

A topographic map of Alaska showing its various regions and geographical features like mountains and rivers. The map is positioned in the upper half of the slide, with the title text overlaid on its right side.

# **Authorities Budget Office**

- *Accountability*
- *Transparency*
- *Integrity*

## **Operational Review**

### **IDA Sales and Use Tax Exemptions**

**January 8, 2019**

**OR-2018-01**

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## Executive Summary

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### **Purpose and Authority:**

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and to assist these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. We reviewed a sample of 43 projects that received sales and use tax (sales tax) exemption benefits from nine different Industrial Development Agencies (IDAs) during 2016 and 2017. Our review was performed between July and October 2018 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The primary objective of this review is to determine whether IDAs are effectively monitoring projects' use of sales tax exemptions approved by the IDA and appropriately recapturing sales tax exemptions claimed by project owners in excess of board approved amounts.

### **Background Information:**

IDAs are authorized by Article 18-A of General Municipal Law to offer financial incentives to attract, retain, and expand businesses to improve economic conditions in their respective locales. One of the financial assistance benefits offered by IDAs is exemption from state and local sales tax. IDAs appoint project owners to act as agents of the IDA to make project-related purchases that are exempt from sales taxes. IDAs are required to annually report the amount of sales tax exemptions claimed for each project in the Public Authorities Reporting Information System (PARIS). For 2016 and 2017, IDAs reported providing a total of \$495.5 million in sales tax exemptions to over 700 projects.

In 2013, legislation was passed to reform how IDAs provide state and local sales tax exemption benefits. The legislation requires IDAs to maintain records for sales tax exemptions provided and to recapture sales tax exemption benefits claimed by a project applicant in excess of amounts approved.

**Results:**

Our review found that only three of the nine IDAs reviewed are adequately monitoring sales tax exemptions provided to projects. We reviewed 43 projects and found that eight reported to the respective IDA that the project used more sales tax exemptions than the IDA approved. In total, these projects reported that they claimed \$385,979 more than the IDA had approved. In addition, another project reported to the IDA that it continued to claim an additional \$43,293 in sales tax exemptions after its approved time period elapsed. Yet there were no actions taken by these IDAs to determine the reason for the excessive amounts reported or to recapture the excess as required by the 2013 legislation until we conducted our review.

For example, the Monroe County IDA approved a project to receive \$230,400 in sales tax exemptions; but the project reported to the IDA that it used \$235,312 in sales tax exemptions, which is \$4,912 in excess of the amount approved. Monroe County IDA officials did not contact the project regarding this excess until we notified Monroe County IDA that the project was selected for our review.

Five of the IDAs responded to our review and indicated that they contacted seven of the nine projects regarding the excess sales tax exemptions reported by the projects. One IDA indicated that it had recaptured a portion of the excess amount that we identified. Four IDAs indicated that they contacted the project owners to inquire about the excess sales tax exemptions reported, and those project owners generally provided the IDAs with revised documents that resulted in the total sales tax exemptions reported being within the amounts approved by the respective IDA boards.

In addition, we found IDA boards are approving resolutions without indicating the amount of financial assistance being considered. Of the 43 projects reviewed, one project did not have a resolution and 16 other project resolutions did not indicate the amount of sales tax exemptions being approved by the board. In addition, the amount of sales tax exemptions recorded on the ST-60s (NYS Sales and Use Tax Exemption Form) do not always match the amount that is approved by the IDA board. For example, Madison County IDA executed a project agreement to provide \$50,100 in sales tax exemptions, but then issued an ST-60 to the project that allowed the project to claim up to \$125,070 in sales tax exemptions.

Further, we found that only three of the nine IDAs reviewed have policies in place to recapture sales tax exemptions in excess of the amounts approved and that only one of the nine IDAs reviewed are posting all project resolutions and project agreements on their web sites, as required by Section 875 (7) of General Municipal Law. In addition, not all IDAs are submitting annual compliance reports to the Tax Department as required by Section 875 (3)(d) of General Municipal Law. Of the nine IDAs reviewed, only two had submitted the annual compliance reports for 2016 and 2017. In response to our review, six of the IDAs indicated that these reports are now or will be submitted to the Tax Department.

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## Introduction and Background

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Industrial Development Agencies (IDAs) are authorized by Article 18-A of General Municipal Law to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation and certain other facilities. There are currently 109 IDAs operating in the State. IDAs offer financial assistance to encourage economic growth and expansion in order to promote job opportunities and the general welfare of the residents of the State of New York. Financial assistance may consist of the issuance of low interest tax-exempt or taxable bonds to finance the costs of a project as well as exemptions from real property taxes, mortgage recording taxes and sales and use taxes.

IDAs, as public benefit corporations, are exempt from payment of sales and use tax (sales tax) on their purchases under Section 1116 (a)(1) of the Tax Law. IDAs are able to extend this tax-exempt status to projects by appointing the project owner as an agent of the IDA to purchase goods and services related to the project. An IDA will generally appoint the project owner or a project operator to act as the primary agent of the IDA, but an IDA may also appoint additional agents as needed for a project.

During 2016 and 2017, 89 IDAs reported providing sales tax exemptions to projects totaling \$495 million. For 2016, IDAs reported that 764 projects received a total of \$181 million in sales tax exemptions. These sales tax exemptions ranged from \$25 to \$13 million per project. For 2017, IDAs reported that 652 projects received a total of \$314 million in sales tax exemptions, ranging from \$72 to \$132 million per project.

Section 874 (9) of General Municipal Law requires IDAs to notify the Department of Taxation and Finance (Tax Department) of the appointment of any agent, within thirty days of the appointment. The Tax Department has established form ST-60 for IDAs to report these appointments. The ST-60 requires IDAs to report the name of the agent, a description and value of the goods and services to be exempt from sales taxes, the total value of the sales tax exemption, and the beginning and end date of the appointment. In addition, Section 874 (8) of General Municipal Law requires the primary agent to annually report to the Tax Department the amount of all sales tax exemptions claimed by all agents of the project. The Tax Department has established form ST-340 for project operators to report the total sales tax exemptions claimed for each project. The ST-340 requires the total sales tax exemptions claimed during the year be reported for each project, as well as the date the project was completed. If an agent does not submit the ST-340, it can lose the ability to act as agent of the IDA and claim sales tax exemptions.

IDAs are also required by Section 2800 of Public Authorities Law to file annual reports that include information on their operations, finances, indebtedness, and other management activities, policies and governance practices. The Authorities

Budget Office (ABO) and the Office of the State Comptroller (OSC) have jointly established and maintain the online Public Authorities Reporting Information System (PARIS) for submitting the Annual Report. Project information required to be submitted by IDAs includes the project name, location, total project amount, and the total sales tax exemptions claimed for the year by the project.

Historically IDAs have been criticized regarding their lack of oversight and accountability of the financial assistance provided to projects. This includes failing to adequately monitor the amount of tax exemptions claimed by projects and failing to recapture tax exemptions that exceed the amount approved by the IDA. For example, both ABO reviews and OSC audits of IDA operations have identified inadequate monitoring of the financial assistance provided to projects, projects that claimed more tax exemptions than approved by the IDA, and failure by IDAs to recapture financial assistance provided to projects that did not achieve the stipulated objectives.

This lack of accountability, transparency and oversight by IDAs has resulted in various legislative changes in recent years. Chapter 59 of the Laws of 2013 was passed to reform the ways IDAs extend sales tax exemption benefits to projects. The legislation amended Section 875 of the General Municipal Law to require IDAs to:

- Maintain records on the sales tax exemptions provided and to recapture sales tax exemptions claimed by a project owner if the benefits taken were not authorized.
- Remit recaptured sales tax exemptions to the Tax Department within thirty days of receipt.
- File an annual compliance report with the Tax Department detailing the recapture terms and conditions for each project and the IDA's procedures to recover, recapture, and receive sales tax exemptions.
- Post copies of project resolutions and agreements to their web sites.

Subsequently, Chapter 563 of the Laws of 2015 was passed to provide additional safeguards regarding the process followed by IDAs in providing financial assistance to projects and ensure that it is transparent, uniform and deliberative. This legislation amended Section 859-a of General Municipal Law to require IDAs to use a standard application form, uniform evaluation and selection criteria and a uniform project agreement for projects beginning June 2016. The law stipulates that no financial assistance will be provided in absence of a uniform project agreement. Project resolutions are required to include terms and conditions for sales tax reporting and recapture provisions and all project resolutions and agreements are required to be posted on IDA web sites. These changes were intended to improve accountability and improve the efficiency and transparency of IDA operations.

## **Compliance Review Objective**

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. The primary objective of this review is to determine whether IDAs are effectively monitoring projects' use of sales tax exemptions approved by the IDA and appropriately recapturing excess sales tax exemptions claimed.

## **Compliance Review Scope and Methodology**

We selected nine IDAs that reported providing sales tax exemptions to projects during 2016 and 2017. At each IDA we reviewed between three and six of these projects, for a total of 43 projects (see Appendix A-1 for a list of the projects reviewed). We began our onsite visits in July 2018 and completed these visits in September 2018. As part of our review, we met with management to understand the IDA's process for providing sales tax exemptions to projects, as well as the process for monitoring and reporting the sales tax exemptions claimed by each project on an annual and cumulative basis. We reviewed project records maintained by each IDA as well as information reported by the IDA for the sampled projects. These records included board resolutions, project agreements and related documents, ST-60s, ST-340s and annual compliance reports with sales tax exemption information. We also reviewed actions taken to recapture sales tax exemption benefits claimed in excess of the amounts approved.

## **IDA Responses**

A draft version of this report was shared with all nine of the IDAs we reviewed for their review and comment. The responses are reflected throughout this report where appropriate and are appended to this report. Madison County IDA did not provide a response to the draft report.



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## Review Results

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Our review found that only three of the nine IDAs reviewed (Dutchess, Rensselaer and Sullivan) are adequately monitoring sales and use tax (sales tax) exemptions to ensure that project owners only claim the sales tax exemptions they are entitled to in accordance with established board approvals and agreements. Further, some projects reported to the IDAs that the projects claimed more sales tax exemptions than approved. Yet those IDAs were unaware of the excess and failed to contact the projects to question why the excess amount was reported or take action to recapture the excess sales tax exemptions claimed until identified by our review.

