Material Factors are determined on a project-to-project basis)
 - 1) **Create or Retain Jobs**
If the company meets 85% of its projection, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by annual reporting by the company to the Agency.
 - 2) **Private Sector Investment**
If the company meets 85% of its total project cost, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by the completion of an affidavit from the company to the Agency at the time of the project completion detailing the total project cost.

- 3) **Local Labor Construction**
If the company meets 85% of its estimated usage of local labor forces, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on a one time basis by the completion of an affidavit from the company to the Agency at the time of the project completion detailing the usage of local labor forces.
- 4) **Wage Rates**
If the company meets 85% of its projection, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by annual reporting by the company to the Agency.
- 5) **Increased Property Value**
If the company meets 85% of its projected increased total assessed value at the time of projection completion, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on a one time basis by a review of the assessed value of the project facility upon completion of the project.
- 6) **Increased Revenue to Local Taxing Jurisdictions**
If the company meets 85% of its projected increased revenues, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on by annual reporting by the company to the Agency of consisting of data relative to the revenues generated by the project.

[NOTE: Each project will not be required to include all the Material Factors listed above. The Agency shall determine for each project what Material Factors shall apply to each project.]

- f. For a project that failed to comply with a material term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

II. RECAPTURE OF REAL PROPERTY TAX BENEFITS:

1. For companies receiving real property tax abatements, the Agency's schedule for recapturing real property tax benefits shall be (applicable to the real property tax abatements) as follows:

Years 1-5 of PILOT: 100% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 6-7 of PILOT: 75% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 8-9 of PILOT: 50% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Year 10 of PILOT: 25% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 11+ of PILOT: 0% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions.

2. The recapture shall be applicable to the time periods above are from the effective date of the PILOT Agreement.
3. Any real property tax exemptions recovered, recaptured, received or otherwise obtained shall be payable to the appropriate taxing jurisdictions, unless otherwise agreed to in writing by the taxing jurisdiction.

III. RECAPTURE OF SALES TAX BENEFITS:

1. In addition to the above reasons for recapture, the Agency shall recover, recapture, receive or otherwise obtain from the company, or its subagents, sales tax benefits that were taken or purported to be taken which are:
 - a. In excess of the amounts authorized.
 - b. For property or services not authorized.
 - c. For a project that failed to comply with a material term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.
2. For purposes of this Recapture Policy, the Company and its subagents shall cooperate with the Agency in its efforts to recover, recapture, receive or otherwise obtain such State sales and use benefit exemptions.
3. The Company and its subagents shall promptly pay over such amount to the Agency that the Agency requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of Taxation and Finance to assess and determine State sales and use taxes due from the Company under Article 28 of the New York State Tax Law, together with any penalties and interest due on such amounts.
4. In the event that the Agency recovers, recaptures, receives or otherwise obtains any amount of State sales and use tax exemption benefits from the Company or its agents, the Agency shall, within thirty (30) days of coming into possession of such amount, remit it to the