



Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities

This memorandum summarizes the amendments to the General Municipal Law and the Public Authorities Law that reform the way Industrial Development Agencies and Authorities provide sales and use tax (sales tax) exemption benefits. It also includes general information and current department policy with respect to IDAs.

Recently enacted legislation (Chapter 59 and Chapter 304 of the Laws of 2013) amended certain provisions of the General Municipal Law (GML) and the Public Authorities Law (PAL) to reform the way Industrial Development Agencies and Authorities (IDAs) allow sales tax exemption benefits. This memorandum describes general and current department policy, includes information about how properly appointed agents of IDAs can make purchases exempt from tax, and summarizes the legislative changes.

Specifically, the changes made by Chapter 59 relating to IDAs include:

- new recordkeeping and reporting requirements;
- new requirements related to the recapture of certain sales tax exemption benefits; and
- limitations on providing sales tax exemption benefits to certain retail sales projects or facilities.

General information and current department policy

IDAs are public benefit corporations established under the GML and the PAL. IDAs are established to promote, develop, encourage, and assist in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in the state. The purpose of IDAs is to advance job opportunities, and the health, general prosperity, and economic welfare of the people of the state.

IDAs are exempt from the payment of sales tax on all of their purchases under section 1116(a)(1) of the Tax Law. However, it is not normal practice for an IDA itself to make purchases. Typically, an IDA appoints a business and/or developer, contractor, or subcontractor as its agent for this purpose. When a project operator or agent (agent) has been appointed by the IDA to act on its behalf, purchases made by the agent acting within the authority granted to it by the IDA are deemed to be purchases made by the IDA and are, therefore, exempt from sales tax. The IDA must file [Form ST-60, IDA Appointment of Project Operator or Agent](#), with the Tax Department when appointing agents.

Making purchases exempt from sales tax

Agents of an IDA should use [Form ST-123](#), *IDA Agent or Project Operator Exempt Purchase Certificate*, to make purchases for the project exempt from state and local sales taxes as an agent of the IDA.

Previously, TSB-M-87(7)S, *Tax Status of IDA Projects*, instructed agents to provide suppliers with a copy of a letter from the IDA written on IDA letterhead authorizing the agent to make qualifying project-related purchases. The new exempt purchase form ([Form ST-123](#)) supersedes this advice. Agents should now use [Form ST-123](#), **beginning June 1, 2014**, to make purchases exempt from state and local sales tax.

Contractors or subcontractors that are not agents of an IDA will continue to present their suppliers with [Form ST-120.1](#), *Contractors Exempt Purchase Certificate*, when making purchases that are exempt from sales tax under sections 1115(a)(15) and 1115(a)(16) of the Tax Law.

New recordkeeping and reporting requirements

The new law requires an IDA to keep records of the sales tax exemption benefits it provides and make those records available to the Tax Department upon request. It also requires an IDA to report the estimated amount of sales tax exemption benefits it provides to an agent (along with any other information required to be reported) within 30 calendar days of granting those benefits. An IDA can meet this reporting requirement by filing [Form ST-60](#) with the Tax Department. Failure to file the report or to make records available could result in the revocation of the IDA's authority to provide sales tax exemption benefits.

In addition, the new law requires that an IDA must include the terms and conditions described in GML section 875(3), including provisions regarding recapture of benefits, within each of its resolutions and project documents that: 1) establish a project, or 2) appoint an agent or project operator for a project. Also, each agent, project operator, or other person or entity that will enjoy state sales tax exemption benefits provided by an IDA must agree to those terms and conditions, prior to receiving the state sales tax exemption benefits from an IDA.

Also, if an IDA amends, revokes, or cancels its appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 calendar days, send a letter to the address on the [Form ST-60](#). The letter should explain that the agent's appointment has been amended, revoked, or canceled, or is no longer valid and include the effective date of the change. An IDA should attach a copy of the [Form ST-60](#) it originally filed to the letter.

The new law provides that an IDA must prepare an annual compliance report detailing the terms and conditions of each of its projects, its activities and efforts to recapture any state sales tax exemption benefits due, and any other information the Commissioner of Taxation and Finance, and the Commissioner of Economic Development may require. The report must be filed with the Commissioner of Taxation and Finance, the Director of the Budget, the Commissioner of Economic Development, the State Comptroller, and the municipality's governing body.

