

## **TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY POLICY FOR RECAPTURE, TERMINATION, OR MODIFICATION OF FINANCIAL ASSISTANCE**

**Purpose:** The purpose of this policy is to establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law for the recapture, termination, or modification of all or a portion of Agency Financial Assistance.

**Annual Review:** The Agency staff will review annual reports it receives from companies receiving financial assistance to determine compliance with the Material Factors or other Significant Factors as set forth in the Inducement Resolution, Project and Agent Agreement, or other Project documents. If the Agency staff determines that a company appears to be in violation of a Material or Significant Factor, the project will be referred to a review committee consisting of the Agency's Executive Director, Chairman, and one additional Board member selected by the Chairman for full review.

### **Non-Compliance Process:**

1. The Agency shall notify the company in writing that in the Agency's determination they are or have violated a Material or Significant Factor. The notification will include the Factor(s) violated and seek an explanation from the company that may include economic or natural factors that led to the violation. These factors should be discussed and analyzed to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company.
2. The company shall be given an opportunity to remedy the violation and will have thirty (30) days to provide a written response or seek an extension of such response.
3. Upon receipt of the company's response, the Agency staff will review the same with the review committee. The company shall be provided the opportunity to present before the review committee any information in the written response outlined above regarding why the Factor was not achieved.
4. Upon hearing the company's position, the review committee will make a recommendation for proposed action and forward the matter to the full Town of Lockport IDA Board of Directors for

consideration. The full IDA Board of Directors may, at its discretion, give the company an opportunity to appear before the Board to provide information relevant to the Board's determination. A determination will be made by the IDA Board of Directors clearly stating the reason to, or not to, recapture and/or modify and/or reduce financial assistance, and the same will be entered into the minutes of a meeting of the Board of Directors.

5. Notwithstanding the foregoing, the IDA Board of Directors, acting through its staff, retains the right to terminate Agency benefits for other significant factors. Cause for such termination of Agency benefits include, but are not limited to, failure to make PILOT payments, failure to make reports to the IDA as detailed in transaction documents, failure to maintain insurance requirements, or other uncured breaches of IDA transaction documents.

**Distribution of Recaptured Financial Assistance:**

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by a local taxing jurisdiction.

**VIII. Recapture of Benefits**

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so), with respect to a particular project, that a project has failed to meet its intended goals and may require the project applicant to agree to the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. Events, in the sole determination of the Agency, that trigger recapture may include, but are not limited to, the:

1. Sale or closure of facility;
2. Significant employment reduction;
3. Significant change in use in facility;

4. Significant change in business activities of project applicant or operator; or

5. Material noncompliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations.

If the Agency determines to provide for the recapture with respect to a particular project, the Agency also shall, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture.

#### **IX. Effective Date**

This Uniform Tax Exemption Policy shall apply to all projects for which the Agency has adopted or adopts an inducement Resolution after April 15, 2009 and all refinancing of any project induced or closed before said date.

#### **X. Amendments**

The Agency, by resolution of its members, and upon notice to all affected taxing jurisdictions as may be required by law, may amend or modify the foregoing policy as it may, from time to time, in its sole discretion determine.