



IDA Annual Compliance Report State Sales Tax Recapture

For IDA fiscal year ending 12 31 18
(mmdyy)

Due within 90 days of the end of each fiscal year.

IDA information

Name of IDA DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY		
Street address 3 NEPTUNE ROAD	Telephone number (845) 463-5400	
City POUGHKEEPSIE	State NY	ZIP code 12601

Terms and conditions for the recapture of state sales tax exemption benefits for projects established, amended, or extended on or after March 28, 2013

1 Did the IDA provide state sales tax exemption benefits to any project established, amended, or extended during the fiscal year entered above? 1 Yes No

If Yes, continue below.
If No, skip to question 3.

2 When an IDA establishes a project, appoints an agent/project operator, or amends or extends a project established in a prior year, the IDA must include terms and conditions for the recapture of state sales tax exemption benefits in its resolutions and project documents. This applies to all projects established, amended, or extended on or after March 28, 2013 (see instructions).

Did the IDA use the same terms and conditions regarding the recapture of state sales tax exemption benefits in the project documents for each of its projects (as described above)? 2 Yes No

If Yes, attach a copy of the terms and conditions used.

If No, attach a copy of each version used. Be sure to identify the projects to which each version of the terms and conditions relate.

If the IDA did not include terms and conditions for the recapture of state sales tax exemption benefits in the project documents, attach a list of these projects (see instructions).

Activities and efforts to recapture state sales tax exemption benefits for projects established, amended, or extended on or after March 28, 2013

3 Did the IDA make efforts to recapture any state sales and use tax exemption benefits from an agent, project operator, or other person or entity (see instructions)? 3 Yes No

If Yes, continue below.
If No, skip question 4 and complete the Certification below.

4 Did the IDA file Form ST-65, IDA Report of Recaptured Sales and Use Tax Benefits, for each recapture, and remit the funds to the Tax Department? 4 Yes No

If Yes, you must keep a copy of Form ST-65 and supporting documentation related to the recapture activities.
If No, attach an explanation of the IDA's recapture efforts (see instructions).

Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of person signing on behalf of the IDA SARAH LEE	Print title of person signing on behalf of the IDA EXECUTIVE DIRECTOR
Signature 	Date 03-12-2019
	Telephone number (845) 463-5400

Mailing instructions

Mail completed form and attachments to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

- (i) If there shall occur a Recapture Event prior to the Completion Date or within the first (1st) or second (2nd) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event during the third (3rd) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return

of public benefits conferred by the Agency, ninety percent (90%) of the Recaptured Benefits;

- (iii) If there shall occur a Recapture Event during the fourth (4th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, eighty percent (80%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event during the fifth (5th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy percent (70%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event during the sixth (6th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty percent (60%) of the Recaptured Benefits; and
- (vi) If there shall occur a Recapture Event during the seventh (7th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;
- (viii) If there shall occur a Recapture Event during the eighth (8th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, forty percent (40%) of the Recaptured Benefits; and
- (ix) If there shall occur a Recapture Event during the ninth (9th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, thirty percent (30%) of the Recaptured Benefits; and
- (x) If there shall occur a Recapture Event during the tenth (10th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty percent (20%) of the Recaptured Benefits; and
- (xi) If there shall occur a Recapture Event during the eleventh (11th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New

York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ten percent (10%) of the Recaptured Benefits; and

- (xii) If there shall occur a Recapture Event during the twelfth (12th) year after the Completion Date, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Lease Agreement including, but not limited to, the amount equal to 100% of:

- (i) the Mortgage Recording Tax Exemption; and
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Company Sales Tax Savings**”); and
- (iii) real property tax abatements granted pursuant to Section 5.1 hereof (the “**Real Property Tax Abatements**”);

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within thirty (30) days after such notice.

- (c) The term “**Recapture Event**” shall mean any of the following events:

- (1) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (4) below or in subsection (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

- (2) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or

- (3) The sale of the Facility or closure of the Facility and/or departure of the Company from Dutchess County, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or

- (4) Failure of the Company to create or cause to be maintained at least ninety percent (90%) of the number of FTE jobs at the Facility as provided in Section 8.11 of the Lease Agreement, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including without

limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

(5) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company's activities in, or commitment to Dutchess County, New York; or

(6) The Company fails to diligently pursue and obtain all necessary permits for and to have commenced construction of the luxury hotel and spa (as such terms are generally defined in the hotel industry and as such project was described in the materials submitted to the Agency with the Project Application Information) planned for the property adjacent to (or in the near vicinity of) the Improvements within five (5) years after the Completion Date; or

(7) The Company receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Reserved.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year of the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full,

together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4, from amounts received by the Agency pursuant to this Section 5.4.

(i) The Company acknowledges that Section 5.4 is intended to reflect the Agency's "Policy on Maintaining Performance Based Incentives (MPBI)" a copy of which is attached hereto as Exhibit G and made a part hereof, and that such policy includes the process by which the Agency will review any performance based incentive deficiencies, the Company's explanations and proposed cures thereof and exercise any remedies hereunder or waiver of same. In the event of a conflict between the provisions of Section 5.4 and the provisions set forth on Exhibit G, the provisions set forth on Exhibit G shall control.