Of the 43 projects reviewed, we found that eight projects reported claiming a total of \$385,979 in sales tax exemptions in excess of the amounts approved by IDA boards, and that one project reported that it continued to claim an additional \$43,293 in sales tax exemptions after the approved period for claiming the sales tax exemption had expired. As a result of our review, one IDA indicated that it had recaptured a portion of the excess amount that we identified. Four IDAs contacted the project owners to inquire about the excess sales tax exemptions reported, and those project owners generally provided the IDAs with revised documents that resulted in the total sales tax exemptions reported being within the amounts approved by the respective IDA boards.

The 2013 Chapter Law requires IDAs to post project agreements and project resolutions on their web sites. However, only one of the IDAs reviewed is posting project agreements on its web site, and only three IDAs are posting some project resolutions on their web sites. However, of the three IDAs that do post some project resolutions on their web sites, resolutions were not posted for each of the projects we reviewed.

IDA boards have a fiduciary duty to ensure that adequate policies and procedures exist to monitor projects and ensure that only approved exemptions are claimed and any amounts in excess are being recaptured and remitted to the State. Further, IDA boards are responsible for providing direct oversight of the chief executive and other management to ensure that appropriate procedures are followed. The lack of oversight by this group of IDAs appears to be indicative of a potential broader issue that needs to be addressed. One immediate step that has been taken, not considered within this review, is the adoption of the ABO Regulation (19 NYCRR 250), which clarifies the law to require the posting of both the IDA project application and the completed project agreements on the IDA web sites. This report recommends IDA boards review their policies and procedures in light of the new regulation and continue to improve oversight, accountability and transparency regarding sales tax exemptions provided to and claimed by projects.

In response to our review, several IDA officials stated that there has not been any guidance provided by New York State agencies regarding the revised monitoring and reporting requirements regarding sales tax exemptions provided to projects.

However we note that the Tax Department issued a Technical Memorandum, TSB-M-14(1.1)S Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities. The memo summarizes the legislative changes from 2013 and includes general information and current department policy with respect to IDAs. This memo was issued in February 2014. Further, in May 2016 the New York State Economic Development Council (NYSEDC), the state's principal organization representing economic development professionals, adopted a series of best practices to guide IDAs in implementing the provisions in the 2015 legislation. The best practices include recapturing, reducing or suspending IDA benefits when project owners fail to meet performance goals, as well as monitoring the status of projects on an annual basis.

### Ineffective Monitoring of Sales and Use Tax Exemptions

Section 874 (8) of General Municipal Law requires agents of an IDA to annually report the total amount of sales tax exemptions claimed to the Tax Department, and Section 875 (3) of General Municipal Law requires IDAs to recover any unauthorized sales tax exemption benefits and remit the funds to the Tax Department. The amount of sales tax exemptions claimed by projects is to be reported annually on form ST-340. For an IDA to monitor the total amount of sales tax exemptions claimed by projects, it would need to determine the amount reported by projects each year and calculate the total amount reported over the life of the project and then compare that total to the amount of sales tax exemptions approved by the IDA board for the project.

All nine IDAs we reviewed annually request project owners to report the sales tax exemptions claimed by a project for the year and require project owners to provide a copy of the ST-340 submitted to the Tax Department. While projects report the amount of sales tax exemptions claimed each year, only three of the nine IDAs (Dutchess, Rensselaer, and Sullivan) calculate the cumulative amount of sales tax exemptions claimed and compare this total to the amount of sales tax exemptions approved by the board to determine if the project is within the terms approved by the board or whether a project claims excess sales tax exemption and recapture is necessary.

Monroe County IDA has a system in place that calculates the cumulative amount of sales tax exemptions reported by projects. However, Monroe IDA staff do not appear to use this information to identify projects that reported claiming excess sales tax exemption and take appropriate actions.

### Excessive Sales and Use Tax Exemptions Taken

We reviewed the cumulative amount of sales tax exemptions reported to the IDAs by each project and compared it to the amount of sales tax exemptions approved by the respective IDA board. We found eight of the 43 projects reported to the IDA an amount of sales tax exemptions claimed that exceeded the amounts approved. These reported excess sales tax exemptions ranged from \$1,182 to \$263,876 and totaled more than \$385,000, as shown in the following chart. Although the amounts

claimed were reported to the IDAs through March 2018, no action was taken prior to our review by the IDAs to recapture the funds and remit to the Tax Department.

<b>IDA</b>	<b>Project Name</b>	<b>Amount Approved</b>	<b>Amount Reported to IDA</b>	<b>Excess</b>
Jefferson	Aviagen North America, Inc.	\$69,750*	\$79,688	\$9,938
Madison	Carriagehouse Apartments II 2016	\$50,100	\$54,638	\$4,538
Monroe	Frocione Properties LLC	\$230,400	\$235,312	\$4,912
Monroe	Hive@155 LLC	\$149,920	\$157,050	\$7,130
Oneida	Cardinal Griffiss Realty, LLC-Buildout	\$27,918	\$29,100	\$1,182
Oneida	Kris-Tech Wire Company, Inc.	\$272,731	\$307,287	\$34,556
Orange	Cross Roads Court Real Estate, LLC	\$593,125	\$652,972	\$59,847
Orange	International Business Machines (IBM)	\$6,093,750	\$6,357,626	\$263,876
Totals				\$385,979

\*This is the amount recorded on the ST-60 since there is no official record indicating the amount of sales tax exemptions approved by the board.

For example, in March 2015 Oneida County IDA approved financial assistance for Kris-Tech Wire Company, Inc. (Kris-Tech) to construct and equip an addition to its manufacturing facility. Kris-Tech was approved for \$176,000 in sales tax exemptions through April 2016. In June 2016, the IDA board approved an additional \$96,731 in sales tax exemption and extended the exemption period through October 2017. This increased the total approved sales tax exemptions to \$272,731. Kris-Tech reported to Oneida County IDA that it claimed \$145,349 in sales tax exemptions for 2015, \$150,738 in sales tax exemptions for 2016, and \$11,200 in sales tax exemptions for 2017. In total, Kris-Tech reported \$307,287 in sales tax exemptions. This exceeds the amount of sales tax exemptions approved by the Oneida County IDA board by \$34,556. As a result of our review, Oneida IDA contacted Kris-Tech to confirm the accuracy of the information reported.

Unlike the other IDAs we reviewed, Jefferson County IDA's fiscal year is from October 1 through September 30. In October 2015 Jefferson County IDA approved financial assistance for Aviagen North America, Inc. (Aviagen) to renovate an existing building. On December 18, 2015, the IDA issued Aviagen an ST-60 for \$69,750 in sales tax exemptions through December 2016. For 2015-16, Aviagen reported to Jefferson County IDA that it claimed \$69,750 in sales tax exemptions. Aviagen then reported to the IDA that it claimed \$9,938 for 2016-17, for a total of \$79,688 in sales tax exemptions. This exceeds the amount of sales tax exemptions approved by the Jefferson County IDA board by \$9,938. As a result of our review, Jefferson County IDA contacted Aviagen, who indicated that the \$9,938 reported for 2016-17 was in error.

In July 2016 Monroe County IDA approved financial assistance for Frocione Properties LLC (Frocione) to construct a food distribution facility. Frocione was approved for \$230,400 in sales tax exemptions through October 31, 2016. While the IDA board did not approve any additional sales tax exemptions for this project,

or extend the exemption period, in October 2016 the IDA counsel signed an ST-60 that extended the exemption period through September 30, 2017. The Monroe County IDA board had authorized the outside counsel to complete and sign ST-60s but had not authorized its counsel to approve any additional sales tax exemptions or exemption periods. For 2016 Frocione reported to Monroe County IDA that it claimed \$219,389 in sales tax exemptions, and for 2017 reported to the IDA that it claimed \$15,923, for a total of \$235,312. This exceeds the amount of sales tax exemptions approved by the Monroe County IDA board by \$4,912.

Although Frocione reported the \$15,923 of sales tax exemptions claimed for 2017 to Monroe County IDA in January 2018, the IDA took no action until after ABO staff contacted the IDA to schedule its site visit for this review in September 2018. At that time the IDA sent a letter to Frocione requesting repayment of the \$4,912 by October 1, 2018. In response, Frocione indicated that the ST-340 submitted for 2017 was an error and provided a revised ST-340 to Monroe County IDA indicating that \$0 in sales tax exemptions were claimed for 2017.

Each of the eight projects had reported the amount of sales tax exemptions claimed each year to the respective IDAs. However, none of the IDAs were aware that the amounts reported to the IDAs by the projects exceeded the amounts approved by the board because the IDAs were not monitoring the amount of sales tax exemptions claimed by project owners. As a result of our review, Jefferson County IDA, Monroe County IDA, Orange County IDA and Oneida County IDA contacted the respective project owners to inquire about the excessive sales tax exemptions reported by each project. These IDAs indicated that five of the six project owners provided revised documents that indicated a lower amount of sales tax exemptions than originally reported, which resulted in the total amount claimed within the amount approved by the IDA. Madison County IDA did not provide any information regarding the Carriagehouse project, Monroe County IDA contacted the Hive project but did not provide us with the results, and Oneida County IDA indicated that it would need additional time to complete its review with the Kris-Tech project.

We also identified a project that claimed sales tax exemptions beyond the timeframe approved by the IDA board. In June 2013 Steuben County IDA approved financial assistance for Marsh Hill Energy LLC (Marsh Hill) to construct and equip ten wind turbine generators. Marsh Hill was approved for \$262,000 in sales tax exemptions through June 2014. In October 2013 Marsh Hill notified the IDA that additional purchases needed for the project may also be subject to sales tax and requested the total sales tax exemptions be increased to \$2,544,000. On October 24, 2013 the IDA approved the increase to \$2,544,000 and also provided an extension to the exemption period through December 2014. For 2013 Marsh Hill reported that it did not claim any sales tax exemptions, but it reported to Steuben County IDA that it claimed \$451,720 in sales tax exemptions for 2014.

Although the IDA board approved the use of sales tax exemptions only through December 2014, Marsh Hill continued to report to the IDA in subsequent years that it claimed additional sales tax exemptions. For 2015 Marsh Hill reported to the

Steuben County IDA that it claimed \$36,210 in sales tax exemptions. Marsh Hill also notified Steuben County IDA that it continued to incur costs for the project in 2015, and requested an extension for claiming sales tax exemptions. Although the IDA denied the request for an extension past December 2014, in March 2016 it reported in PARIS that the project received \$36,210 in sales tax exemptions for 2015. For 2016 Marsh Hill reported to Steuben County IDA that it claimed \$7,083 in sales tax exemptions, and in March 2017 the IDA reported this amount in PARIS. As a result, Marsh Hill reported to the IDA that it claimed a total of \$43,293 in sales tax exemptions after the approved time period had elapsed.

