

## **TOWN OF BETHLEHEM**

### **INDUSTRIAL DEVELOPMENT AGENCY**

#### **GUIDELINES AND PROCEDURES**

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#### A. INTRODUCTION

##### 1. BIDA

The Town of Bethlehem Industrial Development Agency (BIDA or the Agency) was established by an act of the New York State Legislature in 1973, as a public benefit corporation of the State of New York, under Section 895-d of the General Municipal Law. The Agency has the ability to undertake manufacturing, warehousing, commercial, industrial, research, industrial pollution control, recreation, railroad and civic facilities projects and issue its bonds, either tax-exempt or taxable, to help finance such projects.

##### 2. IDA GENERALLY

Industrial Development Agencies were created in New York State and throughout the nation to attract and enhance industrial and economic development, help create and retain jobs and maintain economic stability within municipal or regional boundaries. Because many state constitutions, including New York’s prohibit municipalities from making gifts or loans to private companies or individuals, the creation of IDA’s provided a viable mechanism to accomplish industrial development goals. Support of a healthy economy, the creation and retention of jobs, on local, regional and State levels is an important public policy objective.

##### 3. PURPOSES AND POWERS

In New York State the legislative intent was to promote economic welfare, recreation opportunities, prevent unemployment and economic deterioration, ensure the prosperity of the State’s inhabitants, and promote tourism and trade. Agencies were not

given taxing authority but were granted other broad powers, notably, to acquire and dispose of property and to issue debt. When an agency issues debt, either in the form of bonds or notes, interest on that debt is exempt from personal income taxes on interest income imposed by the State and all political subdivisions.

#### 4. MAJOR ACTIVITIES

##### a. ISSUANCE OF BONDS

**Issuance.** The major activity of IDAs has been the issuance of bonds (federally tax-exempt or taxable) to provide low-cost financing for businesses to acquire, construct and equip their business facilities and thus create and retain jobs, and provide for economic growth and stability in the community. The borrower (e.g. a corporation, partnership or sole proprietorship) agrees to make payments to retire the bonds obligations pursuant to a contractual agreement – usually a Lease or Installment Sale Agreement. Depending on the size of the bond issue and other factors, placement of the bonds, may be made privately or publicly.

The real property and the machinery are technically owned by the Agency. However, the borrower indemnifies the Agency against all claims and is wholly responsible for debt repayment.

**Tax-exempt Status.** The Internal Revenue Code of 1986, as amended, identifies two categories of bonds for federal purposes: private activity bonds and all other or “governmental bonds.” A bond is potentially a private activity bond if any entity other than a state or local governmental entity benefits directly or indirectly from the issuance of the bonds.

A tax-exempt issuance is one in which interest on the bond(s) is exempt from gross income for federal income tax purposes. In most instances federally tax-exempt bonds issued by IDAs are limited to Ten Million Dollars and are subject to all federal regulations and prohibitions governing tax-exempt status.

Bonds issued to provide facilities for 501 (c) (3) organizations such as not-for-profit corporations (Code Section 145), bonds issued to provide for manufacturing facilities (Code Section 144), and bonds issued to provide for facilities listed under Code Section 142, such as airports, docks, wharves, mass commuting facilities, and solid waste disposal facilities, to name some, qualify for tax-exempt status. Companies interested in bond financing should inquire regarding eligibility and additional requirements for tax-exempt financing.

In addition, all bonds issued in New York State will continue to be exempt from State personal income tax on interest income and sales tax. (See comparable benefits of tax-exempt and taxable issues in Section C. below).

##### b. SALE-LEASE TRANSACTIONS

In addition to the issuance of its bonds, an IDA can avail itself of another primary financing tool to encourage project development, namely, a straight lease transaction. Straight leases (also known as sale-leases) enable companies to receive the benefits of IDA project status without the need for the IDA to issue debt. Through a lease agreement, the Agency takes title to the property and/or the machinery and equipment and provides property and sales tax relief to the Project Company.

