

NYS SALES TAX RECAPTURE – REQUIRED ANNUAL FILING OF FORM ST-62 BY INDUSTRIAL DEVELOPMENT AGENCIES

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Industrial development agencies (IDAs) in New York State are subject to a myriad of compliance requirements. This client alert relates to one such requirement of fairly recent vintage: the filing of Form ST-62 – IDA Annual Compliance Report – State Sales Tax Recapture (Form ST-62) as promulgated by the New York State Department of Taxation and Finance (DT&F). **For the majority of IDAs, Form ST-62 is required to be filed no later than March 31st of each year.** A copy of Form ST-62 and the instructions to complete the form are provided for your convenience. [Click here to access the Form.](#)

Sales Tax Exemption Reporting Requirement

Form ST-62 is the byproduct of legislation passed in 2013 by the New York State Legislature, which legislation created a new reporting requirement for IDAs relating to the recapture of sales tax exemption benefits. This requirement was codified in Section 875(3) of the General Municipal Law, which provides that an IDA must, within ninety (90) days of the end of its fiscal year, file an annual compliance report detailing its efforts to:

“recover, recapture, receive or otherwise obtain from an agent, project operator or other person or entity state sales and use tax exemptions benefits taken or purposed to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to such property or services in the manner required by the person’s agreement with the IDA.”

Form ST-62

Translating the above into plain English, Form ST-62 requires an IDA to confirm (among other things): (1) whether the IDA provided a sales tax exemption to any project during their fiscal year, (2) whether the IDA used the same terms and conditions regarding the recapture of state sales tax exemptions across its projects, (3) whether the IDA made efforts to recapture any sales tax exemption benefits due and (4) if recapture benefits were received, whether such funds were remitted by the

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IDA to the DT&F.

Loss of Authority to Provide Sales Tax Exemption Benefits

IDAs should not underestimate the importance of filing Form ST-62 on an annual basis. Under Section 875(3)(d) of the General Municipal Law, the failure by an IDA to file or substantially complete the annual compliance report (i.e., Form ST-62) could result in the IDA losing the ability to offer state sales tax exemption benefits. This serious penalty is further hammered home by DT&F in its instructions to Form ST-62. Suffice it to say, IDAs should be on notice of the heightened scrutiny regarding the provision of sales tax exemption benefits and the dangers inherent in not filing Form ST-62 on an annual basis.

When and Where to File Form ST-62

As previously mentioned, Form ST-62 must be filed within ninety (90) days of the end of an IDA's fiscal year. Since the vast majority of IDAs have fiscal years based on the calendar year, this means that the filing should be completed by no later than March 31st. Under Section 875(3)(d) of the General Municipal Law, IDAs are required to file Form ST-62 with DT&F, the NYS Budget Director, the NYS Commissioner of Economic Development, the Office of the State Comptroller and the governing body of the municipality for whose benefit the IDA was created.

If you have any comments or questions, please contact any of the attorneys listed below:

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