In April 2017 the Tax Department notified the project and Steuben County IDA of the discrepancies between the project's ST-60 and ST-340, indicating that the ST-340 date did not match with the end date of the project on the ST-60. The Tax Department requested the IDA correct the errors and resubmit an updated form. However, Steuben IDA officials simply forwarded the Tax Department's letter to Marsh Hill and requested the project owner adjust its filings but took no other actions. After ABO staff contacted the IDA to schedule its site visit for this review in September 2018, the IDA notified Marsh Hill of its plans to recapture the sales tax exemptions claimed beyond the approved period. In response, Marsh Hill indicated that the ST-340s submitted for 2015 and 2016 were in error and provided revised ST-340s indicating the total of \$2,531 in sales tax exemptions were claimed for 2015 and 2016. In response to our review, Steuben County IDA officials indicated that they have recaptured the \$2,531 from this project.

#### Board Resolutions and Project Agreements Do Not Include Amounts Approved

Section 859-a (1) of General Municipal Law requires IDAs to adopt resolutions describing the project and the financial assistance that the IDA is contemplating for a project. Financial assistance can consist of proceeds from the issuance of low interest tax-exempt or taxable bonds to finance the costs of a project as well as exemptions from real property taxes, mortgage recording taxes and sales and use taxes. Further, Section 859-a (6) of General Municipal Law requires IDAs to develop a uniform project agreement that sets forth the terms and conditions under which financial assistance will be provided and is to include the amount and type of financial assistance to be provided.

We requested the board resolution approving the financial assistance for each project to identify the amount of sales tax exemptions approved by the board. Of the 43 projects, only one project (First Transit) located in Monroe County did not have a board resolution.

We reviewed the board resolutions for the remaining 42 projects and found that only four IDAs (Dutchess, Monroe, Orange and Steuben) included the amount of sales tax exemptions approved by the board in each resolution. For the other five IDAs, only 6 of the 22 board resolutions identified the amount of sales tax exemptions approved by the board. For the remaining 16 projects, we reviewed the corresponding project agreement and found only four of the project agreements identified the amount of sales tax exemptions approved, as required

by General Municipal Law. The remaining 12 project agreements did not include the amount of sales tax exemption approved by the board. With no official record stipulating the amount of sales tax exemption approved by the board, IDA staff have no basis for determining the amount of sales tax exemptions to record on the ST-60 form. The lack of an official record indicating the amount and time frame for sales tax exemptions from the board can lead to excessive sales tax exemptions being taken by projects.

#### ST-60s Do Not Always Match Board Resolutions or Project Agreements

We also found two projects where the amount or timeframe approved by the board did not match the information recorded on the project's ST-60. For example, on April 9, 2015 the Orange County IDA board approved International Business Machines Corporation (IBM) for \$4,062,000 in sales tax exemptions through December 2016. However, IDA staff issued the ST-60 with an expiration date of December 2020. In December 2016 the board approved the sales tax exemptions to be extended through December 2017. However, the ST-60 that the IDA issued to IBM in January 2017 again had the expiration date through December 2020. This allowed IBM to use exemptions beyond the timeframe approved by the board.

On November 17, 2016 the Madison County IDA board approved Carriagehouse Apartments II (Carriagehouse) for real property, mortgage recording and sales tax exemptions to build senior living apartments. Although the amount of sales tax exemptions approved was not identified in the board resolution, the project agreement states the project was to receive sales tax exemptions totaling \$50,100. However, IDA staff issued an ST-60 allowing Carriagehouse to claim sales tax exemptions totaling \$125,070. Carriagehouse reported to Madison County IDA that it used \$54,638 in sales tax exemptions. The amount reported exceeded the \$50,100 approved by the board by \$4,538 but was within the amount on the ST-60 issued by IDA staff. The IDA's Executive Director told us that Carriagehouse underestimated the sales tax exemptions needed for its projects in its application and that the board discussed the need for additional sales tax exemptions for the project. However, the November 17, 2016 board meeting minutes do not reflect this discussion, and the IDA did not provide any documentation to support that the board approved more than \$50,100.

#### Financial Assistance Provided Prior To Public Hearing

Section 859-a (2) of General Municipal Law states that prior to providing any financial assistance of more than \$100,000 to any project, an IDA must hold a public hearing with respect to the project and the proposed financial assistance being contemplated. The public hearing provides an opportunity for interested parties to present their views on the project before the board's final approval for financial assistance. However, we found one project where the effective date of the ST-60 predated the public hearing for the project. As such, this project had the opportunity to use sales tax exemptions before the project's final approval.

On June 19, 2014 the Steuben County IDA board approved an inducement resolution for Hilton Garden Inn to receive real property, mortgage recording and sales tax exemptions to build a hotel. The resolution approved the execution of an agent agreement, provided that the financial assistance provided not exceed \$100,000 until the IDA has held a public hearing and adopted a subsequent resolution. However, rather than wait until final board approval for the project, the IDA issued an ST-60 for sales tax exemptions totaling \$656,000 to Hilton Garden Inn on July 15, 2014. This was done prior to the public hearing which was held on July 30, 2014. The project received final board approval on August 13, 2014. IDA staff indicated the project operator was only allowed to use up to \$100,000 of sales tax exemptions before final approval based on the inducement resolution. However, this is not reflected on the ST-60 that was issued to Hilton Garden Inn. The ST-60 that was issued allowed Hilton Garden Inn to claim up to \$656,000 in sales tax exemptions during the period of July 15, 2014 through December 31, 2015.

We also found that it is Oneida County IDA's practice to record an effective date on ST-60s that is prior to the public hearing date. This fails to comply with Section 859-a (2) since it allows projects to claim sales tax exemptions for a period of time prior to the public hearing. For all five projects reviewed, the ST-60 effective date was prior to the public hearing date. For example, on March 18, 2015 the Oneida County IDA board approved an inducement resolution appointing Marcy Family LLC as the IDA's agent to construct apartment buildings. The public hearing was held on June 2, 2015. On July 15, 2015 the IDA issued an ST-60 that allowed the project to claim up to \$250,000 in sales tax exemptions during the period March 18, 2015 to September 15, 2015.

<b>Project Name</b>	<b>Public Hearing Date</b>	<b>ST-60 Effective Date</b>
Cardinal Griffiss Realty, LLC	1/26/17	12/16/16
Kris-Tech Wire Company Inc.	4/16/15	3/18/15
Marcy Family, LLC	6/2/15	3/18/15
New Hartford Lodging Group, LLC	12/17/14	11/14/14
Northland Communications	8/18/16	7/15/16

In response to this report Oneida County IDA officials indicated that the IDA has restricted its policy to not issue sales tax exemption documents until the project closing.

#### Recapture Policies Do Not Always Address Sales and Use Tax Exemptions

Section 874 (11) of General Municipal Law requires IDAs to develop policies for the return of all or a portion of the financial assistance provided to a project if material violation of the terms exists, commonly known as a recapture policy. In addition, Section 875 (3) states that IDAs must recapture sales and use exemptions that an agent or project operator is not entitled to or that are in excess of the amounts authorized by the IDA.

We found eight of the nine IDAs have adopted recapture provisions either as a separate policy or within their existing uniform tax exemption policy (UTEP). However, these policies do not always address actions to take regarding recapturing sales tax exemptions in excess of amounts authorized. The recapture provisions adopted by three IDAs (Oneida, Rensselaer and Steuben) adequately address the recapture of sales tax exemptions in these policies. The other five recapture policies focus on compliance with project goals, and do not include any provisions that require the IDA to recapture sales tax exemptions amounts taken in excess of the amount approved by the IDA.

In addition, Sullivan County IDA has not adopted a recapture policy. Sullivan County IDA officials told us that a policy was not necessary since its project agreements include language for recapture. This practice does not appear to be in compliance with the requirements of Section 874 (11). In response to this report, Sullivan County IDA officials stated that a recapture policy has been drafted and will be presented to the board for review and approval early in 2019.

Further, although Steuben County IDA's UTEP states that sales tax exemptions may be subject to recapture in compliance with Section 875 (3) of General Municipal Law, the IDA did not take action to recapture the sales tax exemptions claimed by Marsh Hill after the approved time period had elapsed, until after we initiated our review.

#### Project Agreements and Resolutions Are Not Always Posted on Web Sites

Section 875 (7) of General Municipal Law requires IDAs to post board resolutions and project agreements related to any project to the IDA's web site. Of the 43 projects we reviewed, only five project agreements were posted on the respective IDA web sites. In addition, only thirteen of 43 project resolutions were posted on four IDAs' web sites. We noted that some IDAs have posted some board resolutions but have not posted resolutions for all their active projects. For example, of the five projects we reviewed at Rensselaer County IDA we found only one project's resolution was posted on the IDA's web site. In response to our report Monroe County IDA officials indicated that they understood the law to require the posting of resolutions, but not project agreements. They indicated that they will be posting project agreements going forward. The new ABO Regulation (19 NYCRR 250) also should help to clarify any confusion as to what posting is required moving forward.

#### Annual Compliance Reports Are Not Being Filed

Section 875 (3)(d) of General Municipal Law requires IDAs to prepare an annual compliance report including the terms and conditions listed in the resolutions and project documents. Failure to file the report could result in the revocation of the IDA's authority to provide state sales tax exemption benefits. The Tax Department has provided ST-62 IDA Annual Compliance Report State Sales Tax Recapture form for this purpose (ST-62). The ST-62 must be filed within ninety days of fiscal



year end, detailing the recapture terms and conditions of each project and the IDA's activities to recover, recapture, and receive sales tax exemptions. We found that only two of the nine IDAs reviewed (Rensselaer and Sullivan) submitted the required ST-62 form in 2016 and 2017. The other seven IDAs we reviewed indicated they were not aware of this requirement prior to our review but have or will be submitting the compliance report to the Tax Department.

### PARIS Reporting Continues To Be Inaccurate

Section 2800 of Public Authorities Law requires public authorities to certify and submit reports on their finances and operations annually through the Public Authorities Reporting Information System (PARIS). The ABO has historically reported that the accuracy of the data reported in PARIS by IDAs is questionable, as IDAs frequently report incorrect and inaccurate data. Our review found that the sales tax exemption data reported by the IDAs was correct and accurate for only 30 of the 43 projects (70 percent). The inaccurate reporting for the 13 projects included failing to report sales tax exemptions that were claimed by the projects, incorrect amounts reported for sales tax exemptions claimed, and combining the sales tax exemptions claimed by multiple projects as a single project.

