

# Salamanca Industrial Development Agency

## Pilot Payment Policy

SECTION 1. PURPOSE AND AUTHORITY. Pursuant to Section 874(4)(a) of Title One of Article 18-A of the General Municipal Law, Salamanca Industrial Development Agency (the “Agency”) is required to establish a uniform tax exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars to any project. This uniform tax-exemption policy (hereinafter the “Uniform Tax Exemption Policy”) was adopted pursuant to a resolution enacted by the members of the Agency on December 10, 2019.

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. “Act” shall mean Title one of Article 18-A of the General Municipal Law.
- B. “Administrative Fee” shall mean a charge imposed by the Agency to an Applicant or project occupant for the administration of a project.
- C. “Affected Tax Jurisdiction” means, with respect to a particular project, the County and Salamanca and Salamanca Central School which will fail to receive real property tax payments which would otherwise be payable with respect to such project, unless the Affected Tax Jurisdictions shall agree in writing to add or subtract additional governmental entities thereto.
- D. “Agency” shall mean the City of Salamanca Industrial Development Agency.
- E. “Agency Fee” shall mean the normal charges imposed by the Agency on an Applicant or a project occupant to compensate the Agency for the Agency’s participation in a project, The term “Agency Fee” shall include not only the Agency’s normal application fee and the Agency’s normal Administrative fee, but also may include (1) reimbursement of the Agency’s expenses, (2) rent imposed by the Agency for use of the property of the Agency, and (3) other similar charges imposed by the Agency.
- F. “Applicant” shall mean an applicant for financial assistance.
- G. “Applicant Project” shall mean a project which is undertaken by the Agency for the benefit of an Applicant which either (1) has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto or (2) is a straight lease transaction which the Agency has determined to undertake pursuant to the Lease policy.
- H. “Assessed Value” shall mean, with respect to a particular Parcel, the value of the Parcel in question for purposes of determining payments in lieu of taxes hereunder.
- I. “Assessor” shall mean, with respect to a particular project and with respect to the City of Salamanca Assessor’s office.

- J. “Brownfield Redevelopment Project” shall mean a project which both (A) involves the redevelopment of a site listed by the New York State Department of Environmental Conservation in its Environmental Site Remediation Database (currently accessible on The world wide <http://www.dec.ny.gov/cfm/xtapps/derexternal/index.cfm?pageid=3>) and (B) is an Eligible Project.
- K. “Adaptive Reuse Project” shall mean a project in the process of adapting old structures or sites for new purposes and (B) is an Eligible Project. In an effort to advance a City strategy for development consistent with the Framework for City Growth, which outlines a growth, development and investment plan for the City, the SIDA should pursue and Adaptive Reuse Strategy that encourages the redevelopment of older structures or sites for a new purposes consistent with this plan.
- L. “Code” means the internal revenue Code of 1986, as amended, including, when appropriate the statutory predecessor of said Code, and any official rulings and judicial determinations under the foregoing.
- M. “Commercial Facility” shall mean any Applicant Project approved by the Agency that is not a Tax-exempt Facility, a Manufacturing Facility, a Tourism Destination Facility a Retail Facility or a Residential Facility. A “Qualified Commercial Facility” shall mean a commercial Facility which commits to retain at least 100% of the number of existing jobs fir the Initial Period relating thereto.
- N. “County” Shall mean the County of Cattaraugus.
- O. “Eligible Project” shall mean a project which is an “eligible project” pursuant to the Agency’s Eligible Project Policy.
- P. “FTE” shall mean a full time equivalent employee. To determine the number of FTEs employed by an employer at a particular facility in a particular year, divide the number of hours worked by all employees at such facility in such year by 1900.
- Q. “Guaranteed Pilot Payment” shall mean each payment due with respect to the particular Project.
- R. “Initial Period” shall mean, with respect to a particular project, the period of time that said project shall receive property tax abatement pursuant to the provisions of this Uniform Tan Exemption Policy.
- S. “Manufacturing Facility” shall have the meaning set forth in Section 144(a)(12)(C) of the Code, which defines said term to include (1) a “manufacturing facility”, i.e. any facility used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property and (2) certain facilities which are directly related and ancillary to a manufacturing facility if such facilities are located on the same site as the manufacturing facility. A “Regular Manufacturing Facility” shall mean a Manufacturing Facility which commits to retain at least 90% of the number of existing jobs for the Initial Period relating thereto. An “Enhanced Manufacturing Facility” shall mean a Manufacturing Facility which commits to retain all existing jobs for the Initial Period relating thereto and additionally commits to create additional jobs equal to the greatest of (a) 50% of the number of existing jobs or (b) 50 jobs.

