

Tax Status of IDA Projects

The following TSB-M reflects the policy of the Tax Department on Industrial Development Agency (IDA) projects.

Industrial Development Agencies (IDA) are public benefit corporations established pursuant to the authority of Article 18-A of the General Municipal Law for the purpose of promoting, developing, encouraging and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreational facilities in this State and thereby advancing the job opportunities, health, general prosperity and economic welfare of the people of this State.

To accomplish its purpose an IDA will normally enter into an inducement agreement with a business enterprise whereby it agrees to make Industrial Development Bonds (IDB) available for the financing of a certain project. Typically, an IDB financed project is constructed and owned by the IDA and leased under a financing lease to the business enterprise. The terms of the financial lease essentially provide for payments which will amortize debt service on the bonds, and the business enterprise has the option to eventually purchase the project.

Generally it is a requirement of IDB financing that all equipment and property purchased for the projects become the property of the IDA. The assets comprising each project are security for the bonds issued and bond purchasers hold a security interest in all the assets, title to which is held in the name of the IDA.

The IDA as a public benefit corporation is exempt from the payment of sales tax on all of its purchases in accordance with Section 1116(a)(1) of the Tax Law. However, it is not the normal practice of the IDA to actually make purchases. Commonly, the IDA appoints the business enterprise and/or developer, contractor, or subcontractor as its agent for this purpose. Where an agent has been appointed by the IDA to act on its behalf, purchases made by the agent acting within the authority granted to him by the IDA are deemed to be made by the IDA and therefore exempt from tax.

Example (1): Agency agreement states that Contractor X may make all purchases of materials and equipment necessary for completion of the project as agent for the IDA. Contractor X rents a backhoe and bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All of these purchases by Contractor X as agent for the IDA would be exempt from tax.

Example (2): Agency agreement states that Contractor X may make all purchases of materials and equipment which will be incorporated into the project as agent for the IDA. Contractor X makes the same purchases as in Example (1). Since the concrete, lumber and machinery will actually be incorporated into the project, the Contractor may purchase these items without the payment of tax. Rental of the backhoe and bulldozer is taxable to the contractor since these transactions are normally taxable to the contractor and the contractor is not allowed by its agreement to make such rentals as agent for the IDA.

Contractors and others (purchasers) appointed as agents for the IDA should obtain a letter from the IDA written on IDA letterhead, signed by a responsible officer of the IDA and containing a statement identifying the contract, the project, and the purchaser, and authorizing the purchaser to make purchases for the project as agent of the IDA. When making purchases as agent, the purchaser need only provide the supplier with a copy of this letter to establish the exemption. The supplier must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent for the IDA was the purchaser.

Contractors or subcontractors not given agency status must present their suppliers with the "Contractors Exempt Purchase Certificate" Form ST-120.1 when making purchases that are ordinarily exempt from tax in accordance with Sections 1115(a)(15) and 1115(a)(16) of the Tax Law.

Neither labor charges associated with the construction or repair to the realty of an IDA nor the cost of installing tangible personal property owned by an IDA are subject to tax.

As a result of the decision in the Matter of Wegmans v Dept. of Taxation and Finance 126 Misc. 2d 144., the aforementioned guidelines will also apply to projects only partially funded or not funded at all by IDB's as long as the property purchased becomes the property of the IDA.

Example (3): An IDA obtains title to all land, buildings and tangible personal property, but does not finance the entire project. The project is leased to a business enterprise. None of the purchases which become the property of the IDA are subject to sales tax.

Example (4): Same facts as above except that the IDA does not finance any part of the project. Again none of the purchases which become the property of the IDA are subject to sales tax.

Example (5): The occupant of an IDA project is required to replace any and all tangible personal property that becomes obsolete and is required to make all necessary repairs to the buildings. All payments are made by the occupant, but title to all tangible personal property vests in the IDA. All purchases are exempt from sales tax if the occupant provides the vendor with a copy of a letter from the IDA containing all the elements required for a contractor acting as agent for the IDA, as described on page 2 in the paragraph following example (2).

These guidelines apply to IDA projects whose agreements are structured similar to the terms stated herein. They should not be used for IDA projects which are structured substantially different or projects with other governmental units or organizations in possession of an Exempt Organization Certificate (ST-119). Purchases and sales made in connection with contracts for these other tax exempt entities will be treated as they have been in the past. (See TSB-M-82(2)S).