We found none of the four projects reviewed at Jefferson County IDA were reported accurately by the IDA in its PARIS annual reports. For example, Roth Industries reported claiming \$0 in sales tax exemptions for 2015-16, but the IDA reported the project as claiming \$83,200. Aviagen reported claiming \$9,938 of sales tax exemptions for 2016-2017, but the IDA reported the project as claiming \$0. Fort Drum Mountain Community Homes reported claiming \$0 for 2016-17, but the IDA reported the project as claiming \$2,032,197. Mohawk, Adirondack and Northern Railroad reported claiming \$130 for 2016-17, but the IDA reported the project as claiming \$7,762.

In addition, Dutchess County IDA approved providing sales tax exemptions for GPSDC (New York) in September 2014. GPSDC (New York) reported to Dutchess County IDA that it claimed sales tax exemptions of \$143,660 for 2014; \$2,587,495 for 2015; \$1,793,829 for 2016; and \$2,763,622 for 2017. The IDA accurately reported the total amount of sales tax exemptions claimed by GPSDC (New York) for 2016 and 2017 but failed to report any sales tax exemptions claimed by GPSDC (New York) for 2014 and 2015. This understated the total value of sales tax exemptions provided to the project by \$2.7 million.

Further, according to Section 1116 (a)(1) of the Tax Law, IDAs are exempt from payment of sales tax on their purchases. This includes the metropolitan commuter transportation district tax (metro commuter tax) which is imposed on the 12 counties within the metropolitan commuter transportation district. Orange County is part of the district, and the Orange County IDA is authorized to approve exemptions for the metro commuter tax. However, the IDA does not report the value of the metro commuter tax exemptions as a local sales tax exemption in PARIS. From 2015 through 2017, International Business Machine Corporations (IBM) reported that it claimed a total of \$6,357,626 in sales tax exemptions, which

included \$155,383 in metro commuter tax exemptions. However, the IDA only reported a total of \$6,202,243 in PARIS, understating the value of the sales tax exemptions it approved. Orange County IDA staff stated that this was an oversight on their part and that this will be corrected going forward.

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## Recommendations

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1. IDAs should annually review and adopt policies and procedures to monitor sales and use tax exemptions and ensure projects are only claiming sales and use tax exemptions authorized by the board of directors.
2. IDAs should recapture any sales and use tax exemptions claimed in excess of the amount authorized by the board of directors and remit funds to the Tax Department, in accordance with Section 875 (3) of General Municipal Law.
3. IDAs should ensure board resolutions and project agreements include the amount of financial assistance authorized by the board of directors, in accordance with Section 859-a (1) of General Municipal Law.
4. IDAs should ensure that ST-60s are issued only for amounts and time periods authorized by the board of directors.
5. IDAs should not issue ST-60s to projects with effective dates prior to the public hearing, in accordance with Section 859-a (2) of General Municipal Law.
6. IDAs should adopt recapture policies that require projects to remit sales and use tax exemptions claimed in excess of the amount authorized by the board of directors, in accordance with Section 874 (11) of General Municipal Law.
7. IDAs should post all project agreements and project resolutions on the IDA web site, in accordance with Section 875 (7) of General Municipal Law as well as the recently issued ABO regulation (19 NYCRR 250).
8. IDAs should annually file the annual compliance report (ST-62) with the Tax Department, in accordance with Section 875 (3)(d) of General Municipal Law.
9. IDAs should establish and implement adequate procedures to ensure that all information reported in PARIS is complete and accurate.
10. IDAs should ensure that they are collecting adequate and reliable sales and use tax exemption information from projects, including but not limited to signed and certified documents, such as the ST-340 submitted to the Tax Department.

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## IDA Responses to ABO

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December 14, 2018

State of New York  
Authorities Budget Office  
PO Box 2076  
Albany, NY 12220-0076

To Whom It May Concern:

We have reviewed the draft audit report (the "Draft Report") for *IDA Sales and Use Tax Exemptions during 2016 and 2017*. We have several comments which we feel will improve the Draft Report and we have found a few inaccuracies as they pertain to the Dutchess County Industrial Development Agency (the "DC IDA") which should be corrected. Our proposed corrections are:

1. Page 12, Annual Compliance Reports – The Draft Report emphasizes that the form for reporting annual compliance (the New York State Department of Taxation and Finance ("NYS DTF") Form ST-62) must be filed within 90 days of fiscal year end and criticizes the DC IDA for not filing those reports in 2016 and 2017. Yet, the NYS DTF did not promulgate Form ST-62 until 2018. The DC IDA had made continuing requests of NYS DTF for the form, as recently as January 31, 2018 and, on each occasion, it was told that the form was still being created. The Form ST-62 that NYS DTF finally created is dated 01/2018 but the DC IDA was never informed that it had been issued until ABO staff advised us during its audit in late July, 2018. The DC IDA then promptly prepared and filed, in September 2018, with the NYS DTF the completed ST-62 forms for 2016 and 2017.

Please find enclosed copies of the filed ST-62 forms for the projects.

2. Page 13, Second Paragraph – Contrary to the statement in the report, the DC IDA reported all sales tax exemptions claimed by GPSDC (New York) Inc. Attached are copies of the ST-340s filed by GPSDC and the 2016 and 2017 PARIS reports filed by the Agency which show that all sales tax exemptions were properly reported for this project.

Note  
1

In addition, we offer the following comments and clarifications to the Draft Report:

1. With regard to the assertion on pages E-2 and page 11 regarding the failure of IDAs to post project resolutions for “all ... active projects”, the DC IDA has posted project resolutions for all projects *actively* receiving sales tax benefits. Of the five projects within the scope of the audit, the only two resolutions that were not posted by the DC IDA were GPSDC (New York) Inc. (2014 project) and Built Parcel Three (approved in 2014), neither of which is currently receiving sales tax benefits. It has been the practice of the DC IDA to post resolutions for all projects going back three years, a practice which the DC IDA follows based upon the New York State Comptroller’s recommendation that agencies post two years’ documentation online. However, in response to the Draft Report, the DC IDA has since posted the resolutions for GPSDC (New York) Inc. (2014 project) and Built Parcel Three on its website even though those projects are not actively receiving sales tax benefits. For all other projects within the scope of this audit, the DC IDA posted the approving resolutions and those resolutions explicitly provide for the recapture of benefits in accordance with N.Y. GML § 875(3).
2. In response to the assertions on page E-2 and page 11 regarding the failure of IDAs to post any project agreements to their websites, it should be noted that two of the five DC IDA projects within the scope of the audit, GPSDC (New York) Inc. (2014 project) and Built Parcel Three (approved in 2014), were approved prior to the requirement for IDAs to create a uniform project agreement as set forth in N.Y. GML § 859-a(6), effective June 15, 2016. A third project, GPSDC (New York) Inc. (2017 project), was an amendment to an earlier agreement. In response to the Draft Report, the DC IDA has posted the project agreements for the remaining two projects to its website.
3. On page 11, the Draft Report discusses the requirement for the adoption of a recapture policy and indicates that the DC IDA is one of the six IDAs whose policies “focus on compliance with project goals, and do not include any provisions that require the IDA to recapture sales tax exemptions amounts taken in excess of the amount approved by the IDA”. The DC IDA’s approving resolutions and project agreements for ALL projects have included a requirement that state sales and use taxes be recaptured as required by N.Y. GML § 875(3). The Draft Report states that N.Y. GML § 874(11) requires that the agency’s recapture policy (the DC IDA “MPBI”) must include a reference to N.Y. GML § 874(11). That section states:

“Each agency shall develop policies for the return of all or a part of the financial assistance provided for the project, including all or part of the amount of any tax exemptions, as specified in the policy, which may include but shall not be limited to material shortfalls in job creation and retention projections or material violations of the terms and conditions of project agreements. All such returned amounts of tax exemptions shall be redistributed to the appropriate affected tax jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.”

The DC IDA is in strict compliance with this statute. The DC IDA MPBI policy follows this statute concerning the recommended categories of violation. Also, the DC IDA’s recapture policy concerning Sales Tax Only projects specifically states that that recapture

policy is "in addition to and not in lieu of" the recapture requirement of N.Y. GML § 875(3). However, given the comments in the Draft Report, the DC IDA's MPBI policy will be amended to contain similar language.

4. In response to the discussion of projects where sales tax exemptions claimed were in excess of the amounts approved by the Board, and discussing IDA boards approving resolutions without indicating the amount of financial assistance being considered, the DC IDA was not one of the offending agencies. In fact, page 4 of the Draft Report notes that "although three IDAs have procedures in place to monitor sales tax exemptions, two of those IDAs are not indicating the amount of approved exemptions in board resolutions."

Finally, we should note that the primary focus of the audit has been to ensure that sales tax benefits are closely monitored by the IDAs and we feel that the DC IDA has been most diligent in that regard. The Dutchess County Industrial Development Agency values the perspectives and recommendations of the ABO and will continue to incorporate the guidance provided by the ABO as we strive for transparency and accuracy.

We thank you for the opportunity to comment on the factual accuracy of the Draft Report for our Agency. Should you have questions, please feel free to contact me at [sarah@thinkdutchess.com](mailto:sarah@thinkdutchess.com) or at (845) 463-5406.

Sincerely,



Sarah Lee  
Executive Director



Jefferson County Industrial Development Agency

800 Starbuck Avenue, Suite 800  
Watertown, New York 13601

ph: 315.782.5865 / 800.553.4111  
fx: 315.782.7915

www.jcida.com

December 17, 2018

ABO Staff  
State of New York  
Authorities Budget Office  
PO Box 2076  
Albany, New York 12220-0076

Dear ABO Staff;

First, thank you for allowing us to review and comment on the draft Operational Review for IDA Sales and Use Tax Exemptions report (OR-2018-01) provided to us last week.

After a thorough review of your outline we believe we have discovered errors in the methodology used to determine sales tax integrity contained within the report.

In addition, we also acknowledge that the report correctly points out some errors of omission on the part of the Agency which staff will immediately set about to correct.

#### Corrections to ABO figures

Regarding the table on Page 9 of the draft report, the numbers recorded in your "Total Project Cost" appear to have been taken from the wrong box in our PARIS reports. The PARIS report includes a box for reporting "Total Project Amount" followed by a box below it for reporting "Benefited Project Amount". The benefited project amount is the amount calculated to benefit from sales tax exemption.