- T. "Municipality" shall mean City of Salamanca.
- U. "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.
- V. "Nonexempt Person" shall mean a person not exempt from real property taxation pursuant to the provisions of the Real Property Tax Law of the State of New York.
- W. "Normal Tax" shall mean, with respect to a particular Parcel, the amount of general taxes and general assessments which would be payable to each Affected Tax Jurisdiction if the Parcel in question was owned by a Nonexempt Person and not the Agency by multiplying (1) the Assessed Value of the Parcel in question, by (2) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to such Parcel if such Parcel was owned by a Nonexempt Person and not the Agency.
- X. "Parcel" shall mean a parcel of land and the improvements located thereon.
- (AA) "Pilot" or "Payment in Lieu of Tax" shall mean any payment made to the Agency or an Affected Tax Jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an Affected Tax Jurisdiction with respect to a project but for Tax Exemption obtained by reason of the involvement of the Agency in such project, but such term shall not include Agency Fees.
- (BB) "Pilot Agreement" or "Payment in Lieu of Tax Agreement" shall mean a payment in lieu of tax agreement.
- (CC) "Residential Facility" shall mean buildings and appurtenant lands constituting single, duplex or multifamily buildings and appurtenant lands that are leased to or occupied by any person as a residence.
- (DD) "Retail Facility" shall mean facility (1) where either (a) fifty percent (50%) or more of the total cost of such facility relates to stores and/or professional offices offering goods or services for sale to customers who personally visit such premises to receive such goods or services or (b) fifty percent sale to customers who personally visit such premises to receive such goods or services or (b) fifty percent (50%) or more of the total space in such facility constitutes stores and/or professional offices offering goods or services for sale to customers who personally visit such premises to receive such goods or services, or (2) which constitutes a club where there is an initial fee, annual membership fee or membership is limited.
- (EE) "School District" shall mean Salamanca Central.
- (FF) "Tax-Exempt Facility" shall mean a facility solely occupied by entities exempt from taxation pursuant to Section 115 of the Code or Section 501(c)(3) of the Code and utilized exclusively for the mission of such entity for which exemption was granted pursuant to Section 501(c)(3) of the Code.
- (GG) "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.
- (II) "Tourism Destination Facility" shall mean a facility in the County that the Agency determines (1) will attract and/or service a significant number of Tourists, (2) will entice more Tourists to come to the County, (3) is linked to other Tourism Destination Facilities in the County, and (4) will agree to pay (a) sales taxes and occupancy taxes related to the operation of said facility and (b) real estate taxes and/or Pilot payments related to such facility.

(JJ)“Tourist” shall mean customer of a facility who resides outside the Western New York Economic Development Region (as designated by the New York State Department of Economic Development).

SECTION 1. REAL ESTATE TAX EXEMPTION. (A) General. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real estate taxes (but not exempt from special assessments and special ad valorem levies). However, it is the general policy of the Agency that, notwithstanding the foregoing, every non-governmental project will be required to enter into a Pilot Agreement, either separately or as part of the project documents. Such Pilot Agreement shall require payment of Pilot payments in accordance with the provisions set forth below.

(B) Pilot Requirement. Unless the Applicant and/or project occupant and the Agency shall have entered into a Pilot Agreement acceptable to the Agency, the project documents shall provide that the Agency will not file a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a (an “Exemption Form”) with respect to the project, and the project documents shall provide that the Applicant and/or the project occupant shall be required to make Pilot payments in such amounts as would result from taxes being levied on the project by the Affected Tax Jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project documents shall provide that, if the Agency and the Applicant and/or project occupant have entered into a Pilot Agreement, the terms of the Pilot Agreement shall control the amount of Pilot payments until the expiration or sooner termination of such Pilot Agreement.

(C) Required Filings. As indicated in subsection (B) above, pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an Exemption Form is filed with the Assessor of each Affected Tax Jurisdiction. Once an Exemption Form with respect to a particular project is filed with a particular Affected Tax Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Affected Tax Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Affected Tax Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Affected Tax Jurisdiction, and (4) the tax year to which such tax roll relates commences.

