

Tompkins County Industrial Development Agency
Economic Incentive Recapture Policy

Introduction

Recapture policies are a response to a concern that public sector economic development incentives are not achieving desired results. There have been several national, high profile examples of large public sector investments in private sector developments that, by any measure, have not yielded the new jobs or taxes projected.

Tompkins County has been fortunate in that the return on public sector investment in private sector development has generally met or exceeded expectations. As the County moves forward with a more aggressive economic development strategy, perhaps including an external marketing campaign, it is appropriate to adopt a policy that maximizes the return on public investment in economic development.

Application for Economic Development Assistance

It is assumed that existing applications for assistance require historical and projected financial information as well as detailed information concerning the incentive requested. These applications will be modified to include the following:

1. A list of all public subsidies received by the applicant or the applicant's parent company during the preceding ten (10) years to include the following:
 - a. the type of subsidy received such as property tax abatement, industrial revenue bonds, direct loans or loan guarantees, grants, technical assistance or employee training;
 - b. the amount and term of the subsidy;
 - c. the public benefit that was projected such as job retention or increased property tax revenues;
 - d. the public benefit received;
 - e. name and contact information for organization granting subsidy.
2. A description of the construction jobs resulting from the proposed project, including the following:
 - a. the estimated total number of jobs that will be held by Tompkins County residents;
 - b. the estimated wages and value of fringe benefits to be provided.
3. A description of the permanent jobs resulting from the proposed project, including the following:
 - a. existing employment by category with wages and benefits;
 - b. projected new employment by year for three (3) years by category with wages and benefits.
4. A description of the jobs that will be lost, if any, as a result of the proposed project, including wage and benefit information. This particularly related to productivity improvements.
5. A description of non-employment-related economic benefits, including the following:
 - a. property taxes and special assessments by jurisdiction for three (3) years;
 - b. sales tax on construction materials, furnishing and fixtures for the initial project;
 - c. mortgage recording tax;
 - d. purchases from local suppliers or subcontractors on an annual basis for three (3) years.

6. A summary of the company's products and markets particularly as they relate to possible competition with other Tompkins County companies.

Reporting Requirements

1. On an annual basis for the duration of the term of the assistance provided, the company will provide the following information:
 - a. average annual employment by category with wage, benefits and residence of employee;
 - b. property taxes and special assessments paid;
 - c. local and New York State sales tax paid;
 - d. any other information relevant to the project that the IDA deems appropriate.

Recapture Provisions

1. In accordance with Section 875(3) of the New York General Municipal Law, if a Company receives New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") from the IDA, and it is determined that: (i) the Company is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the IDA to be taken by the Company; (iii) the sales and use tax exemption benefits are for property or services not authorized by the IDA as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company fails to comply with a material term or condition to use property or services in the manner approved by the IDA in connection with the Project, then the Company will (i) cooperate with the IDA in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the IDA. In the event that the Company fails to pay over such amounts to the IDA, the New York State Tax Commissioner may assess and determine New York State and local sales and use taxes due from the Company, together with any relevant penalties and interest due on such amounts.
2. If the company shifts production activity to a facility outside of Tompkins County and, as a result, fails to achieve the economic benefits projected, then the IDA will declare the agreement to be in default and require the value of the incentives utilized to date to be repaid, with interest (determined as the New York State legal interest rate).
3. If it is determined that the economic benefits projected have not been achieved for reasons other than described above, then the IDA will afford the company a hearing where the company can be heard as to the issue. The following criteria will be used to determine if a valid explanation exists for failure to achieve the economic benefits projected by the company.
 - a. Natural Disaster: if a natural disaster such as a fire, flood, or tornado disrupts the business
 - b. Industry Trends: An evaluation of industry trends will be made relevant to the company, and a determination reached as to whether the company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measured by the appropriate SIC code, it experiences employment or revenue declines--beyond its control--of 10% or more over 3 years.
 - c. Loss of Major Supplier or Customer: if the loss of a customer or supplier represents 15% or more of the sales of the company
 - d. Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment

- e. Unfair Competition: if an international competitor utilizes an unfair competitive advantage to acquire market share
4. If the IDA, based on criteria outlined in points 2 and 3 above, then determines that the company's reasons for failing to meet the economic benefit projections are invalid, the IDA can declare the agreement to be in default by written notice to the Company and require the value of the incentive utilized to date to be repaid, with interest. Interest shall be due from the date when the Company failed to achieve the economic benefits projected by the Company to the date of payment, at the rate of interest for judgments set forth in New York Civil Practice Law and Rules §5004 and any future amendments thereof. The taxing jurisdictions will receive the recaptured property tax, plus the estimated interest income the taxing jurisdictions would have earned if they had collected the taxes when due, as calculated and determined by the Finance Director of Tompkins County. The remainder of the interest shall constitute an Administrative Fee of the Agency and shall be retained by the Agency and used for future economic development activities.
5. The IDA granting the economic incentive retains all rights to impose, delay or waive penalties.
6. The policy is effective as of the date of project approval and applies to all current and future projects.

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