Note  
3

In their review, ABO staff used the benefited project amount in place of the actual project cost, and then took 40% of that number to estimate sales tax benefit. This artificially reduces the amount legitimately eligible for sales tax exemption.

Particular confusion occurred regarding the Aviagen North American's Hatchery project. Following our investigation, it was determined that the company had incorrectly stated the amount of sales tax benefit they received on its original filing with the State Tax Department. Attached, you will see a corrected copy of that report attached in support of this letter. In addition, it should be noted that this company is directly involved in Agricultural activities and is thus exempt from sales tax (note: Email/forms including NYS Form ST-125 are attached). The sales tax originally reported by Aviagen was for agricultural activities not the JCIDA project.

To best illustrate our conclusions, we have attached two tables. The first is the table provide in the draft ABO report. The second is a table with the corrected figures. That table also identifies the method used to estimate the benefited project amount.





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### Clarification on estimating sales tax exemption

As noted in your report, we do generally use 40% of adjusted project costs to estimate that portion of a project that would be subject to sales tax. We start with the total cost, subtract out what we know is not subject to sales tax (for example, manufacturing equipment), and then take 40% of the remaining amount. However, when we have enough detail up front, we are able to estimate sales tax directly from the provided figures (which typically match the 40% methodology). This was the method used to estimate the sales tax benefit for Fort Drum Mountain Community Homes. 50% was used to estimate the taxable portion of the Aviagen project because of our understanding of the nature of its particular costs. The sales tax exemption estimated for the Mohawk, Adirondack, and Northern Railroad was provided to us by the St. Lawrence County Industrial Development Agency. This was a unique project in that the project corridor traversed 3 counties (St. Lawrence, Lewis, and Jefferson), and the SLCIDA served as lead agency. They therefore provided us with the estimate for Jefferson County's portion of the exemption.

As reported on ABO Draft Audit for Jefferson County IDA

<b>Project Name</b>	<b>Total Project Cost</b>	<b>40 Percent of Project Costs</b>	<b>Sales Tax on 40 Percent</b>	<b>Amount Recorded on ST-60</b>	<b>Difference</b>
Aviagen North America, Inc.	\$1,800,000	\$720,000	\$57,600	\$69,750	\$12,150
Fort Drum Mountain Community Homes	\$25,402,473	\$10,160,989	\$812,879	\$2,032,198	\$1,219,318
Mohawk, Adirondack and Northern Railroad	\$388,000	\$155,200	\$23,416	\$31,040	\$7,624
Roth Industries	\$1,040,000	\$416,000	\$33,280	\$83,200	\$49,920

Corrections to ABO report to follow next page





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Corrections to page 9 ABO Draft Report

	Total Project Costs	Method	Benefitted Amount Subject to Sales tax	Sales Tax	ST-60 Recorded
		50%			
Aviagen*	5,000,000	Taxable	900,000****	69,750	69,750
FDMCH **	71,201,856	Detail Costs	25,402,473	2,032,198	2,032,198
Mohawk ***	6,180,000	SLC Provided	388,000	31,040	31,040
		40%			
Roth*	8,553,250	Taxable	1,040,000	100,750	83,200

\* 4% NYS, .0375% County

\*\* Detailed Costs provided by FDMCH

\*\*\* SLC determined total taxable purchases to be \$2,472,000. JCIDA portion 15.7% -\$388,000.

Also the total, cost reported in PARIS is incorrect as the amount reported is total exempt purchases.

Total cost on this projec is estimated to be \$6,180000.. St Lawrence County IDA is lead on the project.

\*\*\*\* Incorrectly reported in PARIS as \$1,800,000.

As acknowledgement of the additional findings in your report, we understand our obligations for improving oversight, accountability and transparency.

In response to these areas we wish to confirm for your Office that we are revamping and updating our **Recapture Policy** based on 'best practices' as advocated in the recent joint effort by the NYS Comptroller's office and the New York State Economic Development Council. This updated policy was informally discuss with your auditors and was reviewed again by our Attorneys following receipt of this draft audit. The update policy is expected to be passed by the JCIDA Board of Directors in January, our next regular Board meeting.

Further, the Agency will be taking steps to 'close the loop' on insuring that the amount of sales tax exemption approved by our Board of Directors is the actual amount of the exemption that is ultimately claimed by the project.

In support of this action, all Project Development Agreements (PDA's) will contain specific references to all the exemptions allotted to the project---with notation, as added reinforcement, that these exemptions cannot t exceeded without being subject to recapture efforts by both the NYS Tax Department and our Agency.



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Further, we will continue to review the copies of ST-340s we request from the Project to further insure that a calculation of the sales tax exemptions taken are actually within the amounts allotted through our exemption process and if found to be excessive, correction shall be undertaken according to the process outline in our Recapture Policy.

It was also suggested in the audit that the Agency was not posting Project Resolutions on our web site. Actually, they are being posted, however, it became clear following your review that they are difficult to find. As a result, we will be developing an improved drop-down menu that will clearly allow anyone looking for these Resolutions to find them.

Further, the audit drew to our attention, that we are not submitting annual compliance reports to the Tax Department as required by Section 875 (3) (d) of the GML. We were not aware of the existence of the NYS Form ST-62 until your audit brought it to our attention. Henceforth, we will be complying with the Section 875 requirements.

It is clear from this audit that further efforts must be employed by our Agency to insure that the approved abatement schedules match those that are actually being taken by our project developers and for that to be accomplished, we acknowledge that a 'tightening up' of our policies and procedures will be necessary.

That being said, the disparity between actual sales tax exemptions taken and those identified through our process (and as discussed and reviewed within your report) is more accurate than you have identified in your report.

I should also like to acknowledge that your auditors were both friendly and very business-like and were helpful as regards to pointing out our omissions and procedural issues.

Most Sincerely,

D. C. Alexander  
CEO

Jefferson County Industrial Development Agency

DCA/e.g.

cc: David Converse, Chair

Attorney Joseph Russell

Attachments 10)

Note: Hard copy to follow in regular mail.

December 14, 2018

To Whom It May Concern:

We respectfully submit the following comments to the draft *Operational Review IDA sales and Use Tax Exemptions*:

ES-2, second Paragraph: We have no reason to believe the project owner knowingly provided false information in order to avoid recapture. Assertions such as this should be based upon actual evidence. This allegation against a Monroe County business and employer is damaging to its reputation and, ultimately, state economic development. Given our determination that this project did not receive benefits in excess of those authorized by our board, we respectfully request that this project be removed from this report.

Note  
4

Page 5, first full paragraph: Our project monitoring system, of which we provided screenshots, does calculate the cumulative amount of sales tax exemptions claimed. As such, we respectfully request this paragraph to be modified to reflect Monroe County IDA's inclusion.

Note  
5

Page 5, chart: As stated above, upon inquiry we learned that Frocione Properties LLC did not claim sales tax exemptions that exceeded the amount approved. Therefore, we reiterate our comments above, and respectfully request that this project be removed from this report.

Page 6, second and third paragraphs: As stated above, upon inquiry we learned that Frocione Properties LLC did not claim sales tax exemptions that exceeded the amount approved. Also, legally there is no prohibition for an IDA board to authorize its executive director to grant extensions for sales tax purposes when a project is taking longer than anticipated. In this instance, the executive director properly authorized the extension. Further, neither IDA staff nor our counsel improperly provided benefits in excess of the board's approval, as discussed above. Again, we reiterate our comments above, and respectfully request that this project be removed from this report.

Page 8, paragraph 2: This is not an accurate account of the conversation between the auditors and the IDA staff and our counsel. It is accurate that we could not locate the resolution for this project. However, we believe, that the prior IDA staff and prior counsel did not prepare a resolution in this instance. Further, based upon historical knowledge, we stated that the board would have received all relevant information, including amounts, relative to this project. Further, we told your auditor that current IDA staff and current counsel prepare resolutions for all projects receiving IDA benefits. We respectfully request this paragraph to be modified to accurately reflect the conversation.

Note  
3

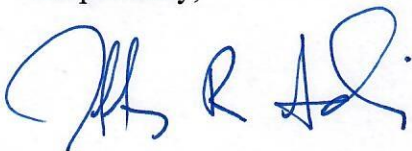


Page 11, posting of project agreements: We have previously understood the law to require posting of our resolutions but not project agreements because the resolution appoints the company to act as our agent. That being said, we acknowledge that ABO Regulation 19 NYCRR 250 requires posting of the project agreement, however, the effective date of this regulation is December 2018. In order to comply with this new regulation, we will post project agreements going forward but not retroactively. As such, we respectfully request this section of the report be modified to reflect the legal requirements applicable to the subject projects.

Page 12, second paragraph: While we understand the form ST-62 was covered by the audit, we do not recall discussing the form ST-62 with your auditors. IDA staff did not make any statements about the form ST-62. Therefore, we request that this paragraph be modified to remove reference to Monroe County IDA.

Note  
5

Respectfully,

A handwritten signature in blue ink, appearing to read "Jeffrey R. Adair".

Jeffrey R. Adair

Executive Director

LINDA E. ROMANO, ESQ.  
[lromano@bsk.com](mailto:lromano@bsk.com)  
P: 315.738.1223  
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December 14, 2018

**VIA ELECTRONIC MAIL**

State of New York  
Authorities Budget Office  
P.O. Box 2076  
Albany, NY 12220-0076

Re: *Oneida County Industrial Development Agency*

Ladies and Gentlemen:

Please allow us to comment on behalf of our above-referenced client on the draft report entitled, "Operational Review – IDA Sales and Use Tax Exemptions."

**Review Results**

We presume OCIDA is preliminarily included in the six IDAs that are inadequately monitoring sales and use tax exemptions. We hope, based on the comments contained here, you will reconsider that classification before making it final.

**Excessive Sales and Tax Exemptions Taken**

Cardinal Griffiss: The original ST-340 filed by Cardinal Griffiss Realty, LLC reflected an exemption claimed of \$29,100.00. As a result of the audit, OCIDA requested Cardinal Griffiss confirm the value of the exemption. Upon verifying with its contractor, Cardinal Griffiss advised that the actual amount of sales tax exemption claimed was \$26,448.97, and filed a corrected ST-340 with NYS, attached here as Attachment 1. OCIDA asked the ABO during the audit what corrective measure it should take outside of this action (e.g., whether it should file a revised ST-60), but no guidance was provided.