## B. ADVANTAGES AND DISADVANTAGES OF IDA FINANCING

### 1. ADVANTAGES

- a. Ability to borrow at significantly lower interest rates.
- b. Borrowing money through the issuance of tax-exempt or taxable industrial development bonds enables the borrower to access the public market.
- c. Exemption from mortgage recording tax.
- d. Potential real property tax modification. (See Attachment A).
- e. Exemption from sales tax for acquisition of construction materials and machinery and equipment.

### 2. DISADVANTAGES

- a. Number of parties involved in the transaction and the amount of additional documentation required.
- b. Restrictions on the types of projects permitted.
- c. Additional closing costs.

## C. COMPARISON OF TAX-EXEMPT AND TAXABLE BONDS

<u>FEATURE</u>	<u>TAX-EXEMPT</u>	<u>TAXABLE</u>
Interest Rate	Subject to market. Approximately 70% Of Prime with Investment bank, 90-95% with Commercial bank.	Subject to market. Similar to commercial rates: Prime to Prime plus 2.
Federal Income Tax Interest Income	Exempt	Applicable
NYS Personal Income on Interest Income	Exempt	Exempt

NYS Sales Tax	Exempt	Exempt
NYS Franchise Tax	Applicable	Applicable
Mortgage Recording Tax	Exempt	Exempt
Real Property Tax Abatement	Eligible	Eligible
Depreciation	40 years	31 1/2 years
Other Considerations	Subject to all Federal Reg. & Requirements, & Prohibitions	N/A

## D. PROCEDURES

### 1. APPLICATION PROCESS

BIDA entertains applications from developers on a first-come first-served basis, tax-exempt, financing, either public or private placement, will be offered unless federal legislation prohibits it.

#### a. BIDA FEES

Payments of all fees and associated closing costs may be paid for with a portion of the proceeds of the bond issue, subject to federal limitations.

A non-refundable Administrative fee of \$250.00 is charged on all applications. In addition, the Agency charges a general Agency fee, payable at time of closing, as follows:

- Tax Exempt Bond:  $\frac{3}{4}$  of 1% of the bond amount
- Taxable Bond:  $\frac{1}{2}$  of 1% of the bond amount
- Straight Lease:  $\frac{1}{2}$  of 1% of the cost of the project
- Not-for-profit:  $\frac{1}{2}$  of 1% of the bond amount

The developer is also responsible for payment of the Agency's counsel fee and bond counsel's fee.

#### b. ELIGIBLE PROJECTS

Only facilities which qualify as a "project" as defined in the New York State Industrial Development Agency Act, may be financed by the Agency. These include manufacturing, warehousing, research, commercial or industrial facilities; or industrial

pollution control, recreation, educational, cultural, horse racing, railroad and civic facilities. In addition, the project must be shown to serve a public purpose by creating or retaining employment.

The Agency may not finance a project which results in the removal of a facility from one area of the state to another, or the abandonment of a plant, unless such removal or abandonment is reasonable necessary to preserve the competitive position of the project occupant in its industry.

Included within the Agency's application is a general policy statement regarding fees and disclosure requirements, a hold harmless agreement and an environmental assessment form which describes the impact of the project on the environment. Also included is a form required by the State outlining specific job opportunities to be created as a result of project completion.

Once a completed application is delivered to the Agency, the Agency members will convene to review the application, and if approved, pass an Environmental Resolution and an Official Action ("Inducement") Resolution. The project is subject to an environmental review under the State Environmental Quality Review Act ("SEQR"). State law generally requires a public body to make an environmental determination prior to taking official action.

Once the SEQR and Inducement resolutions have been adopted, the developer may receive benefit of the tax-exempt status of the Agency for exemption from payment of sales tax on purchases of project machinery and equipment and/or construction materials. However, in the event that project does not close, the company is responsible for paying all applicable sales taxes to the State of New York.

