

Orange County Industrial Development Agency

The Orange County Industrial Development Agency was established as a not-for-profit by an act of the New York State Legislature in 1972 as a public benefit corporation of the State of New York, under the General Municipal Law. The Orange County IDA can serve all cities, towns and villages in Orange County, but generally defers to the municipalities that have their own IDA's.

What is an Orange County Industrial Development Agency Transaction?

Industrial Development Agencies were created to promote economic development and job creation within their jurisdiction. They are empowered to acquire property or an interest in property and also issue bonds to finance projects that will increase the local tax and employment base in New York State.

The IDA participates in a Company's eligible project by taking title to or a leasehold interest in the real and personal property involved in the project. The IDA then leases the property under a lease agreement or sells the property under an installment sale agreement to the Company. The payment under the lease or installment sale agreement is for nominal consideration.

A Company seeking to undertake a construction or expansion of a project in Orange County should first discuss the matter with the Orange County Partnership at 845-294-2323; then submit the preliminary IDA application (no fee); followed by a full application (fee required.)

If the Company owns the property before starting the project, it transfers title (either fee title or a leasehold interest) to the IDA without paying a transfer tax. If a third party owns the property, the Company must arrange for the transfer of an interest in the property to the IDA. The length of time the IDA stays in title depends on the terms of the financial assistance being provided to the Company. When financial assistance is limited to providing a sales tax exemption, mortgage recording tax exemption, and even bond financing, the IDA will remain in title through the construction or installation period. When the IDA is offering a real property tax abatement, the IDA will stay in title for ten years or more for the duration of the abatement.

The Agency has the ability to undertake the following types of projects:

- Airport
- Manufacturing
- Warehousing
- Commercial
- Industrial
- Research
- Office
- Tourism destinations
- Recreation
- Railroad
- Docks and wharves
- Educational, cultural, and civic facilities
- Other qualified non-profit projects

The Orange County Industrial Development Agency provides financial assistance in connection with the acquisition, construction and or equipping of such projects. As a public benefit corporation, the IDA is a tax-exempt entity, and thus properties to which it takes title or in which it acquires a leasehold interest are exempt from taxes. Under New York State law, the IDA can provide financial assistance in the forms of:

1. Mortgage Recording Tax Exemption
2. Sales and Use Tax Exemption
3. Real Property Tax Abatement (“PILOT”)
4. IDA Bonds--Lower Tax Exempt Interest Rate for Manufacturers only

In the event just the first three forms of financial assistance are used, the project is called a “straight lease transaction.” Transaction costs are less for straight lease transactions than if bond financing is involved.

1. Mortgage Recording Tax Exemption

Whenever a county clerk records a mortgage in New York State, the Company must pay 1.05% of the mortgaged amount as a Mortgage Recording Tax. However, if an IDA is in title (either fee title or leasehold interest) at the time the mortgage is recorded, the IDA and the Company will not have to pay the Mortgage Recording Tax. This saves the Company a lot of money– \$52,500 for example, on a \$5 million mortgage.

2. Sales and Use Tax Exemption

The Sales and Use Tax in Orange County is 8.125%. All purchases made by an IDA or its agents are exempt from the Sales and Use Tax. The IDA will issue a sales tax exemption letter to the Company, authorizing it to act as an agent for the IDA. The Company can then acquire the equipment, materials and services needed to acquire, construct, reconstruct and equip the project without having to pay the Sales or Use Tax. The exemption is limited to the construction, reconstruction or installation and cannot cover ongoing operational costs. Depending on the size of the project, the cost savings for the Company under this arrangement can be significant. On a project where \$10 million of the costs are subject to the Sales and Use Tax, the exemption can result in a savings of \$812,500. When the lease or installment sale agreement expires, the IDA transfers all personal property involved in the project to the Company without the payment of any Sales or Use Tax.

A Company located in or qualifying as “regionally significant” in a New York State Empire Zone can benefit from both the IDA sales tax exemption (exempts both the local and State portion for purchases of equipment and materials) and the Empire Zone sales tax exemption (exempts State portions only, but also exempts operational costs for up to 10 years).