Kris-Tech: The audit notice from the ABO indicated the audit was focusing on the 2016 addition project only and, based on this notice, OCIDA focused on compiling information relative only to the 2016 addition in preparation for the audit. When OCIDA informed the auditor there were multiple projects going on at the same time, the ABO expanded the audit to all projects. OCIDA was not prepared at the time of the audit to address all projects, but has since examined its files in further detail. OCIDA also reached out to Kris-Tech's new financial director to confirm the accuracy of all numbers Kris-Tech reported, insofar as the fact that there are various ongoing projects could complicate reporting on the projects. OCIDA will complete its review with Kris-Tech on the

exemptions claimed in the next seven days, and has advised Kris-Tech that OCIDA is obligated to recapture the New York State portion of sales tax exemptions that exceeded the value of exemptions authorized by OCIDA.

In light of the above information, we take exception to the statement on page 7 that "Oneida County IDA officials did not provide any information regarding the other two projects that we identified as claiming excess sales tax exemptions."

Note  
5

We also take exception with the statement in the same paragraph that the companies "avoided recapture" by filing amended ST-340s. It is important to note that amended ST-340s are signed under penalty of perjury and we suggest a more accurate statement is, after the companies were contacted by OCIDA, they determined they did not in fact claim more than authorized and they filed amended ST-340s to report the actual amount of exemptions claimed.

Note  
4

#### Financial Assistance Provided Prior to Public Hearing

We don't believe the actual OCIDA policy and process is accurately reflected in this section, and would like to confirm the process it follows for all projects.

At the time each project is induced, while OCIDA declares in the inducement resolution that the application is appointed agent for the purpose of sales tax exemptions, NO exemption documents are issued to the applicant until certain conditions are met. Each inducement resolution specifically states the agency appointment is subject to OCIDA conducting a public hearing, the parties entering into a standard form of Inducement/Project Agreement and OCIDA adopting a SEQR resolution. Only after all conditions are met does OCIDA issue Form ST-60 to the applicant, which is evidenced by the date on which each ST-60 was signed by OCIDA.

During the audit, OCIDA representatives explained this process to the auditor, and asked for clarification on what the "appointment date" should read, based on this procedure but did not receive clear direction. Now, based on the ABO report, we understand the ABO is directing the "appointment date" to be the date on which the ST-60 is issued to the agent.

We understand the purpose of General Municipal Law Section 859-a (2) is to limit project financial assistance to \$100,000.00 until the IDA conducts a public hearing and receives comments, and submit that the OCIDA process fully complies with that requirement as OCIDA does not make any financial assistance available to agents until after the public hearing is conducted, as is evidenced by the signature date on each ST-60. In short, the practice is being followed but the forms ST-60 were not completed in the manner in which OCIDA now understands is required.

Note  
6

Following the ABO audit, OCIDA further restricted its policy to not issue any sales tax exemption documents until the closing of the lease-leaseback transaction, unless doing so would harm a project. In those limited instances, only a small portion of the sales tax exemption is issued, after the public hearing and with board approval.

We respectfully request you amend the statement on page 10 that reads: "We also found that it is Oneida County IDA's practice to allow its projects to claim sales tax exemptions prior to the public hearing by recording an appointment date on ST-60s that is prior to the public hearing date."

Note  
4

#### Recapture Policies

The report indicates OCIDA's recapture policy does not include any provisions that require the IDA to recapture sales tax exemptions amounts taken in excess of the amount approved by the IDA. This is an inaccurate statement. We attach here as Attachment 2 the OCIDA Recapture Policy, and direct your attention to Section 5 ("Mandatory Recapture") and specifically paragraph (b). This language is also mirrored in Section 3.12(c) of each Inducement/Project Agreement (form attached as Attachment 3) and in Section 6(c) of each Job Creation and Recapture Agreement (form attached as Attachment 4). Please change this statement to reflect OCIDA is in compliance.

Note  
5

#### Annual Compliance Reports

OCIDA concedes that it did not submit Form ST-62 in 2016 and 2017. We are told that the 2017 report was submitted this week and attach a copy here as Attachment 5. It will file the 2016 report in the next thirty days.

In closing, OCIDA considered the time spent with auditors as an opportunity to learn and to keep abreast of best practices in light of the ever-changing regulatory environment. In all instances where the auditor offered criticism of a practice, OCIDA implemented new policies to better address the same. In some instances, OCIDA requested specific directives or recommendations from the auditor, but did not receive them.

Following the ABO audit, OCIDA implemented the following new policies:

1. ST-60s are not issued until the closing of a lease-leaseback transaction, unless it would cause an applicant hardship, in which case a minimal amount is authorized by the board of directors, but in no event issued before a public hearing is conducted.
2. When OCIDA issues an ST-60, it provides the form attached as Attachment 6 to each agent, as a spreadsheet to use to track each exempt purchase. Each time



an agent requests a new ST-60 to be issued, it must submit to OCIDA an updated form that shows the amount of exemptions claimed to date so OCIDA can compare with what is authorized. This form is also required to be submitted with each annual report to OCIDA.

3. OCIDA updated its memorandum to agents, providing a plain language description of the agent's obligations under the IDA appointment. See Attachment 7.

Finally, we would request our client's willingness to adjust its policies to reflect best practices is reflected in this report.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Linda E. Romano

LER/lr

Attachments

cc: Oneida County Industrial Development Agency



**BOARD OF DIRECTORS**

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- CHAIRMAN

**John Steinberg, Jr.**  
- VICE CHAIRMAN

**Stephen Brescia**  
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EXECUTIVE VICE  
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**Joel Kleiman**  
- CHIEF FINANCIAL OFFICER

**Kevin T. Dowd**  
- ATTORNEY

Mr. Jeffrey Pearlman, Director  
NYS Authorities Budget Office  
P.O. Box 2076  
Albany, NY 12220-0076

December 19, 2018

RE: Draft Operational Review - IDA Sales and Use Tax  
Exemptions – Orange County IDA

Dear Mr. Pearlman,

Please accept this letter as the Orange County IDA's response to the above referenced draft report which is submitted with our earnest appreciation for drawing our attention to deficiencies within our organization's oversight responsibilities but, at the same time, with the hope that certain errors or mischaracterizations of our operations will be corrected by the ABO in its final report.

The draft report indicates correctly that while we annually require project owners to report sales tax exemptions claimed by a project for a particular year together with providing us with a copy of their ST-340 submitted to the Tax Department, our staff never calculated the cumulative amount of sales tax claimed to the amount of sales tax exemptions approved by the Board. However, this deficiency was the result of a lack of staffing which the IDA has rectified by adding a new "compliance officer" position whose duties, among others, will be to closely monitor sale tax exemptions to avoid any future discrepancies.

Setting aside the foregoing, the draft report singles out two project owners who allegedly exceeded their authorized sales tax exemptions: Cross Roads Court Real Estate, LLC and International Business Machines, Inc. Immediately after these alleged excesses were brought to our attention, the project owners were notified by our counsel. Cross Roads subsequently revised their ST-340 to reflect a lower amount of sales tax exemptions claimed and filed the same with the Tax Department and with the IDA. Given that we have not received any indication from the Tax Department that the revised ST-340 was erroneous, we believe that Cross Roads should not be singled out in the report as exceeding its authorized sales tax exemption or, at the very least, the report should indicate that, based upon the revised ST-340, Cross Roads did not exceed its authorized exemption. To allow the report as written to stand is extremely unfair to the project owner.

Note  
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As for International Business Machines, as stated above, the project owner was immediately made aware of the apparent discrepancies uncovered by ABO staff between the

authorized sales tax exemption and the purported sales tax exemption claimed. As we are sure you can appreciate, the corporate structure of IBM is considerably more complex than many other corporations with which we do business and the amount of the authorized sales tax exemption was considerable and extended over several years. The IDA did not receive information back from IBM until a week before the ABO draft report was issued. Based upon

IBM's internal audit and review, it appears that your staff was incorrect in its finding that IBM exceeded its authorized sales tax exemption authorization by \$263,876. This incorrect assertion on your staff's part may be due to several factors. First, the ST-340 filings are based upon a January-December schedule while the actual IDA accrual period for this particular project was on a June-May schedule. Second, the IDA has incentivized different IBM projects over the years and we believe that this may have caused some confusion within your staff's review. For example, we believe that there was a \$1,377,697 reported sales tax exemption which was part of a prior project begun in 2007 that was not part of the 2015 project reviewed by your staff that should not have been included in its calculations. Third, the draft report indicates that the IDA approved IBM for \$4 million in sales tax exemptions through December, 2016 when, in fact, the authorizing resolution granted sales tax exemptions of \$4,062,500, a significant mistake on your staff's part. Additionally, the IDA Board increased and extended the sales tax exemptions for IBM to \$6,093,750 through December 31, 2017. Based upon IBM's documentation to us, this latter amount of \$6,093,750 was not exceeded as IBM claimed sales tax exemptions of \$6,090,769.04 and, therefore, should not be included in this portion of your report. The only valid assertion in your report is that the ST-60s filed in this matter had an expiration date through December 31, 2020. The IDA relies upon its Bond Counsel to complete and file the ST-60s for all of our projects. Unfortunately, it appears Bond Counsel made a mistake and we have discussed the issue with them so as to avoid any further mistakes in the future.

Note  
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Note  
8

With respect to that part of your report concerning the filing of the ST-62 recapture form, we were not aware of any notice, policy guidelines or best practices issued by either your office or the Tax Department that such a form even existed and the need to file the same. Even before our interview with your staff ended, we began texting our Bond Counsel to find out what they knew about the ST-62 since that law firm assists us in all such filings. Our Bond Counsel was equally unaware of the form. Subsequent to our interview with your staff we contacted several other IDAs and found that most never heard of the form either. While we are somewhat at a loss as to the logic of the need to file a form that reports a negative (no recapture), the IDA will submit the form going forward within 60 days of the end of our fiscal year. Lastly, we have filed the ST-62 for fiscal year 2017.

This brings us to the last point in your draft report, namely, our failure to properly report the metropolitan commuter transportation tax as a "local sales tax exemption" in PARIS. The report specifically refers to IBM for the years 2015-2017 and the fact that IBM reported receiving the metro commuter tax exemptions but that we failed to include that in our PARIS reporting for those years. This was an oversight on our part and we will correct it going forward.