(D) Pilot Agreement. Unless otherwise determined by resolution of the Agency, all Pilot Agreements shall satisfy the following general conditions:

(1) Determination of Full Assessment: (a) Existing Assessment: Except as otherwise set forth herein, the general policy of the Agency is to minimize the loss of existing assessment, either by avoiding taking title to (or a leasehold interest in) an existing improvement and any portion of the project land not necessary to deliver the tax abatements contemplated by this Uniform Tax Exemption Policy, or, if such is not possible and the Agency takes title to (or a leasehold interest in) an existing improvement and/or any portion of the project land, to require that Pilot payments be made with respect to such existing improvements and existing land in an amount equal to 100% of the Normal Tax with respect thereto. The existing assessment on an existing improvement and/or any portion of the project land acquired by the Agency with respect to which the Agency files an Exemption Form is hereinafter referred to as the “Existing Assessment”. The Pilot Agreement may provide that the Existing Assessment is to be frozen at its present level for a period of up to fifteen years.

(b) New Assessment: Except as provided in Section 7(D)(10) below, with respect to a project including new construction, the general policy of

the Agency is to take title to (or a leasehold interest in) said new construction portion of the project (the “New Construction”), to file an Exemption Form with respect thereto, and to provide that the Assessor of each Affected Tax Jurisdiction will determine the interim assessments of such New Construction as construction progresses thereon (each, an “Interim New Assessment”) (the Interim New Assessment and the Existing Assessment being collectively referred to as the “Interim Full Assessment”) and a final assessment thereof (the “Final New Assessment”) when such New Construction is completed (the Final New Assessment and the Existing Assessment being collectively referred to as the “Final Full Assessment”). Once the Final Full Assessment is fixed, the Final Full Assessment shall be used as the basis of taxation of the project. The Applicant shall pay real estate Pilot payments determined in each tax year as follows: (i) first, determine the assessment of the new construction portion of the project for such tax year (the “Current New Assessment”), which assessment shall be a percentage of the Final New Assessment determined by subtracting the percentage of abatement applicable to such year (as determined pursuant to paragraph (2) below) from 100%; (ii) next, determine the assessment of the project for such tax year (the “Current Pilot Assessment”) by adding the Current New Assessment to the Existing Assessment; and (iii) finally, determine the Pilot payment payable to with respect to the project to each Affected Tax Jurisdiction by multiplying the Current Pilot Assessment by the applicable tax rate of the such Affected Tax Jurisdiction.

(2) Amount of Abatement: Based upon the categorization of a project (as set forth below), the new assessment portion of said project shall be entitled to the following benefits:

(a) Tax-Exempt Facility: If the project qualifies as a Tax-Exempt Facility, (i) the Initial Period shall be such period as the project continues to qualify as a Tax-Exempt Facility, and (ii) the percentage of exemption in each tax year shall be 100%.

(b) Regular Manufacturing Facility: If a project qualifies as a Regular Manufacturing Facility, (i) the Initial Period shall be fifteen years, and (ii) the percentage of exemption in each tax year shall be as set forth in the following table:

<b>Tax Year</b>	<b>Percentage of Exemption</b>
1 through 15	100%
16 and thereafter	0%

(c) Enhanced Manufacturing Facility: If a project qualifies as an Enhanced Manufacturing Facility, (i) the Initial Period shall be twenty years, and (ii) the percentage of exemption in each tax year shall be as set forth in the following table:

<b>Tax Year</b>	<b>Percentage of Exemption</b>
1 through 15	100%
16	85%
17	70%
18	55%
19	40%
20	25%

21 and thereafter	0%
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(d) Tourism Destination Facility: If a project qualifies as a Tourism Destination Facility, (i) the Initial Period shall be fourteen years, and (ii) the percentage of exemption in each tax year shall be as set forth in the following table:

<b>Tax Year</b>	<b>Percentage of Exemption</b>
1 through 10	100%
11	80%
12	60%
13	40%
14	20%
15 and thereafter	0%

(e) Residential Facility: If the project qualifies as a Residential Facility, (i) the Initial Period shall be zero years, and (ii) the percentage of exemption in each tax year shall be 0%.