3. Real Property Tax Abatement

Property owners in New York State must pay a real property tax based on the assessed value of the land and improvements on a site. Any real property owned or controlled by an IDA is not subject to ad valorem real property taxes. When an IDA takes title to or a leasehold interest in real property, the property becomes 100% exempt from ad valorem real property taxes, including town, village, county and school taxes. Real property owned or controlled by an IDA continues to be subject to special assessments and user fees such as water and sewer charges.

However in order to accommodate the needs of the local taxing jurisdictions, the IDA negotiates a Payment In Lieu Of Tax Agreement ("PILOT Agreement") with the Company for the benefit of the municipalities. By law IDA's have the authority to negotiate any PILOT Agreement they deem reasonable. The PILOT agreement spells out the terms. Then the IDA directs that the Company pay PILOT payments directly to the affected taxing jurisdictions. IDA's are required to have specific policies outlining the types of PILOT Agreements they are offering and procedures for deviation from those stated policies. Although there is no statutory limit to the period or amount of the abatement, the Orange County IDA usually limits the period to ten years. The expectation is that the abatement will result in more tax revenue for the municipalities than was generated by the property before the IDA transaction.

The Orange County Industrial Development Agency has adopted a Uniform Tax Exemption Policy program targeted to businesses and industries that will provide meaningful jobs and tax ratables. The program doubles the benefits of the standard New York State 485 (b) program. Starting with zero taxes in the first year of the improvement, and increasing a straight 10% per year for ten years, the enhanced PILOT program results in a 55% tax abatement over ten years. The specifics of the IDA's PILOT program are set forth in Schedule A. Specific questions regarding the enhanced PILOT should be addressed to the Orange County Partnership or the IDA attorney.

A Company in an Empire Zone may benefit from a refund of real property taxes paid on payments made under a PILOT Agreement. In those cases the Company and IDA may negotiate PILOT anyway, in case the Empire Zone program lapses or for other reasons.

4. IDA Bonds--Lower Interest Rates

The Orange County Industrial Development Agency is authorized by New York State law to issue bonds and notes. The IDA can issue tax exempt bonds to manufacturers only, subject to the limitations imposed by the Internal Revenue Code. The interest income on bonds issued to finance an eligible project is exempt from federal, state, and local taxes. Such triple tax exemption results in lowering the interest rate on the Company's borrowing. The bond limit for a project is currently \$20 million.

The proceeds of these tax exempt bonds can be used to fund substantially all of the costs of a project, including land acquisition, building construction, acquisition of existing buildings, and renovation, as well as purchase of new machinery and equipment.

IDA bonds are considered "conduit financing" because the security for the bond is the credit-worthiness of the Company responsible for payment. The IDA itself provides no credit enhancement and issues bonds on a non-recourse basis. For that reason the ability to sell bonds depends solely on the credit-worthiness of the Company or the credit rating of the credit enhancement underlying the transaction. New York State law does not allow the IDA to loan directly to a Company as is done in other states. Since the IDA does not have the statutory authority to loan money, the bond proceeds are used by the Company to build the project as the agent for the IDA. The project is then leased or sold by the IDA to the Company for an amount equal to debt service on the bonds issued. The Company's rental payments under the lease agreement or installment purchase payments made under the installment sale agreement to the IDA or the bond trustee are used to pay principal and interest on the bonds. The property involved is used as collateral and the Company's guaranty is required. It may also be necessary to provide some form of credit enhancement, such as a letter of credit. A Company has three years from date of closing to spend the bond proceeds.

Due to higher transaction costs for bond financing, the minimum is usually \$2 million. Before proceeding with a bond transaction, the Company should conduct a cost benefit analysis weighing the cost of financing through traditional means and that of an IDA

bond transaction. The question is: does it pay to finance the project with funds that are at an interest rate that is two to three percentage points lower than the cost of borrowing money through a taxable transaction? Or will that benefit be outweighed by the additional costs of an IDA bond transaction. The Orange County Partnership and IDA's bond counsel can assist in the analysis.

Legal Requirements Covering IDA Financing Assistance

The New York State General Municipal Law places constraints on the IDA's ability to participate in certain types of projects.

