

PUBLIC FINANCE INFORMATION MEMO

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Doing Business in New York Part 2: An Overview for Securing Financial Assistance from Industrial Development Agencies

For businesses that are considering a construction, renovation, expansion project and/or expanding operations into New York State, it is worth considering whether the economic development incentives that can be provided by an industrial development agency (IDA) are worth pursuing. This article is intended to provide you with an understanding of IDAs, including the basic structure of an IDA-assisted transaction and the types of financial assistance that IDAs are permitted to provide in New York State.

Under New York law, industrial development agencies are public benefit corporations governed by Article 18-A of the General Municipal Law (the GML). The GML authorizes IDAs to provide private entities (with the exception of not-for-profit corporations)¹ financial assistance for certain qualified “projects” to “promote the economic welfare, recreation opportunities and prosperity” of the residents of the municipality. The GML’s definition of “project” is very broad and includes most types of construction or expansion projects, although certain limitations exist (for example IDAs are prohibited from providing financial assistance to facilities used primarily in making “retail sales” to customers who personally visit the facility, subject to a few notable exceptions)². To see if a particular construction or expansion project is eligible for financial assistance, you should contact legal counsel and/or your local IDA.

Types of financial assistance that IDAs can provide include: (i) real property tax-abatement in the form of a Payment in Lieu of Taxes (PILOT), (ii) mortgage recording tax exemption; and (iii) sales and use tax exemption. IDAs are required to have a legal interest in the property to grant the requested exemption. More specifically, the IDA is required to take title to or a leasehold interest in the real and/or personal property involved in the project.

In general, in order for IDAs to provide financial assistance for qualified projects, the following steps must be completed³:

- 1. Environmental Review** – the company seeking financial assistance generally will work with architects and/or engineers to undertake an environmental review of the project site before submitting a financial assistance application. In particular, the company (along with its architects or engineers)

¹ The ability of IDAs to provide financial assistance to not-for-profit corporations or civic facilities expired in 2008. However, not-for-profit corporations may still obtain financial assistance from local development corporations (LDC) formed pursuant to Section 1411 of the Not-for-Profit Corporation Law. A detailed discussion of LDCs is beyond the scope of this article.

² GML Section 854(4) defines “project” as “any land, any building or other improvement, and all real and personal properties located within the State of New York within or outside or partially in and partially outside the municipality for whose benefit the agency was created . . . which shall be suitable for manufacturing, warehousing, research, commercial, renewable energy or industrial purposes or other economically sound purposes.”

³ Please note that certain prerequisites specified under GML Section 859-a, including the adoption of an inducement resolution, notification to affected tax jurisdictions, and the holding of a public hearing, are only required if the IDA is providing financial assistance in excess of \$100,000. Please also note that certain IDAs may impose additional requirements beyond what is outlined here.

will work with the local municipal planning board, which will make a determination with respect to the environmental impact of the project.

2. **Financial Assistance Application** – the company seeking financial assistance benefits is required to complete, sign, and submit an application for financial assistance. The application should be available on the IDA's website.
3. **Evaluation of Application** – the IDA staff should review and evaluate the application based on the IDA's criteria for evaluation and selection of projects for financial assistance, including whether the project is a qualified project under the GML. The IDA is also required to undertake a written cost-benefit analysis of the project. If the project involves the removal or abandonment of a facility or plant within the state, the IDA must provide notice to the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located.
4. **Inducement Resolution** – prior to providing financial assistance of more than \$100,000, the IDA Board must adopt an "inducement resolution," which should describe the project and the financial assistance being contemplated. The assistance must generally be consistent with the IDA's uniform tax exemption policy (UTEP), unless the IDA has followed the procedures for deviation from such policy.
5. **Notification to ATJs** – following the adoption of an inducement resolution, the IDA is required to send copies of the inducement resolution, as well as any other resolutions relating to a proposed deviation from the IDA's UTEP, to the chief executive officer of each affected tax jurisdiction (ATJ). When a school district is an ATJ, the IDA is required to provide notice to the district clerk and district superintendent.
6. **Schedule and Provide Notice of Public Hearing** – if the value of the requested financial assistance exceeds \$100,000, the IDA must schedule a public hearing with respect to the project and the proposed financial assistance being contemplated by the IDA. The IDA must provide notice of the public hearing by publishing a notice in the newspaper at least ten (10) days in advance of the hearing. The IDA should also post the notice to its website. Further, the IDA must provide notice of such hearing to the chief executive officer of each ATJ. The notice must state the time and place of the hearing, contain a general functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the IDA with respect to the project.
7. **Hold Public Hearing** – the public hearing must be held in a city, town, or village where the project proposes to locate. Interested parties must be provided with a reasonable opportunity, both orally and in writing, to present their views with respect to the project.
8. **Adopt SEQRA Resolution** – the IDA must comply with the State Environmental Quality Review Act (SEQRA) or make a determination that the action requires no further review under SEQRA as a "Type II" action. If not already determined, the IDA may be required to notify the local planning board and other "involved agencies" to determine "lead agency" status.
9. **Final Authorizing Resolution** – the IDA Board must adopt a resolution which authorizes the IDA to grant the applicant's requested financial assistance.

- 10. Company Resolution** – the exact timing of this may vary, but the company seeking financial assistance is generally required to authorize its officers to execute any agreements or other documents via a corporate resolution by its Board of Directors, Board of Managers, or shareholders.
- 11. Execution of Agency Project Agreement** – each IDA is required to develop a uniform agency project agreement that sets forth terms and conditions under which financial assistance may be provided. The exact timing of execution of this agreement may vary from deal to deal.
- 12. Due Diligence** – IDA and IDA counsel should undertake a due diligence review, which generally includes review of the certificate of incorporation or articles of organization, bylaws or operating agreement, good standing certificate, company resolution, insurance certificates/policies naming IDA as additional insured, decommissioning plan (if applicable), type of construction, and legal description of property, among other items.
- 13. Execution of Closing Documents** – IDA counsel will prepare the closing documents, to be executed by the IDA and the Company. The documents may vary depending on the financial assistance being requested, but generally include a Lease Agreement, Leaseback Agreement, PILOT Agreement, Bill of Sale, Environmental Indemnification Agreement, Job Creation and Recapture Agreement, Mortgage Tax Affidavit, general certificates, and opinions of counsel.
- 14. File Appropriate Documents with Tax Department, Assessors, and County Clerk** – the exact filings will depend on the structure of the transaction and the financial assistance being granted, but the following is a list of common filings:
 - a. Form ST-60** – filed by the IDA with the Tax Department within 30 days of the Company being appointed as agent of the IDA for sales and use tax purposes.
 - b. Form RP-412-a** – filed by the IDA with the assessor’s office on or before the appropriate taxable status date (March 1 for most, but not all, municipalities).
 - c. Memo of Lease and Memo of Leaseback** – filed by the IDA with the County Clerk to provide notice that the property is subject to a leasehold interest.
 - d. Form TP-584** – filed by the IDA with the County Clerk no later than the fifteenth day after the delivery of the instrument effecting the conveyance of real property.

The foregoing is intended as a summary of IDA-assisted transactions and not a comprehensive discussion, nor is it intended to serve as legal advice. If you have any questions related to IDA-assisted transactions in New York State, please contact [Matthew N. Wells](#), [Thomas R. Clifford](#) or the attorney at the firm with whom you are regularly in contact.

