

**COUNTIES OF WARREN AND WASHINGTON  
INDUSTRIAL DEVELOPMENT AGENCY**

**RECAPTURE POLICY**

Section 1.     Reasons for the recapture of benefits (Financial Assistance) include the following:

- a. Sale or closure of the facility and departure of the company from the Counties of Warren or Washington (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance).
- b. Significant change in the use of the facility and/or the business activities of the company.
- c. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions.
- d. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency.
- e. Failure to meet or comply with the Material Terms, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the Inducement Resolution, Preliminary Agreement.

These "Material Terms" as defined for the particular project will be utilized by the Agency in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the Agency's recapture policy.

For certain numerical "Material Terms" such as job creation/retention or investment amount an achievement factor of 80% will constitute compliance. For non-numeric "Material Terms" such as redevelopment of an old structure for a new purpose or location on a Brown Field site, a determination of compliance will be made upon completion of the project.

It is understood that these "Material Terms" may vary depending on project type and project specifics, and may be selected from the criteria set forth in the foregoing Section A, 2 Impact on Local Economy in the Policy Manual of the Agency.

- f. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

Section 2. For companies receiving real property tax abatements the recapture of benefits schedule (applicable to the real property tax abatements) is as follows:

Years 1-5      100% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 6-7      75% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 8-9      50% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Year 10        25% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 11+      0% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions.

The time period above is from the effective date of the PILOT Agreement.

In the case of real property taxes, any amounts recovered, recaptured, received or otherwise obtained shall be payable to the appropriate taxing jurisdictions, unless otherwise agreed to in writing by the taxing jurisdiction.

Section 3. In addition to the above reasons for recapture, the Agency shall recover, recapture, receive or otherwise obtain from the company, or its subagents, sales tax benefits that were taken or purported to be taken which are:

- a. In excess of the amounts authorized; or
- b. For property or services not authorized; or
- c. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

For purposes of this Recapture Policy, the Company and its subagents shall cooperate with the Agency in its efforts to recover, recapture, receive or otherwise obtain such State sales and use benefit exemptions and shall promptly pay over such amount to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of Taxation and Finance to assess and determine State sales and use taxes due from the Company under Article 28 of the New York State Tax Law, together with any penalties and interest due on such amounts.

In the event that the Agency recovers, recaptures, receives or otherwise obtains any amount of State sales and use tax exemption benefits from the Company or its agents, the Agency shall, within thirty (30) days of coming into possession of such amount, remit it to the Commissioner of Taxation and Finance, together with such other information and report that the Commissioner deems necessary to administer payment over such amount.

#### Section 4.

In the event that the agency determines that there exists a basis for recapture as set forth in Section 1 herein, the Agency shall notify the company, in writing, that the Agency has determined that a basis for recapture exists. The company shall be given a reasonable timeframe within which to remedy the violation, such timeframe being commensurate to the violation, and the company shall provide additional information and/or an explanation as to why the violation has occurred or the Material Term has not been achieved, as the case may be. If requested by the Agency, the company shall make a presentation to the Agency concerning this default.

Thereafter the Agency may make a determination pursuant to this Recapture Policy. Imposition of any recapture is at the sole discretion of the Agency and is reviewed/considered on a case by case company, the Agency, at its sole discretion, may make a determination to discontinue the Financial Assistance in its entirety, per the provisions set forth in the Lease Agreement; or suspend the Financial Assistance for a specific stated period of time in order for the company to correct or comply with the Material Term being breached; or, in the case of real property taxes exemptions, modify the PILOT Agreement to decrease the exemption and increase the payments due for the remaining term of the PILOT Agreement.