- A. *Public Hearing*: the IDA is required to hold a public hearing in the effected municipality summarizing the project and the financial assistance being considered by the IDA.
- B. *State Environmental Quality Review ("SEQR")*: Before closing on any project, the Company must comply with the New York State Environmental Quality Review Act.
- C. *Planning and Zoning*: IDA projects are not exempt from municipal planning and zoning requirements, so such approval when necessary must be in hand before closing.
- D. *Open Meetings and Freedom of Information*: IDA meetings are open, and IDA records are accessible to the public, except where seven specific exceptions apply.
- E. *Retail Facilities*: the IDA is limited in its ability to provide financial assistance to projects that are primarily used in making retail sales to customers, and where the retail element constitutes more than one third of the total project cost. This restriction on retail does not apply to:
 - Projects which are "tourism destinations," that is, a location or facility likely to attract a significant number of visitors from outside the economic development region
 - projects where the project would, but for the financial assistance being provided by the IDA, locate outside the State
 - projects where the predominant purpose is to make available goods or services which would not be, but for the project, reasonably accessible to residents of the municipality
 - projects located within a "highly distressed area" (projects located in an Empire Zone qualify as being in a highly distressed area.)

For projects falling under the first three of the above retail restrictions, the IDA must make an additional finding in connection with the public hearing that the project will preserve permanent private sector jobs or increase the overall number of permanent private sector jobs, which finding must be confirmed by the Chief Executive Officer of the municipality for whose benefit the IDA was created, ie. the County Executive.

Despite the complexities, the vast majority of projects, whether new construction, expansion, renovation or equipment acquisition, will qualify for IDA financing assistance.

Steps to Obtain Industrial Development Agency Financing Assistance

1. Company initiates discussion between IDA and Company by calling Orange County Partnership at 845-294-2323.
2. Company completes a preliminary application (no fee.)
3. Preliminary application is reviewed by Orange County Partnership, IDA Bond Counsel, and IDA Attorney, and discussed with IDA Chairman and Board members.
4. Full application is requested together with non-refundable \$5,000 application fee, which will be credited at closing toward total fees. At closing the IDA charges a fee of 1% on the first two million of the project to .5% of the project cost above two million, plus IDA bond counsel and IDA attorney fees.
5. IDA bond counsel prepares an Initial Resolution for action by IDA at next monthly meeting, which will call for public hearing.
6. Public Hearing takes place. IDA attorney prepares report and submits to IDA and bond counsel.
7. Once SEQR is completed, IDA bond counsel prepares an Inducement Resolution for IDA to adopt. Once adopted, the IDA can issue a sales tax exemption letter up to \$100,000 for short term.
8. When Company’s financing is in place, and local planning and zoning approvals are completed, the closing can take place, at which time the Sales & Use Tax Agency letter and tax exemption certificate are issued, and the PILOT agreement is filed with the municipalities.

Schedule A.

Uniform Tax Exemption Schedule

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|----------------|-------------|-------------------------------|
| Year 1 | 0% | of Real Property Taxes |
| Year 2 | 10% | of Real Property Taxes |
| Year 3 | 20% | of Real Property Taxes |
| Year 4 | 30% | of Real Property Taxes |
| Year 5 | 40% | of Real Property Taxes |
| Year 6 | 50% | of Real Property Taxes |
| Year 7 | 60% | of Real Property Taxes |
| Year 8 | 70% | of Real Property Taxes |
| Year 9 | 80% | of Real Property Taxes |
| Year 10 | 90% | of Real Property Taxes |
| Year 11 | 100% | of Real Property Taxes |

Continued

This PILOT program specifically targets companies in the areas of:

- Agriculture
- Assembly
- Banking and Financial
- Biotech
- Communications
- Computer Hardware and Software
- Data Processing
- Defense
- Drug-related
- Electronics
- Hospital
- Insurance
- Internet
- Life and Healthcare
- Life Science
- Manufacturing
- Media
- Medical
- Micro-Chip
- Micro-Electronics
- Nanotech
- Pharmaceutical
- Processing
- Professional office
- Research and Development
- Semi-Conductors
- Solar
- Sports
- Technology
- Telecommunications
- Tourism-Related