

Albany Industrial Development Agency

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Anthony J. Ferrara, *Chairman*
John R. Vero, *Vice Chairman*
Kathy Sheehan, *Treasurer*
Susan Pedo, *Secretary*
Martin Daley
C. Anthony Owens
Tracy Metzger

Michael Yevoli, *Chief Executive Officer*
Erik J. Smith, *Chief Financial Officer*
John Reilly, *Agency Counsel*

To: Martin Daley
Kathy Sheehan
Susan Pedo
Anthony Owens
Tracy Metzger

Mike Yevoli
Erik Smith
John Reilly
Joe Scott
Sarah Reginelli
Brad Chevalier

Date: February 11, 2013

AGENDA

A meeting of the Finance Committee of the City of Albany Industrial Development Agency will be held on **Wednesday, February 13th at 12:15PM** at 21 Lodge Street, Albany, NY 12207 (Conference Room)

Roll Call

Reading of Minutes of the Finance Committee Meeting of December 13th, 2012

Approval of Minutes of the Finance Committee Meeting of December 13th, 2012

Unfinished Business

New Business

Other Business

— Proposed Sales & Use Tax Exemption Legislation Update

Adjournment

* The next regularly scheduled Board meeting will be held Thursday, February 21st, at 21 Lodge Street, Albany, NY 12207

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IDA MINUTES OF FINANCE COMMITTEE MEETING Thursday, December 13th

Attending: Martin Daley, Kathy Sheehan, & Susan Pedo

Absent:

Also Present: Tony Ferrara, C. Anthony Owens, John Vero, Mike Yevoli, Erik Smith, Joe Scott, Sarah Reginelli, Brad Chevalier, & Amy Gardner

Acting Chair Martin Daley called the Finance Committee meeting of the IDA to order at 12:15PM.

Roll Call

Acting Chair Martin Daley reported that all Committee members were present.

Reading of Minutes of the Finance Committee Meeting Minutes of November 8th, 2012

Since the minutes of the November 8th, 2012 meeting had been distributed to the Committee members in advance for review, Acting Chair Martin Daley made a proposal to dispense with the reading of the minutes.

Approval of Minutes of the Finance Committee Meeting Minutes of November 8th, 2012

Acting Chair Martin Daley made a proposal to approve the minutes of the Finance Committee meeting of November 8th, 2012. A motion to accept the minutes, as presented, was made by Susan Pedo and seconded by Kathy Sheehan. A vote being taken, the minutes were accepted unanimously.

Other Business

Chris Betts, Principal of Betts Housing gave a presentation to the Committee on Low Income Housing Tax Credits. Mr. Betts discussed the industry that has developed surrounding low income tax credits. He also reviewed the process and procedures for a project that utilizes these tax credits.

Unfinished Business

LV Apartments, LP

Staff advised the Committee that no changes had occurred to the project since it was presented at the November 15th Board meeting. The applicant is still working on solidifying their financing. Staff advised the Committee that the applicant will be submitting their application for federal and state Low Income Housing Tax Credits in early January.

Albany Medical Science Research, LLC

Staff provided the Committee with a summary of the application. Staff advised the Committee that the current applicant is a for profit company set-up by the the Trustee of the former bondholders . The creation of jobs will be reliant on their ability to attract tenants. Staff assured the Committee that the land and improvement assessment values will not be fixed. Staff would like the Board to consider a public hearing resolution for the project at the next Board meeting. The Committee agreed that a public hearing resolution for the project should be considered at the following Board meeting.

Housing Visions Consultants, Inc.

Staff reviewed the project and additional letters of support with the Committee. The Committee discussed the effect the project would have on the neighborhood. Counsel advised the Committee that historically the Board has supported projects that passed the legal muster. The Committee discussed creating a policy that would make it easier for the Agency to ensure local labor would be hired on this project and others. Counsel advised the Board that he would research the constitutionality of such a policy. The Committee decided that that all approving resolutions should be considered at the next Board meeting.

New Business

Penta on Broadway, LLC

Staff reviewed the request with the Committee. Staff advised the Committee that the applicant had found a tenant for the vacant commercial space on the first floor of the property. The applicant will need to fit-up the space for the tenant this is an unexpected cost as the applicant had originally planned to offer the space as a “vanilla box”. The additional financing has already been approved by the applicant’s first lien holder. The applicant is not asking the Agency for any additional benefits. Staff advised the Committee that this was primarily an administrative matter. The Committee agreed that the matter should be moved to the full Board for consideration.

39 Sheridan Realty, LLC

Staff reviewed the request with the Committee. Staff advised the Committee that the applicant was asking for an extension and increase of the project’s New York State Sales and Use Tax exemption. The project experienced delays due to the weather and public infrastructure improvements required as part of the project. The project was also modified to include an additional apartment. Due to the delays and project modifications total project costs have increased. The extension is being requested until June 30, 2013. The Committee discussed setting a threshold for the amount of changes a project can undergo before there is an additional charge from the Agency.

Honest Weight Food Co-operative Inc.

Staff advised the Board that since the approval of the sales tax exemption the applicant has realized that equipment they previously thought was not eligible is in fact eligible for the exemption. Counsel advised the Committee that from a procedural standpoint approving the modification is not a problem. This would increase the fee the Agency will receive in connection with this project. Staff advised the Committee that due to the changes in the project a public hearing would be held prior to the next Board meeting.

There being no further business, Acting Chair Martin Daley adjourned the meeting at 2:00PM.

