



INDUSTRIAL DEVELOPMENT AGENCY
Town Of Brookhaven

Lisa M. G. Mulligan, Chief Executive Officer

March 20, 2024

NYS Tax Department
IDA Unit
W.A. Harriman Campus
Albany, NY 12227-0866

Dear Sir/Madam:

Enclosed is a completed ST-62 form for the Town of Brookhaven Industrial Development Agency for the 2023 fiscal year.

If you have any questions, please do not hesitate to contact me at (631) 406-4244.

Sincerely,

Lisa M. G. Mulligan
Chief Executive Officer

LMGM:jl
Enclosure



IDA Annual Compliance Report State Sales Tax Recapture

For IDA fiscal year ending 12 31 23
(mmddyy)

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

IDA information

Name of IDA Town of Brookhaven Industrial Development Agency		
Street address One 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 M. G. Mulligan	Print title of person signing on behalf of the IDA Chief Executive Officer
Signature 	Date 03-20-2024
	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**

more Mortgages securing an aggregate principal amount not to exceed \$[_____] ⁵, 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, [year of Closing Date + 3] ⁶, 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, [year of Closing Date + 4] but on or before December 31, [year of Closing Date + 5], 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, [year of Closing Date + 6] but on or before December 31, [year of Closing Date + 7], 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, [year of Closing Date + 8] but on or before December 31, [year of Closing Date + 8], 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, [year of Closing Date + 9], the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

⁵ Insert maximum amount from Authorizing Resolution.

⁶ For PILOTs longer than 10 years, increase recapture period accordingly

(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 (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 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 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 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.