

**Oneida County Industrial Development Agency Recapture Policy  
(Effective April 25, 2017)**

**DEFINITIONS:**

|                              |   |
|------------------------------|---|
| "Company"                    | is the entity that applied for and received a benefit from the Agency.  |
| "Agency"                     | is the Oneida County Industrial Development Agency.   |
| "AER"                        | is the Company's annual report of employment required to be provided to the Agency.   |
| "Employment Obligation Term" | shall mean the period during which the Company is receiving a benefit in the form of lower payment in lieu of taxes than their real estate taxes would be.  |
| "Employment Obligation"      | shall mean the number of FTEs employed by the Company in Oneida County and selected by the Agency as the Company's obligation.  |
| "FTE"                        | shall mean a full time employee that has a minimum of thirty-five (35) scheduled hours per week, or any combination of two or more part-time employees that work a minimum of fifteen (15) scheduled hours per week, when combined together, constitute the equivalent of a minimum of thirty-five (35) scheduled hours per week, and whose workplace location is the project facility. For this purpose an employee shall include a leased employee regularly retained by the Company. |
| "Benefit"                    | shall mean the amount the Company saved by making payments in lieu of real property taxes in a particular year. For example, if a Company's PILOT payment is equal to 75% of normal real property taxes, then the Company's Benefit for that year would be an amount equal to 25% of normal real property taxes.  |
| "Per Employee Amount"        | shall mean an amount equal to the Benefit for the year after the year of the Shortfall divided by the "Employment Obligation".  |
| "Shortfall"                  | shall mean the difference between the Employment Obligation and the actual number of FTEs per the AER for the applicable year.  |
| "Major Shortfall"            | shall mean having FTEs that are less than 50% of the Employment Obligation.   |
| "Minimum Standard"           | shall mean a Company whose AER shows that they are short of meeting its Employment Obligation by 20%.   |
| "Initial Benefit"            | shall be the amount of savings the Company received through the Agency, in the form of Mortgage Recording Tax and New York State Sales Tax.   |
| "Cure Period"                | shall mean the period ending June 30 <sup>th</sup> of the year following the Major Shortfall.   |

1. **Job Creation and Retention Obligations.**

After the expiration of the Employment Obligation Term, the Company shall have no further obligation with respect to the Employment Obligation and shall not be liable for any of the payments described below.

The failure of the Company to satisfy the Employment Obligation can subject the Company to payments to the Agency. The Company shall be required to make payments if it fails to attain the Minimum Standard.

If the Company falls below the Minimum Standard, the Agency will notify the Company in writing of the Agency's intention to recapture Financial Assistance. The Company will have thirty (30) days to respond to the letter and may include a request to appear before the Agency. The Agency will determine, in its sole discretion, if a valid exemption exists and potentially reduce the remedies described below.

2. **Projects with less than Ten Years Employment Obligation Term.**

(a) Shortfall Payments.

- (1) If, during the first three (3) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall and then multiplied by (c) 1.5.
- (2) If, after the first (3) years, of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall.

(b) Major Shortfall Payment.

- (1) If a Company shall incur a Major Shortfall; then, the Company shall pay to the Agency as an additional one-time payment an amount as set forth in the schedule below (such payment shall be referred to as the "Major Shortfall Payment").

| <b><u>Major Shortfall Occurs:</u></b> | <b><u>Percentage of Initial Benefit</u></b> |
|---------------------------------------|---|
| Year 1                                | 100%  |
| Year 2                                | 80%   |
| Year 3                                | 60%   |
| Year 4                                | 40%   |
| Any Subsequent Year                   | 20%   |

- (2) Notwithstanding any of the foregoing, the Company shall not be liable for a Major Shortfall Payment unless the number of FTEs remains at less than 65% of the Employment Obligation at the expiration of a Cure Period. The Company shall have the opportunity at any time before the expiration of a Cure Period to provide additional information to the Agency regarding the Major Shortfall, and to request a waiver or amendment of this provision.

- (3) Notwithstanding any of the foregoing, a Major Shortfall shall not apply where the Shortfall is a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Major Shortfall Payment.
- (4) Qualification for a waiver of either (2) or (3) above shall be at the sole discretion of the Agency.

3. **Projects with Ten Years or Longer Employment Obligation Term.**

(a) Shortfall Payments.

- (1) If, during the first five (5) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall and then multiplied by (c) 1.5.
- (2) If, after the first five (5) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall.

(b) Major Shortfall Payment.

- (1) If a Company shall incur a Major Shortfall, then the Company shall pay to the Agency as an additional one-time payment an amount as set forth in the schedule below.

| <b><u>Major Shortfall Occurs:</u></b> | <b><u>Percentage of Initial Benefit</u></b> |
|---------------------------------------|---|
| Year 1                                | 100%  |
| Year 2                                | 90%   |
| Year 3                                | 80%   |
| Year 4                                | 70%   |
| Year 5                                | 60%   |
| Year 6                                | 50%   |
| Year 7                                | 45%   |
| Year 8                                | 40%   |
| Year 9                                | 35%   |
| Year 10                               | 30%   |

- (2) Notwithstanding any of the foregoing, the Company shall not be liable for a Major Shortfall Payment unless the number of FTEs remains at less than 65% of the Employment Obligation at the expiration of a Cure Period. The Company shall have the opportunity at any time before the expiration of a Cure Period to provide additional information to the Agency regarding the Major Shortfall, and to request a waiver or amendment of this provision.
- (3) Notwithstanding any of the foregoing, a Major Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Major Shortfall Payment.

- (4) Qualification for a waiver of either (2) or (3) above shall be at the sole discretion of the Agency.

4. **Shift of Employment.** If the Shortfall or Major Shortfall is as a result of the Company shifting employment away from Oneida County, then the Agency will require the value of the Benefit and the Initial Benefit utilized to date to be repaid, with interest (determined as the New York State legal interest rate).

5. **Mandatory Recapture.** The Agency is mandated to recapture New York State sales tax benefits where:

- a. The Project is not entitled to receive those benefits.
- b. The exemptions exceed the amount authorized, or are claimed for unauthorized property or services.
- c. The Company fails to use property or services in the manner required by the Leaseback Agreement.

6. **Return of Recaptured Funds.** If the Agency recaptures Initial Benefits or Benefits from a Company, the Agency shall return the recaptured funds promptly to the affected taxing jurisdiction, unless otherwise agreed to by the taxing jurisdiction, in accordance with the General Municipal Law.

**The Agency shall have the right to reduce any payment required under this Policy, in extraordinary circumstances, in its sole discretion.**