We thank you for the opportunity to respond to the matters raised in the draft report and wherever deficiencies have occurred we will take immediate remedial measures to ensure that they do not occur in the future.

Sincerely,



Laurie Villasuso  
Chief Operating Officer &  
Executive Vice President  
Orange County Industrial Development Agency

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**From:** LaBrake, Robin <RLaBrake@rensko.com> on behalf of Pasinella, Robert  
<RPasinella@rensko.com>  
**Sent:** Thursday, December 13, 2018 12:18 PM  
**To:** abo.sm.info  
**Cc:** 'LaBrake, Robin (RLaBrake@rensko.com)'  
**Subject:** RE: ABO IDA Sales and Use Tax Exemptions Draft Report  
**Attachments:** Rensselaer County IDA Public Hearing Documents Related to Regeneron Projects.pdf

Good afternoon,

I am responding to the IDA Sales and Use Tax Exemptions Draft Report you sent for our review. On page 10 under Financial Assistance Provided Prior to Public Hearing, we found an inaccuracy. The Rensselaer County IDA held a public hearing on November 5<sup>th</sup>, 2015 for the Regeneron Boiler/Chiller project. On December 8, 2015, the Rensselaer County IDA held a public hearing for the Regeneron Parking Lot and Walkway project. These were two separate projects. There was no sales tax exemption granted for the boiler/chiller project prior to the public hearing. I have attached copies of the documents for your review. They can also be found on our website.

Note 3
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Thank you for allowing our agency to clarify this issue. If you would like to discuss this further, please contact me.

Regards,

Robert Pasinella

Robert Pasinella  
Executive Director  
Rensselaer County IDA  
1600 7<sup>th</sup> Avenue  
Troy, NY 12180

(518) 270-2914

rpasinella@rensko.com

December 14, 2018

State of New York  
Authorities Budget Office  
Mr. Jeffrey Pearlman, Director  
PO Box 2076  
Albany, NY 12220-0076

RE: IDA Sales and Use Tax Exemption Operational Review, Steuben County IDA Response

Dear Mr. Pearlman:

Please accept this as the formal response from the Board of Directors of the Steuben County Industrial Development Agency (IDA) in regard to the Operational Review of IDA Sales and Use Tax Exemptions that we participated in this past September.

The staff and board of the Steuben County IDA take great pride in making sure the organization is in operational compliance and when an operational deficiency is found we take immediate action to make any necessary changes. We do not dispute that there are imperfections that occur from time to time, however, the draft report has many inaccuracies, is incomplete and combative in tone.

The process the organization follows to grant and monitor sales tax exemptions is outlined below:

- At time of application, IDA staff work with the company to estimate the total sales tax exemptions that will be claimed. This agreed to number is included in the application and the company is made aware that should they exceed this benefit the excess amount will be recaptured in accordance with the IDA statute. It is made clear to the company that if they exceed the benefit or need more time to complete the project the IDA board will need to approve any such change. A formal request in writing is required by the company outlining the reason for the increase or extension and the board takes action on the request at its next meeting.
- IDA staff annually monitors the sales tax benefit as part of the required reporting for PARIS. Projects are required to complete the IDA annual report which asks for total benefits claimed in the year including the total sales tax benefit claimed that year. In addition, for those claiming sales tax, they are required to provide a copy of the ST-340 that was submitted to the NY State Department of Tax and Finance.
- IDA staff reviews this information for issues or concerns as it relates to the total approved benefit and addresses them with the company prior to a review by the board.

It should be noted that Department of Tax and Finance (or any other state agency) has not provided guidance related to the 2013 legislation and that the process for approving and monitoring this benefit outlined above was developed by the agency. In addition, two of the three projects that were reviewed received approvals from the IDA the same year as the legislation was adopted (Marsh Hill Wind and Hilton Garden Inn) before rules and regulations were issued related to the change. These projects were also the projects that the report found fault with. In other words, it appears that the ABO's position is that all projects are subject to the 2013 legislation (and any changes thereto) regardless when approved and that the legislation is retroactive (which is arguably in violation of NYS law).

Below are responses to the findings in the report specific to the Steuben County IDA.

**The Steuben County IDA is Not Posting Resolutions (page 4)**

**IDA Response** - There have been no rules or regulations issued regarding the posting of these to the website. Currently rules and regulations regarding this have just went through the public comment period and the Steuben County IDA will act accordingly to the requirements that are issued.

If the ABO determines that posting of resolutions and agent agreements is best practices, we will comply.

**Ineffective Monitoring and Tracking of Cumulative Benefit (Page 5)**

**IDA Response** - As you can see from the process outlined above, we gather the information annually and internally maintain a cumulative total of the benefits during the life of the benefit period.

**Marsh Hill Wind Claiming Benefits Beyond the Life of the Project (Page 7)**

**IDA Response** - The report points out that the Marsh Hill Wind Project claimed Sales Tax benefits beyond the approved period totaling \$43,293 for 2015 and 2016 and no action to correct this. Admittedly, the IDA did not recognize that benefits were being reported on the 2015 and 2016 ST-340 submitted with the projects annual reporting. In 2017, the IDA was notified by the Department of Tax and Finance that the project submitted an ST-340 for 2016 showing that a benefit was claimed beyond the approved benefit period for that year. The IDA immediately notified the company that they were to cease use of the benefit and contact the Department of Tax and Finance to correct the situation. The Department of Tax and Finance was copied on this correspondence and no further correspondence was received from tax and finance regarding this issue so no additional action was taken. IDA staff thought the issue was resolved.

It should be noted that neither the IDA nor the Department of Tax and Finance identified the claim of benefits beyond the approved benefit period in 2015 and only determined there was a concern after the 2016 tax year.

In September of this year, the auditors raised the concern that we took no further action outside of our correspondence in 2017. Again, staff reached out to the company on September 7, 2018 to get additional details of what occurred. After a thorough review of the project details, the company determined that in 2015 the company had reported \$36,210 in sales tax benefit on the ST-340 but of that amount only \$2,531



was actual claimed as an IDA exemption. The remaining \$33,679 was related to other exempt services. In addition, the 2016 report was submitted in error and no benefits were taken.

As a result of this review the company filed amended ST-340's for 2015 and 2016 and the IDA recaptured \$2,531 in benefit that was claimed in 2015 after the expiration of the benefit period. This payment was remitted to tax and finance in October of 2018 and the ABO was notified of these actions in advance of this report being drafted.

In summary, the report is inaccurate, misleading and incomplete relative to the actions taken by the IDA in connection with the Marsh Hill project and needs to be corrected.

Note  
10

**Hilton Garden Inn Received Benefits in Advance of Public Hearing (Page 10)**

**IDA Response** – The report is critical of the IDA providing financial assistance in the form of a sales tax exemption prior to the required public hearing despite those benefits being limited to \$100,000 per the IDA statute (the IDA approval resolution explicitly limits the exemption to \$100,000 until such time as the hearing is held and subsequent approval by the IDA). Occasionally, the timing of project commencement requires a sales tax exemption prior to the hearing and final approval. In such instances, the IDA explicitly limits any such benefit to \$100,000 as was the case with this project.

The report notes that the ST-60 form contains the entire estimated sales tax exemption to be utilized over the course of the project and is not limited to the initial \$100,000 needed to commence construction. The IDA views the ST-60 form as just that, a “form” and not a contract. The company is contractually limited to the \$100,000 exemption explicitly by the IDA initial resolution.

In the event the ABO determines that best practices require an initial ST-60 for up to \$100,000 and a second ST-60 for the full amount upon final approval, the IDA will comply. In our view, this will create confusion for the Department of Tax and Finance and could potentially result in reporting issues. The IDA recommends that any best practice related to the completion of the ST-60 be coordinated with the Department of Tax and Finance to avoid further concerns.

Note  
11

**Steuben IDA Took No Action to Recapture Marsh Hill Benefit (Page 11)**

**IDA Response** - The IDA did act upon realizing the benefit was claimed in excess. These actions are outlined above. The report is inaccurate with respect to this and needs to be corrected.

**IDA Relies on Attorney's for Compliance (Page 12)**

**IDA Response** – The IDA relies on counsel for many things, not only legal advice, but advice on how to proceed on certain matters where there is a lack of guidance from the ABO and other state agencies. With respect to the ST-62 recapture form, to our knowledge, the ABO (and any other state agency) did not give notice that this was an additional reporting requirement. From a practical standpoint, it does not make sense to require IDA's to complete and submit a form advising the ABO that it has not attempted to recapture benefit in any given year. We agree that a recapture event is worthwhile information for the

state but question the need to report an “non-action”. We will submit the form going forward within 90-days of the end of our fiscal year.

Thank you for this opportunity to reply to this draft report. While any opportunity to review our procedures is welcome, I believe, as has been demonstrated in this letter, the Steuben County IDA has taken the necessary actions to correct any oversights where we feel is necessary.

As previously stated, the agency and its board take its obligations seriously. This response will serve to clarify the boards actions and compliance at the time of those actions and we request the ABO recognizes this response and works to adjust the report accordingly in an attempt to promote a partnership to better serve the State and communities we strive to improve.

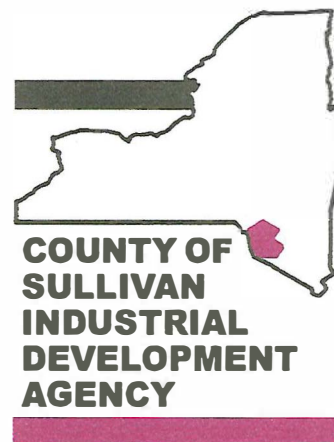
Sincerely,

A handwritten signature in black ink, appearing to read "Michael Nisbet".

Michael Nisbet  
Chairman



548 Broadway  
Monticello, New York 12701  
(845) 428-7575  
(845) 428-7577 FAX  
TTY 711



December 13, 2018

Mr. Jeffrey H. Pearlman, Director  
State of New York Authorities Budget Office  
PO Box 2076  
Albany, New York 12220-0076

Dear Mr. Pearlman,

The County of Sullivan Industrial Development Agency (CSIDA) appreciates the opportunity to respond to the Authorities Budget Office's (ABO) Draft Operational Review of IDA Sales and Use Tax Exemptions.

