

COUNTY OF CATTARAUGUS INDUSTRIAL DEVELOPMENT AGENCY

STRAIGHT LEASE POLICY

SECTION 1. PURPOSE AND AUTHORITY. Pursuant to Section 854(15) of Title One of Article 18-A of the General Municipal Law (the "Act"), County of Cattaraugus Industrial Development Agency (the "Agency") is authorized to undertake a transaction whereby the Agency takes title, possession or control of property of a project occupant, thereby entitling such property to be exempt from taxation according to the provisions of the Act, even though no financial assistance in the form of proceeds of bonds issued by the Agency is provided to the project occupant (a "straight-lease transaction"). The purpose of this lease policy (the "Lease Policy") is to set forth in a single place the policies that the Agency has been following to determine when the Agency will consider undertaking a straight-lease transaction. This lease policy was adopted pursuant to a resolution enacted by the members of the Agency on November 14, 1995 and modified pursuant to resolution enacted by the members of the Agency on March 30, 1999 and on June 8, 2004 and on February 4, 2010.

SECTION 2. DEFINITIONS. All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(A) "Affected Tax Jurisdiction" means, with respect to a particular project, the County and each Municipality or School District in which such project is located which will fail to receive real property tax payments, or other tax payments which would otherwise be due with respect to such project, but for Tax Exemption obtained by reason of the involvement of the Agency in such project, unless the Affected Tax Jurisdictions shall agree in writing to add or subtract additional governmental entities thereto.

(B) "Applicant" shall mean an applicant for financial assistance.

(C) "Applicant Project" shall mean a project which is undertaken by the Agency for the benefit of an Applicant.

(D) "County" shall mean the County of Cattaraugus.

(E) "Municipality" shall mean each city, town and village located within the County.

(F) "Non-Applicant Project" means a project which is undertaken by the Agency for the benefit of the Agency, and shall not include an Applicant Project.

(G) "School District" shall mean each school district located within the County.

(H) "Small Alternate Energy Facility" means a facility that (1) is determined by the Agency to be a facility described in Section 487(1) of the Real Property Tax Law (including solar or wind energy equipment, a solar or wind energy system, farm waste electric generating equipment, and a farm waste energy system), (2) is installed or to be installed in a residence, a farm or a small business located within the County and (3) is not a Wind Farm Facility.

(I) "Small Alternative Energy Project" means a project that (1) is to be comprised of a Small Alternate Energy Project only and (2) is intended to extend only a real property tax benefit to the owner of said sales tax benefit to such Small Alternative Energy Project.

(J) “Small Business” shall mean any business which is a recipient of a small business loan from the Cattaraugus County Business Development Corporation.

(K) “Small Business Equipment Project” means a project that (1) is to be undertaken by the Agency for the benefit of a Small Business, (2) is intended to extend only a sales tax benefit to such Small Business and (c) is to be comprised of equipment only.

(L) “Tax Exemption” shall mean any financial assistance granted to a project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a project but for the involvement of the Agency in such project.

(M) “Uniform Tax Exemption Policy” shall mean the Uniform Tax Exemption Policy adopted by the Agency pursuant to a resolution enacted by the members of the Agency on November 14, 1995, readopted pursuant to a resolution enacted by the members of the Agency on March 30, 1999, and modified pursuant to resolutions enacted by the members of the Agency on June 8, 2004, and on February 4, 2010.

(N) “Wind Farm Facility” means a group of wind turbines and related facilities in the same location intended to be used for the production of electric power to be sold to third parties. A Wind Farm Facility includes all related equipment determined by the Agency to be necessary or desirable for collecting such electric energy and delivering same to the electric grid, but shall not include the land and improvements that were included on the tax rolls of the Affected Tax Jurisdictions prior to the commencement of the project of which such Wind Farm Facility is a part (see Section 7(D)(1) of the Uniform Tax Exemption Policy).

