

Livingston County Industrial Development Agency
Recapture Policy

Approved July 8, 2016

Section 1. Statement of Purpose

It is the policy of the Livingston County Industrial Development Agency (the “Agency”) to ensure public benefits are properly utilized and determine under what circumstances benefits shall be recaptured, terminated, modified or suspended.

Section 2. Recapture Provisions

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) with respect to a particular project to require the project applicant to agree to the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. Events that the Agency may determine will trigger recapture may include, but shall not be limited to, the following:

1. Sale or closure of a facility;
2. Significant employment reduction;
3. Significant change in use of facility;
4. Significant change in business activities or project applicant or operator; or
5. Material noncompliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state, or local environmental laws or regulations.

If the Agency determines to provide for recapture with respect to a particular project, the Agency also shall, in its sole discretion on a case-by-case basis, determine the timing and percentage of recapture. All funds that are recaptured shall be redistributed to the appropriate affected taxing jurisdictions, unless agreed to otherwise by such affected taxing jurisdictions.

Section 3. Additional Recapture Provisions

In addition to the provisions for recapture set forth above, the Agency may, in its sole discretion and on a case-by-case basis, require recapture benefits with respect to any project or project applicant for:

1. Failure to respond to Agency inquiries concerning insurance coverage or failure to provide insurance certificates when and as required by the Agency transaction documents;
2. Failure to respond to Agency inquiries regarding payments of monies in lieu of taxes;
3. Failure to respond to Agency inquiries or to provide facts requested by the Agency in connection with any proceedings or determinations;

4. Failure to respond to the inquiries of the Agency or failure to provide the Agency with any information or documents requested by the Agency in order to provide any federal, state, or local agency with information or reports required under any applicable law, rule or regulation; or
5. Failure to provide any other information concerning the project or the project applicant or any project operator requested by the Agency.

Section 4. Additional Enforcement Provisions

In addition to recapturing benefits, the Agency may determine, based upon the events and failures outlined in Sections 2 and 3 above, to take the following enforcement action:

1. Terminating any or all of the project agreements;
2. Reducing the value of any financial assistance;
3. Suspend any financial assistance; or
4. Modify any project agreements to require increase payments under such project agreements.

Section 5. Procedures

Upon the occurrence of any of these events listed above, the Agency will, upon at least 10 calendar days send a written notice to the project applicant, hold a public hearing at which the project applicant will have the opportunity to provide, or explain its failure to provide, the information requested by the Agency. Within 30 calendar days after the hearing, the Agency will issue a determination whether and to what extent it will require termination, modification, suspension or recapture of the value of tax exemptions granted with respect to the project by virtue of the Agency's involvement.