

**IDA Annual Compliance Report  
State Sales Tax Recapture****ST-62**  
(1/18)For IDA fiscal year ending 12 31 24  
(mmddyy)

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

**IDA information**

Name of IDA Town of Brookhaven IDA	
Street address 1 Independence Hill	Telephone number ( 631 ) 406-4244
City Farmingville	State NY
	ZIP code 11738

**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 Lisa Mulligan	Print title of person signing on behalf of the IDA CEO
Signature 	Date 03-06-2025
	Telephone number ( 631 ) 406-4244

**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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notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of 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 compounded daily 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 or any Agent (as applicable).

(k) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or an Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 5.2.

**Section 5.3 Mortgage Recording Tax Exemption.** Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law. The Agency hereby grants to the Company exemption from mortgage recording taxes for one or more Mortgages securing an aggregate principal amount not to exceed **\$179,250.00** or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing of the Project Work and any future financing, refinancing or permanent financing of the costs of the Project Work for the Facility (the **"Mortgage Recording Tax Exemption"**). The Company represents and warrants (1) that the real property secured by the Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

**Section 5.4 Recapture of Agency Benefits.**

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the Public Purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(i) If there shall occur a Recapture Event after the Closing Date, but on or before December 31, 2029, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(ii) If there shall occur a Recapture Event on or after January 1, 2030 but on or before December 31, 2031, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy-five percent (75%) of the Recaptured Benefits;

(iii) If there shall occur a Recapture Event on or after January 1, 2032 but on or before December 31, 2034, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;

(iv) If there shall occur a Recapture Event on or after January 1, 2035 but on or before December 31, 2037, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and

(v) If there shall occur a Recapture Event on or after January 1, 2038, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term "**Recaptured Benefits**" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by the Lease Agreement including, but not limited to, the amount equal to 100% of:

(i) the Mortgage Recording Tax Exemption; and

(ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the "**Company Sales Tax Savings**"); and

(iii) real property tax abatements granted pursuant to Section 5.1 hereof (i.e., Taxes on the Facility less the PILOT Payments) (the "**Real Property Tax Abatements**");

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

(c) The term "**Recapture Event**" shall mean any of the following events:

(i) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (iv) below or in subsections (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(ii) The Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or

(iii) The sale of the Facility or closure of the Facility and/or departure of the Company from the Town of Brookhaven, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or

(iv) Failure of the Company to create or cause to be maintained the number of FTE jobs at the Facility as provided in Section 8.11 of the Lease Agreement, which failure, in the sole judgment of the Agency, is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

(v) Any significant deviations from the Project Application Information which, in the sole judgment of the Agency, would constitute a significant diminution of the Company's activities in, or commitment to, the Town of Brookhaven, Suffolk County, New York; or

(vi) The Company receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount or after the Termination Date; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

(d) Provided, however, if a Recapture Event has occurred due solely to the failure of the Company to create or cause to be maintained the number of FTEs at the Facility as provided in Section 8.11 hereof in any Tax Year but the Company has created or caused to be maintained at least 90% of such required number of FTEs for such Tax Year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, adjust the PILOT Payments due hereunder on a pro rata basis so that the amounts payable will be adjusted upward retroactively for such Tax Year by the same percentage as the percentage of FTEs that are below the required FTE level for such Tax Year. Such adjustments to the PILOT Payments may be made each Tax Year until such time as the Company has complied with the required number of FTEs pursuant to Section 8.11 hereof.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish, and to cause any sublessee of the Facility to furnish, the Agency with written notification within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Company shall pay to the Agency all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4.

## ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

### Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any material part of the Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility or cause the Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility; and (iii) operate the Facility in a sound and economic manner.

(b) The Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. The Company may not make any changes to the footprint of the Facility, and any additions expanding the square footage of the Facility (including the addition of any stories whether above or below ground) or make any additions, modifications or improvements to the Facility which will materially and/or adversely affect the structural integrity or value of the Facility without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed. All such additions, modifications or improvements made by the Company after the date hereof shall become a part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or an interest in such Property.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.5 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur: (i) if any Event of Default has occurred or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the