SECTION 3. GENERAL PROVISIONS. (A) General Policy. The general policy of the Agency is not to consider becoming involved in a straight-lease transaction unless said transaction meets the following criteria: (1) the project must be a project of a type which the Agency is authorized to consider undertaking, and must not be a project of a type which the Agency has decided for policy reasons not to undertake; and (2) if the applicant desires to achieve maximum cost savings, the transaction should be structured to minimize the documentation to be reviewed and executed between the Agency and an outside lender.

(B) Exceptions. The Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider factors which make the project unusual, which factors might include but not be limited to the following factors: (1) the magnitude and/or importance of any permanent private sector job creation and/or retention related to project; (2) whether the Affected Tax Jurisdictions will be reimbursed by the project occupant if the project does not fulfill the purposes for which Tax Exemption was granted; (3) the impact of the project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by the project; (5) demonstrated public support for the project; (6) the estimated value of the Tax Exemptions requested; and (7) the extent to which the proposed project will provide needed services and/or revenues to the Affected Tax Jurisdictions. In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

(C) Application. No request for a Tax Exemption relating to an Applicant Project shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and regulations of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project and of each Tax Exemption sought with respect to the project, the estimated value of each Tax

Exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, the estimated date of completion of the project, and whether such financial assistance is consistent with this part.

(D) Notice to Affected Tax Jurisdictions. No request for approval of an Applicant Project by the Agency which involves a straight-lease transaction involving projected financial assistance aggregating \$100,000 or more, or which involves a proposed deviation from the provisions of this Lease Policy, shall be given final approval by the Agency unless and until, to the extent required by Section 859-a of the Act, (1) the Agency has sent written notice of said request to each Affected Tax Jurisdiction, and (2) the Agency has given each Affected Tax Jurisdiction a reasonable opportunity, both in writing and in person, to be heard by the Agency with respect to the proposed request. With respect to Non-Applicant Projects, the Agency shall comply with the provisions of Section 859-a of the Act, to the extent applicable. In addition, the Agency shall comply with all other notice provisions contained in the Act relative thereto.

(E) Fee Structure. Except as provided in subsection (F) or subsection (G) of this Section 3, the following is the current fee structure for an Applicant Project which involves a straight-lease transaction:

(1) Administrative Fee. At the time of closing and/or prior to the Agency issuing its sales tax exemption letter with respect to the project and/or granting any other financial assistance with respect to the project, the applicant for a straight-lease transaction will be required to pay the Agency’s administrative fee relating to the project, said fee to be in an amount equal to one and one-sixteenth percent ( $1\frac{1}{16}\%$ ) of the amount of the project receiving financial assistance from the Agency (typically based upon an affidavit delivered by the applicant at the closing). Any increase in the size of the project occurring subsequent to the closing (as evidenced in any additional sales tax exemption letter(s), annual tax filings or other evidence of the project cost increasing beyond the initial project amount) will similarly require that the applicant pay the standard Agency fee ( $1\frac{1}{16}\%$ ) *on such additional amount* prior to the Agency issuing further financial assistance. Any project with an agreement regarding payments in lieu of real property taxes (a “Pilot Agreement”) will be responsible to ensure that all payments in lieu of taxes (“Pilot Payments”) due with respect to the project are in fact paid in full at time of the project closing. The Agency may modify its administrative fee with respect to a project if three quarters of the members of the Agency present at a meeting of the members of the Agency approve such modification.

(3) Legal Fees. In addition to the Administrative Fees described in paragraph (2) above, at the time of closing and/or prior to the Agency issuing its sales tax exemption letter with respect to the project and/or granting any other financial assistance with respect to the project, the applicant for a straight-lease transaction will be required to pay the legal fees and expenses of the Agency’s legal counsel for lease transactions. The following are the Agency’s expected legal costs for normal projects falling within the following monetary ranges:

<b>Project Size</b>	<b>Anticipated Fee**</b>
Projects up to \$500,000	\$5,000* fee & up to \$500 in expenses
Projects up to \$1,000,000	\$7,500* fee & up to \$750 in expenses
Projects up to \$2,000,000	\$9,000* fee & up to \$750 in expenses
Projects above \$2,000,000	Will be negotiated

\* **NOTE:** Agency legal counsel fee includes the \$750 non-refundable Agency counsel fee. Also if a Pilot Agreement and/or a mortgage is part of the project, an additional \$2,000.00 fee will be charged.

