



Industrial Development Agencies and Authorities

Introduction

This bulletin explains how Industrial Development Agencies (IDAs) work with their agents, operators, and contractors on economic development projects to provide sales and use tax benefits. It also explains the requirements and responsibilities that apply to IDAs and their agents, operators, and contractors with respect to the Tax Department.

IDA activities

Appointing an agent: [Form ST-60](#)

As a government entity, an IDA is exempt from paying sales and use taxes (sales tax) on its purchases. However, it is not normal practice for an IDA itself to make purchases related to an industrial development project. An IDA typically appoints as its agent for this purpose a:

- business or developer,
- contractor, or
- subcontractor.

Purchases made by a properly appointed agent within the authority granted to it by the IDA are deemed to be purchases made by the IDA and are exempt from sales tax.

An IDA **must** file with the Tax Department [Form ST-60](#), *IDA Appointment of Project Operator or Agent For Sales Tax Purposes*, **each time** it appoints an agent to receive sales tax exemption benefits. The IDA must file [Form ST-60](#) within 30 days of appointing an agent. If the IDA authorizes an agent to appoint other persons as agents of the IDA, the agent making the appointment must inform the IDA that it has appointed someone as agent and the IDA must file [Form ST-60](#) within 30 days of the date of the new agent's appointment.

In addition, an IDA must include the terms and conditions described in General Municipal Law § 875(3) (including provisions regarding recapture of benefits) in each resolution or project document that:

- establishes a project, or
- appoints an agent.

Each agent appointed by an IDA must agree to those terms and conditions prior to receiving any sales tax exemption benefits.

Amending or revoking an agent's appointment

If an IDA amends, revokes, or cancels its appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, file a statement with the Tax Department at the address listed on [Form ST-60](#) that identifies the agent and explains that the agent's appointment has been:

- amended, revoked, canceled, or is otherwise no longer valid; and
- the effective date of the change.

The IDA should attach a copy of the original [Form ST-60](#) filed for the agent's appointment to the letter.

Recordkeeping and reporting requirements

An IDA must keep records of the sales tax exemption benefits it provides. It is also required to report the sales tax exemption benefits it provides to an agent by filing [Form ST-60](#) with the Tax Department within 30 days of conferring the exemption benefit. If the IDA fails to report the sales tax exemption benefits or make records available to the Department upon request, the IDA shall be prohibited from providing sales tax benefits until the IDA comes into compliance with all such requirements.

Recapture requirements: [Form ST-65](#)

An IDA must recapture any state sales tax exemption benefits that were claimed by an agent whenever the benefits were:

- not entitled or authorized to be taken;
- in excess of the amounts authorized;
- for unauthorized property or services; or
- for property or services not used according to the terms of the project contract with the IDA.

An IDA must remit recaptured sales tax exemption benefits to the Tax Department using [Form ST-65](#), *IDA Report of Recaptured Sales and Use Tax Benefits*. The IDA must file [Form ST-65](#) within 30 days from when the IDA comes into possession of the recaptured funds.

An agent must cooperate with the IDA in its effort to recapture state sales tax exemption benefits. Where an agent fails to cooperate, IDAs have an obligation to commence an action or proceeding against an agent to recover unauthorized sales tax if necessary.

Any failure by an agent to pay over improper sales tax exemption benefits to an IDA could also result in an assessment to the agent for the state sales tax due, plus applicable penalties and interest. The IDA must cooperate with the Department, for example, by sharing the relevant documents and information in the event that the Department elects to issue an assessment.

Annual compliance report: [Form ST-62](#)

An IDA must file [Form ST-62](#), *IDA Annual Compliance Report - State Sales Tax Recapture*, within 90 days of the end of the IDA's fiscal year. The report must include details of:

- the terms and conditions of each of its projects;
- the IDA's activities and efforts to recapture any state sales tax exemption benefits due; and
- any other information required by either the:
 - Commissioner of Taxation and Finance, or
 - Commissioner of Economic Development.

The IDA must file the report with the:

- Commissioner of Taxation and Finance,
- Director of the Budget,
- Commissioner of Economic Development,
- State Comptroller, and

- municipality's governing body.

Agent activities

Purchases

Once appointed, agents can make purchases to acquire, build, or equip a project exempt from sales tax, including the additional $\frac{3}{8}\%$ sales tax in the Metropolitan Commuter Transportation District (if applicable). However, exempt purchases are only allowable to the extent provided by the terms of the agent's IDA project contract.

To make qualifying purchases exempt from sales tax, agents use:

- [Form ST-123](#), *IDA Agent or Project Operator Exempt Purchase Certificate*, or
- [Form FT-123](#), *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Note: IDAs cannot operate a business. All purchases by agents must be made under the terms of an IDA **project contract** to qualify for an exemption.

Example: *An IDA creates a project to construct a building that will be used as a manufacturing facility and appoints ABC Corporation as its agent for purposes of the project. The IDA will own the building once construction is complete. Under the terms of the project contract, ABC Corporation can purchase all materials necessary for the construction and equipping of the building.*

Sometime after the building is complete and the facility is operating, it becomes necessary to replace some of the building's windows. If the project has not ended, ABC Corporation, as agent of the IDA, can purchase replacement windows exempt from sales tax because the purchase is within the terms of the project contract, even though construction of the building is complete.

However, ABC Corporation cannot use its status as agent of the IDA to make purchases of utilities used to provide power, heating, cooling, and lighting for the facility, since those purchases are operational expenses of running the facility and are not within the terms of the project contract.

Reporting requirements: [Form ST-340](#)

After the end of each calendar year, each agent appointed **directly** by an IDA **must file** with the Tax Department [Form ST-340](#), *Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)*. [Form ST-340](#) is used to report the total value of all state and local sales and use taxes exemptions claimed during a calendar year under the terms of the project contract, including the value of the exemptions claimed by:

- the agent itself; and
- the agent's sub-agents, contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

[Form ST-340](#) is due on the last day of February in the following calendar year.

Note: Agents that were not appointed **directly** by an IDA, such as sub-agents appointed by an IDA agent, are not required to file Form ST-340.

Contractors who are not agents or project operators of an IDA: [Form ST-120.1](#)

Contractors, subcontractors, and repairmen who are not agents of an IDA can make certain purchases exempt from sales tax using [Form ST-120.1](#). The exemption applies to purchases of tangible personal property used to:

- erect a building or structure;
- add, alter, or improve real property; or
- maintain, service, or repair a building, structure, or real property.

To qualify for exemption, the tangible personal property must become an integral component part of the IDA project's structure, building, or real property, and the IDA must own the structure, building, or real property.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information

Statutes: [General Municipal Law \(GML\)](#)

Memoranda:

[TSB-M-14\(1.1\)S](#), *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*

[TSB-M-97\(11\)S](#), *An IDA Must Provide Notice of Appointment of Agent or Project Operator*

Important Notices: [N-13-3](#), *New Reporting Requirement for Industrial Development Agencies and Authorities*