Failure to file the report could result in the revocation of the IDA's authority to provide state sales tax exemption benefits.

The new law also authorizes the Tax Department to audit the records, actions, and proceedings of an IDA and its agents to ensure that they comply with these requirements.

In addition to the reporting and filing requirements:

- An IDA must report and post on the Internet free copies of its resolutions and agreements (including agent appointments) related to any IDA projects it establishes.
- An IDA must also provide, without charge, copies of all reports and information related to a project upon request.

In complying with this new requirement, an IDA may, at the request of an agent, delete any information contained in a report that is specifically exempt from disclosure under the Freedom of Information Law.

New requirements related to recapture of certain sales tax exemption benefits

The new law 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,
- the benefits were in excess of the amounts authorized,
- the benefits were for unauthorized property or services, or
- the benefits were for property or services not used according to the terms of the agreement with the IDA.

Project operators or agents, or other persons or entities, must cooperate with the IDA in its effort to recapture state sales tax exemption benefits. Any failure by the project operator or agent, or other person or entity that received state sales tax exemption benefits to pay over improperly granted sales tax exemption benefits to an IDA could result in an assessment to the project operator or agent, or other person or entity, of the state sales tax due, together with penalties and interest. IDAs must remit recaptured state sales tax exemption benefit amounts to the Tax Department within 30 calendar days.

Limitations on providing sales tax exemption benefits to certain retail sales projects or facilities

As amended by Chapter 59, the GML imposes certain limitations on the types of projects to which IDAs established under the GML may provide *financial assistance*. These new amendments provide that, with certain exceptions, IDAs may not grant financial assistance to a project that will include facilities or property where *retail sales* are made to customers who personally visit the facilities, if the cost of those retail sales facilities is more than one-third of the total project cost. Chapter 304 amends the PAL to also impose this limitation on the City of Auburn IDA. The limitation does not apply when the project is a *tourism destination*.

However, an IDA may provide financial assistance to a retail sales project if:

- the project's predominant purpose is to make available goods or services that are not readily accessible to residents of the municipality where the project is located; or
- the project is located in a *highly distressed area*.

In addition, when a retail sales project meets these conditions, the project may not receive approval unless the IDA finds after a public hearing that undertaking the project will serve the public purpose of preserving or increasing permanent private sector jobs in the state. The chief executive officer of the municipality for whose benefit the IDA was created must also confirm the proposed action of the IDA before financial assistance may be provided.

For purposes of this memorandum the following terms apply:

Financial assistance shall mean the proceeds of bonds issued by an agency, straight-leases, or exemptions from tax claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.

Retail sales means sales by a vendor registered for sales tax purposes who is primarily engaged in the retail sale of tangible personal property or services.

Tourism destination means a location or facility that is likely to attract a significant number of visitors from outside the economic development region, as defined by section 230 of the Economic Development Law, where the project is located.

Highly distressed area means:

- a census tract or tracts or block numbering area or areas, or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has: (i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates; or
- a city, town, village, or county within a city with a population of one million or more for which: (i) the ratio of the full value property wealth, as determined by the comptroller for the year 1990, per resident to the statewide average full value property wealth per resident; and (ii) the ratio of the income per resident, as shown in the 1990 census to the statewide average income per resident, are each fifty-five percent or less of the statewide average; or
- an area which was designated an empire zone under Article 18-B of the GML.

Effective dates

The amendments made by Chapter 59 took effect March 28, 2013, and apply to:

- any project established and any agent or project operator appointed and any financial assistance provided or agreement for payment in lieu of taxes entered into on or after that date;
- any amendment or revision for additional funds or benefits made on or after March 28, 2013, relating to any project established, agent or project operator appointed, financial assistance provided, or agreement for payment in lieu of taxes entered into before that date; and
- any state sales tax exemption benefits or payments in lieu of state sales taxes recaptured by an IDA on or after that date.

The amendments made by Chapter 304 took effect August 30, 2013.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.