We would like to respond to some specific points raised in the draft report:

Value of Sales and Use Tax Exemption Taken by the BRR Brothers III, LLC and Sullivan County Fabrication Inc. Project:

With respect to the sales and use tax exemption claimed by the BRR Brothers III, LLC and Sullivan County Fabrication, Inc. project, we contacted the project immediately upon receipt of the draft report and confirmed that the project has not exceeded its authorized sales and use tax exemption. As indicated in the draft report, during the site audit CSIDA staff supplied ABO staff with a 2016 ST-340 showing that the project claimed \$19,921 in exemptions. The project furnished this form to CSIDA in April 2017. The report continues that ABO obtained a 2016 ST-340 from the Tax Department showing the project claimed \$186,652 in exemptions. The project had also furnished this form to CSIDA, in February 2017. In the interim, CSIDA staff reviewed the February 2017 ST-340 and contacted the project to advise that the project was approaching its approved exemption limit of \$191,464. During that discussion it became apparent that the project had filled out the ST-340 incorrectly and had provided the total amount of purchases, not the total value of exemptions. The project then recalculated the CSIDA sales tax benefits and submitted a revised ST-340 to CSIDA in April. Upon receipt of the draft report in December, CSIDA staff immediately contacted the project, and project representatives confirmed they had signed and submitted the revised ST-340, showing a total exemption of \$19,921, to the Tax Department in April. Based on the values reported on the revised 2016 form and 2017 form, the project has claimed \$149,243 and thus has not exceeded its authorized sales and use tax exemption of \$191,464.

Note  
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Moreover, during our discussions with the project we learned the ST-340s submitted to the Tax Department vastly overstate the value of IDA sales and use tax exemptions. This project is a supermarket shelf manufacturing facility, and many of its purchases are exempt under New York State's manufacturing and production exemption. This project, when in operation, will manufacture supermarket shelves. This

is clearly the creation of a product that is substantially different in form, character, composition and usefulness than its component parts. The project is currently working to further revise the 2016 and 2017 ST-340s, and will submit corrected forms to the Tax Department with copies to CSIDA in the coming days.

We would like to point out that by submitting revised ST-340s, the project will correct the forms previously submitted, which in error overstated the value of the IDA's sales and use tax exemption. The draft ABO report states that projects submit revised ST-340s to "avoid recapture" of excess exemptions, but in this instance, the filing of revised ST-340s is to correct an error, not avoid recapture.

The draft report indicates "Sullivan County IDA did not provide any information indicating that they would take any actions for the [project] that we identified as claiming excess sales tax exemptions." As stated elsewhere in the draft report, at the time of the audit, we knew the project had not exceeded its authorized exemption so there was no discussion with ABO regarding recapture of benefits. Upon further review and discussion with the project, we are even more confident that there was no excess sales tax exemption and further, we believe the total IDA exemption is much lower than previously reported. As indicated above, the project is now working to correct the apparent overstatement of IDA sales and use tax benefits and will submit revised ST-340 forms to the Tax Department in the near future.

Finally with respect to sales tax reporting, we contacted the New York State Department of Taxation and Finance on March 16, 2018 at the request of another CSIDA project. A project representative asked us whether the ST-60 forms should include the estimated value of goods and services and estimated value of exemption resulting from the IDA's sales and use tax exemption alone, or the total value of all sales and use tax exemptions authorized by any New York State program (for example, the production exemption or the sales and use tax exemption for the sales and installation of commercial solar energy systems equipment, or others). We were advised by the Tax Department representative that the values on the ST-60 should reflect all exemptions. Further, the Tax Department representative advised that the State examines the values provided on the ST-60 forms for overall budgeting purposes. We later followed up and were advised by other sources that this is not the case, and that IDA related forms (ST-60, ST-340) should only include values pertaining to IDA exemptions. We point this out to illustrate the complexity and confusion that seems to surround IDA reporting requirements. Our staff is dedicated to complying with all applicable rules, regulations, and policies, but we find it difficult to do so in the absence of clear and consistent information.

#### Recapture Policy:

We have not adopted a recapture policy. Unlike many IDAs, CSIDA requires each project to approach our Board of Directors at six-month intervals to request an extension of the project's sales tax exempt status. This approach allows us to monitor our projects closely, and we require regular reports (monthly on large projects) on the value of the sales tax exemption claimed to help ensure projects do not exceed their authorized exemptions. However, we recognize the State's preference for every IDA to adopt a specific Project Recapture and Termination Policy, and to that end we have drafted a policy which will be presented to our Board for their review and approval early in 2019.

### Posting Project Agreements and Resolutions:

Since 2014, CSIDA has posted all project agreements to its website. The ABO's draft report states "of the 43 projects we reviewed, none of the project agreements were posted on the respective IDA web sites." This conclusion is clearly in error. Upon review of the draft report, we confirmed that all project agreements for projects that have closed since late 2014 were posted on the CSIDA's website prior to the on-site audit. Project agreements can be found at <http://www.sullivanida.com/project-documents/>.

The draft report continues, "[i]n addition, only eight of the 43 project resolutions were posted on three IDAs' web sites." All CSIDA resolutions passed since September 13, 2011 are posted on our website. We post draft resolutions prior to our Board meetings, and replace them with final versions as soon as practical after each meeting. Links to all Board meeting documents, including resolutions, are found on the left side of our homepage [www.sullivanida.com](http://www.sullivanida.com).

### Recommendations of the Draft Report:

We appreciate the recommendations included in the draft report, and we are happy to see that substantially all of the recommended policies and procedures are already a part of CSIDA's operations. For example,

- CSIDA staff tracks all ST-60s and ST-340s to ensure projects only claim sales and use tax exemptions authorized by the CSIDA.
- Our Agent and Project Agreements specify that all projects will be subject to the recapture of unauthorized sales and use tax exemption benefits taken. To date we have not worked with a project that claimed unauthorized benefits, but we are committed to recapture if the need arises.
- Our Board resolutions and Agent and Project Agreements specify the amount of financial assistance authorized.
- The amounts and time periods authorized on our ST-60s are taken directly from our Agent and Project Agreements. Many of our projects involve subagents, each of which prepares a separate ST-60. We work hard to track all ST-60s for each project, totaling the exemption amounts authorized by all subagent ST-60s to ensure the total does not exceed the amount authorized by the CSIDA.
- CSIDA never provides financial assistance to projects that are required to have public hearings prior to the public hearing. Moreover, we do not provide financial assistance to any project prior to the CSIDA's approval of the project.
- As noted above, CSIDA posts all project resolutions and project agreements on our website.
- CSIDA submits all annual compliance reports.
- CSIDA files accurate and timely PARIS reports every year. We often contact ABO for guidance in using the system, and we appreciate ABO staff's knowledge and helpfulness. We note that while PARIS has improved in recent years, it remains a flawed system for accurate reporting of our projects and activities.

- CSIDA collects adequate and reliable sales and use tax exemption information from all projects, including ST-340 Forms, and we check those forms against ST-60 Forms to ensure the information received and reported is accurate and the exemptions fall within the approved limits.

CSIDA staff closely monitors sales and use tax exemptions. We have over twenty active projects with sales and use tax exemptions. Several are large projects with dozens of subcontractors performing work, further complicating the reporting, monitoring, and compliance required of us. We work hard to ensure all projects comply with all applicable CSIDA and New York State requirements, and we always strive to improve our processes.

Very truly yours,  
County of Sullivan Industrial Development Agency

  
By: Jennifer M. Flad, Executive Director

cc: Edward T. Sykes, Chief Executive Officer  
Ira Steingart, Chairman  
Walter F. Garigliano, General Counsel

70289-046v2

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## ABO Notes to Responses

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1. The report was amended to reflect that while sales tax exemptions for 2016 and 2017 were reported, sales tax exemptions for 2014 and 2015 were not reported.
2. Although this review focused on sales tax exemptions, some projects are still actively receiving other IDA financial assistance such as real property tax exemptions and should have project documents posted.
3. This section was removed from the report.
4. The language in the report has been revised to reflect this concern.
5. The report was revised to reflect the IDA's response.
6. The purpose of General Municipal Law 859-a (2) is to require a public hearing when financial assistance to a project exceeds \$100,000. This section of law does not include any provisions that would limit financial assistance provided to projects to \$100,000 prior to the public hearing.
7. This number was clarified in the report to reflect the full dollar value of the sales tax exemptions.
8. IBM reported a total of \$6,357.625 to the IDA in sales tax exemptions between 2015 and 2017, all of which were identified as applying to the project selected for this review.
9. The report was revised to reflect the guidance that was provided by the Department of Taxation and Finance in February 2014
10. The report was revised to better reflect the events that occurred relative to this project.
11. ST-60s should not be provided until the project is approved by the board.

## Appendix A

IDA	Project
Dutchess	Built Parcel Three
Dutchess	Cardinal Court Apartment, LLC
Dutchess	Empire Hotel Development
Dutchess	GPSDC (GAP) New York, Inc
Dutchess	GPSDC (New York)
Jefferson	Aviagen North America, Inc
Jefferson	Fort Drum Mountain Community Homes
Jefferson	Mohawk, Adirondack and Northern Railroad
Jefferson	Roth Industries
Madison	Carriagehouse Apartments II 2016
Madison	Cazenovia Hospitality 2015
Madison	Good Nature Brewing, Inc.
Monroe	First Transit Inc.
Monroe	Five Star Bank
Monroe	Frocione Properties LLC
Monroe	Big Apple Deli
Monroe	Hive @ 155 LLC
Monroe	Unither U.S. Corp
Oneida	Cardinal Griffiss Realty, LLC-Buildout
Oneida	Kris-Tech Wire Company Inc.
Oneida	Marcy Family, LLC
Oneida	New Hartford Lodging Group, LLC
Oneida	Northland Communications
Orange	Blackhawk Development, LLC
Orange	Cross Roads Court Real Estate, LLC
Orange	International Business Machines (IBM)
Orange	Matrix Newburgh I, LLC
Orange	USAI, LLC
Rensselaer	555-One
Rensselaer	Cell-Nique
Rensselaer	Regeneron Renovation/Equipment
Rensselaer	Renssco Development Corporation
Rensselaer	Van Allen Apartments
Steuben	East Lake Holdings LLC
Steuben	Hilton Garden Inn
Steuben	Marsh Hill Energy LLC
Steuben	Red Lilac Properties, LLC
Steuben	Riedman Purcell CH I LLC
Sullivan	Adelaar Developer, LLC.
Sullivan	BRR Brothers III, LLC. / Sullivan County Fabrications, Inc.
Sullivan	Metallized Carbon Corporation
Sullivan	NY Delaware I, LLC.
Sullivan	Veria Wellness Center