## 2. OUTLINE OF PROCEDURES

1. Review of Project with the company.
2. Determination of tax-exempt eligibility.
3. Completion of Application and Long Form Environmental Assessment.
4. Delivery of Application to Administrative Director of Agency, Agency Counsel and Bond Counsel for review.
5. Schedule a meeting of the Agency and prepare public notice of meeting.
6. Preparation of SEQR and Official Action Resolutions.
7. Convene meeting and adopt resolutions.

8. Preparation of Public Hearing Notice and Public Approval Resolution for the Town Board.
9. Publication of Public notice at least 14 days prior to the scheduled date of the Public Hearing.
10. Public Hearing held. Minutes of the hearing forwarded to the Town Board for its meeting and consideration.
11. Meeting of the Town Board after public notice and adoption of Public Approval resolution.
12. Payment in lieu of tax (PILOT) negotiations. (Subject to Uniform Tax Exemption Policy – see Attachment A)
13. Company obtains commitment letter from institution providing financing (Underwriter and/or Bond buyer).
14. Preparation of draft bond documents and Volume Cap Allocation Request Form.
15. Ongoing negotiations and preparation of final Bond documents and Bond Resolution.
16. Reflecting the Town's desire to create jobs, preparation of NYS Employment Registration data. Arrangements made with NYS Job Service and Private Industry Council for employer interview.
17. Agency convenes to adopt Bond resolution.
18. Closing scheduled. Bonds delivered and proceeds made available to the Company for the Project.
19. IRS Form forwarded to NYS Department of Economic Development and the IRS.
20. Closing transcript prepared and distributed to all parties to the transaction.
21. Closing: Bond Sale and all documents including PILOT Agreement signed.
22. Within 15 days of closing a copy of the PILOT Agreement is delivered to each affected taxing jurisdiction.

23. On or before the taxable status date BIDA will submit to the Assessor a copy of the PILOT Agreement and an application for exemption on form EA-412-a describing the terms of the PILOT Agreement. BIDA will simultaneously mail or deliver a copy of the application form to the chief elected official of each school district, city, county, town and village within which the project is located.

24. Administration of file and retention of Records including case file, application, status reports, etc., and Official Transcript. (Records must be retained for a period of at least six (6) years after denial of application or final payment of debt. Official transcript is a permanent record). All IDA records and reporting is done pursuant to New York State reporting guidelines and requirements.

#### E. PAYMENT IN LIEU OF TAX (“PILOT”) AGREEMENTS

If real property owned by the Company is transferred to the Agency as part of the Bond transaction, the Agency becomes the “owner of record” of the property. As a tax-exempt agency, any real property owned by the Agency may be exempt from normal real property taxes, including school taxes in accordance with the Agency’s Uniform Tax Exemption Policy. (See Attachment A.)

Special assessments and special ad valorem levies, e.g. assessments for water, sewer, lighting and fire districts, however, are fully taxable and payments of such assessments shall become the responsibility of the Company as if the real property were in the name of the Company and not the Agency.

#### F. SALES AND USE TAX EXEMPTIONS

Under New York State Law, industrial development agencies are authorized to grant certain State tax exemptions including exemptions for mortgage recording tax, real property taxes (see Sec. E. above and the Agency’s Uniform Tax Exemption Policy Attachment A), and sales and use taxes for bond projects.

The past practice of the agency has been to grant the sales and use tax exemption benefit to companies for use in the acquisition of construction material and machinery and equipment only. The Agency does not condone or permit the exemption to be used by companies for operating expenses.

This policy and procedure has been incorporated into these guidelines in its entirety and may be found in Attachment B. Companies interested in obtaining this benefit should become familiar with its applications and limitations.

#### G. BOND COUNSEL

The Agency will consider an applicant's choice of Bond counsel if the applicant company so requests at the time of submission of the application and prior to the passage or adoption of the Official Action ("Inducement") Resolution. The company should attach a statement of qualifications and capabilities and any other additional justification for its choice of Bond Counsel to its application to the Agency.

These Guidelines and Procedures were adopted February 6, 1995 by unanimous vote of the members of the Bethlehem Industrial Development Agency.