Respectfully submitted,

Susan Pedo, Secretary

MEMO

TO: City of Albany IDA Finance Committee
FROM: City of Albany Industrial Development Agency Staff
RE: Proposed Sales and Use Tax Exemption Legislation Update
DATE: February 11, 2013

On January 22, 2013 Governor Cuomo released the proposed 2013-2014 Executive Budget, which includes proposed legislation that will severely limit the authority of industrial development agencies to provide the State four percent (4%) portion of sales and use tax exemption.

It is our understanding that the Governor and State Lawmakers plan to pass the Budget, and the proposed legislation, by March 21, 2013. Based on the current version of the proposed legislation, the Bill would take effect immediately upon passage of Budget.

Therefore, the Agency has contacted and advised all applicants with pending projects that have NOT closed (i.e. financial documents signed) with the Agency to close before March 21, 2013 to avoid the potential loss of the State four percent (4.0%) portion of the sales and use tax exemption.

Attached please find a Memorandum from Special Counsel to the Agency providing a concise explanation of the proposed legislation as well as the effect its passage will likely have on the authority of the City of Albany Industrial Development Agency and its pending projects.

Agency staff, as well Special Counsel to the Agency, are available to answer any questions you may have on the matter.

MEMORANDUM FROM



A. Joseph Scott, III
Direct Dial: 518.433.2419
Facsimile: 518.465.1567
ascott@hodgsonruss.com

To: Staff of City of Albany Industrial Development Agency

Date: February 5, 2013

Subject: ACTION REQUIRED by March 21, 2013 to Avoid Loss of the State Four Percent (4%) Portion of the Proposed Sales Tax Exemption on Pending Projects

As you are aware, on January 22, 2013 Governor Cuomo released the proposed 2013-2014 Executive Budget (the "Budget"), which includes proposed legislation to severely limit the authority of industrial development agencies ("IDAs") to provide State sales and use tax exemptions.

We understand that the Governor and State Lawmakers plan to pass the Budget by March 21, 2013.

Therefore, our advice to our clients is that any pending projects NOT closed (i.e., financial documents signed) before that date will most likely be subject to the new legislation and will most likely LOSE the State FOUR PERCENT (4.0%) portion of the proposed sales tax exemption on said pending projects.

DISCUSSION

The proposed legislation, constituting Part J of Bill Number S. 2609 / A. 3009 (the "Bill"), will limit IDA authority through three major changes: (1) limiting eligibility for State sales and use tax exemptions to project operators participating in the Excelsior Jobs Program or who are eligible for the program, (2) requiring State approval prior to an award of an exemption from State sales and use taxes, and (3) changing the current upfront exemption to a rebate requiring submission of a claim form.

Effective Date

Based on the current version, the Bill would take effect immediately and apply to:

- a) Any IDA project established, agent or project operator appointed, financial assistance provided or agreement regarding payments in lieu of taxes entered into on or after the Bill's effective date or which is amended or revised on or after the Bill's effective date (which would include an extension of the sales tax exemption period);
- b) Any State sales and use tax benefits recovered, recaptured, received or otherwise obtained by an IDA on or after the Bill's effective date; and
- c) Any payments in lieu of State sales and use taxes that an IDA receives on or after the Bill's effective date.

Accordingly, we advise you to inform all project applicants of the Bill and the possible impacts it will have on their projects if they do not close prior to the Bill becoming law, which could be as early as March 21.

Details of the Bill

The remainder of this memorandum will provide further detail on the changes proposed under items (1) through (3) above.

- (1) **Eligibility - Excelsior Jobs Program.** An IDA could only grant State sales and use tax incentives to an agent or project operator that has been certified as a participant in the Excelsior Jobs Program, or is a business that would be eligible to participate in the program. Eligibility in the program is limited to business entities who operate predominately (1) as a financial services data center or a financial services back office operation, (2) in manufacturing, (3) in software development and new media, (4) in scientific research and development, (5) in agriculture, (6) in the creation or expansion of back office operations in the state, (7) in a distribution center, or (8) in an industry with significant potential for private-sector economic growth and development in this state.

Specific criteria for job creation and capital investment exist for each area of operation to determine a projects eligibility for the program. For example, a manufacturing firm must create at least 25 new jobs. Additionally, firms in strategic industries that make significant capital investment and have at least 50 employees are also eligible for the program. Further details on program eligibility are available at: <http://www.esd.ny.gov/BusinessPrograms/Excelsior.html>.

- (2) **State Approval.** Before an IDA could award State sales and use tax incentives to a project eligible under the Excelsior Jobs Program, the IDA would need to receive approval from the Commissioner of Economic Development. The approval would be based on a determination by the Commissioner of Economic Development, in consultation with the Regional Economic Development Council, that the benefit plan (State sales and use tax incentives) is consistent with regional economic development strategies. An IDA would not be able to provide State sales and use tax incentives greater than that approved by the Commissioner of Economic Development.
- (3) **Rebate v. Exemption.** An IDA who awards State sales and use tax incentives must not provide them as exemptions at the time of purchase or use. Instead, in all cases, the person or entity awarded the incentives must pay State sales or use taxes at the time of purchase. After paying the state sales or use tax upfront, such person or entity may then apply to the Commissioner of Economic Development for a refund or credit. Thus, cash flows for all project applicants will be constrained by the initial payment requirement of the State FOUR PERCENT (4.0%) sales tax.