

**COLUMBIA COUNTY
INDUSTRIAL DEVELOPMENT AGENCY
RECAPTURE OF BENEFITS POLICY**

NEW YORK STATE RECAPTURE POLICY PROVISIONS

In March 2013 the New York State Legislature approved the creation of newly required clawback/recapture provisions for New York State sales tax benefits. These provisions went into effect on the date of the passage of the New York State 2013-2014 budget. Accordingly, it is the policy of the Columbia County Industrial Development Agency to recapture New York State sales tax benefits on projects:

- In excess of the amounts authorized
- For property or services not authorized
- For a project that has failed to comply with a material term or condition to use the property or services in the manner required by the agreement with the IDA, including but not limited to the Project Benefits Agreement.

Further the IDA shall include in the project documents and applicable resolutions, the terms and conditions of the recapture provision. Once recaptured, the New York State sales tax benefits shall be remitted to the Department of Tax and Finance within thirty days of the recapture. Such remittances shall include any penalties and interest imposed by the IDA.

Furthermore, with respect to reporting and record keeping, the IDA shall take the following actions:

- The IDA shall keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- The IDA shall report within thirty days of providing any financial assistance, the amount, the project and other information as may be required by the New York State Tax Commissioner.
- The IDA shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales tax benefits.

With respect to any other benefits and/or financial assistance provided by the IDA, the Columbia County Industrial Development Agency has determined that its general policy shall be to provide in the Agency documents for recapture of benefits already provided to project applicants if the project applicant does not reach and maintain its employment requirements or otherwise defaults in connection with the PILOT Agreement, Lease Agreement, Project Benefits Agreement or any other Agreement between the IDA and the applicant (the "IDA Agreements"), including but not limited to failure to carry out the terms and provisions as represented in the application. At the time of any default, the IDA will at that time determine whether or not to exercise its right to recapture of benefits already provided to project applicants, and shall consider the following criteria in determining whether to proceed in the recapture of benefits:

1. Whether the applicant has proceeded in good faith.
2. Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the particular applicant.
3. Whether the enforcement by the IDA of recapture rights would create a more adverse situation for the applicant and the community, such as the applicant going out of business or declaring bankruptcy which would not occur if the recapture were not exercised.
4. Whether there is an adverse or negative effect on the community by the IDA's exercise of its rights to recapture of benefits.
6. Such other pertinent criteria as the IDA shall recognize as a relevant factor in connection with any decision for recapture of benefits.

It is the basic policy of the Columbia County Industrial Development Agency to encourage the continuation of existing businesses who have performed or intended to perform its obligations in good faith. In many instances, the mere discontinuance of the benefits by reason of the applicants default or failure to adequately perform as required under the IDA Agreements is enough of a negative factor so that additional recapture provisions would be an excessive penalty. On the other hand, a business that has made false representations, that has elected to locate elsewhere or that has improperly transferred assets or jobs to another location is less sympathetic to waiving the right to the recapture of benefits.

In conclusion, the issue of whether or not the IDA shall proceed to exercise its right to recapture benefits where the applicant is in default or has not performed in accordance with the requirements of the IDA Agreements, shall be on a case by case basis based upon the above criteria and the circumstances existing at that time.

Finally, nothing set forth herein shall in any manner affect the continuing rights of the Columbia County Industrial Development Agency to take any and all action it deems necessary in connection with any default by the applicant with respect to any of the IDA Agreements executed by the applicant with respect to the project and/or with respect to any representations made by the applicant. Upon such default by any applicant, then, upon determination by the Agency, all economic benefits provided to the applicant shall be terminated.