\*\* **Please Note:** ALL straight lease transactions will be by mail closing and these costs only include basic lease documents. Modification of the base documents could result in additional Agency counsel costs. In addition, the applicant will also be responsible for the applicant's own attorney's legal expenses relating to the transaction.

(4) Late Payment Fee. A late payment charge of one percent (1%) per month (30 day period) shall be imposed for any of the foregoing payments more than 30 days late from the date billed.

(F) **Special Fee Structure for Small Alternate Energy Projects.** Notwithstanding the provisions of Section 3(E) above, the following is the current fee structure for an Applicant Project which involves a straight-lease transaction with respect to a Small Alternate Energy Project:

(1) Application Fees. All applications for a straight-lease transaction constituting a Small Alternate Energy Project shall be exempt from an application fee.

(2) Administrative Fee. At the time of closing and/or prior to the Agency granting a real property tax exemption with respect to the project, the applicant for a straight-lease transaction constituting a Small Alternate Energy Project will be required to pay any and all recording and filing fees that would apply at the time of filing.

(3) Legal Fees. Assuming that a straight-lease transaction constituting a Small Alternate Energy Project utilizes the Agency's standard documents for said transaction, with no modifications, there will be no legal fees associated with the transaction. If changes are desired to said documents, or additional documents are required for said transaction, the applicant is responsible for the legal fees incurred by the Agency for the creation or alternation of such documents.

(4) Late Payment Fee. A late payment charge of one percent (1%) per month (30 day period) shall be imposed for any of the foregoing payments more than 30 days late from the date billed.

(G) **Special Fee Structure for Small Business Equipment Projects.** Notwithstanding the provisions of Section 3(E) above, the following is the current fee structure for an Applicant Project which involves a straight-lease transaction with respect to a Small Business Equipment Project:

(1) Application Fees. All applications for a straight-lease transaction constituting a Small Business Equipment Project are exempt from having an application fee.

(2) Administrative Fee. At the time of closing and/or prior to the Agency granting a sales tax exemption with respect to the project, the applicant for a straight-lease transaction constituting a Small Business Equipment Project **will not** be required to pay the Agency's administrative fee relating to the project.

(3) Legal Fees. Assuming that a straight-lease transaction constituting a Small Business Equipment Project utilizes the Agency's standard documents for said transaction, with no modifications, there will be no legal fees associated with the transaction. If changes are desired to

said documents, or additional documents are required for said transaction, the applicant is responsible for the legal fees incurred by the Agency for the creation or alternation of such documents.

**SECTION 4. PROCEDURES FOR DEVIATION.** In a case where the Agency shall determine that special circumstances may exist that may justify a deviation pursuant to Section 3(B) of this Lease Policy, the Agency may determine to deviate from the provisions of this Lease Policy provided that:

(A) the Agency adopts a resolution (1) setting forth, with respect to the proposed deviation, the reasons for the proposed deviation and (2) imposing such terms and conditions thereon as the Agency shall deem just and proper; and

(B) to the extent required by Section 859-a of the Act, as provided in Section 3(D) hereof, the Agency shall give written notice of the proposed deviation from this Lease Policy to each Affected Tax Jurisdiction, setting forth therein a general description of the proposed deviation and the reasons therefor.

**SECTION 5. ANNUAL REVIEW OF POLICY.** At least annually, the Agency shall review this Lease Policy to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. The Chief Executive Officer of the Agency shall be responsible for conducting an annual review of this Lease Policy and for an evaluation of the internal control structure established to ensure compliance with this Lease Policy, which review shall be submitted to the Agency for consideration by the Agency.