(f) Retail Facility: If the project qualifies as a Retail Facility, (i) the Initial Period shall be ten years, and (ii) the percentage of exemption in each tax year shall be as set forth in the following table:

<b>Tax Year</b>	<b>Percentage of Exemption</b>
1	50%
2	45%
3	40%
4	35%
5	30%
6	25%
7	20%
8	15%
9	10%
10	5%
11 and thereafter	0%

(g) Qualified Commercial Facility (Renovation): If a project qualifies as a Qualified Commercial Facility which is being renovated, but does not include any new construction, (i) the Initial Period shall be six years, and (ii) the percentage of exemption in each tax year shall be as set forth in the following table:

<b>Tax Year</b>	<b>Percentage of Exemption</b>
1	60%
2	50%
3	40%
4	30%
5	20%
6	10%
7 and thereafter	0%

(h) Qualified Commercial Facility (New Construction): If a project qualifies as a Qualified Commercial Facility and involves new construction, (i) the Initial Period shall be ten years, and (ii) the percentage of exemption in each tax year shall be as set forth in the following table:

<b>Tax Year</b>	<b>Percentage of Exemption</b>
1	100%
2	90%
3	80%
4	70%
5	60%
6	50%
7	40%
8	30%
9	20%
10	10%
11 and thereafter	0%

(i) Small Alternate Energy Facility (New Construction): If the project qualifies as a Small Alternate Energy Facility, (i) the Initial Period shall be fifteen years, and (ii) the percentage of exemption in each tax year shall be 100%.

(j) Brownfield Redevelopment Project: If a project qualifies as a Brownfield Redevelopment Project, (i) the Initial Period shall be fourteen years, and (ii) the percentage of exemption in each tax year shall be as set forth in the following table:

<b>Tax Year</b>	<b>Percentage of Exemption</b>
1 through 10	100%
11	80%
12	60%
13	40%
14	20%
15 and thereafter	0%

(k) Adaptive Reuse Project: If a project qualifies as an Adaptive Reuse Project, (i) the Initial Period shall be ten years, and (ii) the percentage of exemption in each tax year shall be as set forth in the following table:

<b>Tax Year</b>	<b>Percentage of Exemption</b>
1 through 5	75%
6	50%
7	50%
8	50%
9	50%
10	50%
11 and thereafter	0%

(3) Reduction for Failure to Achieve Goals: If the Agency's approval of a particular project is predicated upon achievement by the project of certain minimum goals (such as creating and maintaining certain minimum employment levels), the Pilot Agreement may provide for the

benefits provided thereby to the project to be reduced or eliminated if, in the sole judgment of the Agency, the project has failed to fulfill such minimum goals.

(4) Payee. Unless otherwise determined by resolution of the Agency, all Pilot payments payable to an Affected Tax Jurisdiction shall be assessed, billed and collected directly by the same officials which assess, bill and collect normal taxes levied by such Affected Tax Jurisdiction. Pursuant to Section 874(3) of the Act, such PILOT payments shall be remitted to each affected tax jurisdiction within thirty (30) days of receipt.

(5) Expiration of Initial Period; Project Additions. Upon expiration of the Initial Period as aforesaid, the assessment of the project shall revert to a normal assessment (i.e., the project will be assessed as if the project were owned by the Applicant and not by the Agency). Also, any addition to the project shall be assessed normally as aforesaid, unless such addition shall be approved by the Agency as a separate project following notice and a public hearing as described in Section 859-a of the Act.

(6) Special District Taxes. As indicated above, the Agency is not exempt from special assessments and special ad valorem levies, and accordingly these amounts are not subject to abatement by reason of ownership of the Project by the Agency. The Pilot Agreement shall make this clear and shall require that all such amounts be directly paid by the Applicant and/or project occupant. However, Applicants and project occupants should be aware that the courts have ruled that an Agency-sponsored project is also eligible to apply for an exemption from special district taxes pursuant to Section 485-b of the Real Property Tax Law. If an Applicant or project occupant desires to obtain an exemption from special district taxes pursuant to said Section 485-b, it is the responsibility of the Applicant and/or project occupant to apply for same at its sole cost and expense.

(7) Credit for Taxes Paid. The Pilot Agreement may contain a provision providing that, should the project occupant pay in any fiscal tax year to any Affected Tax Jurisdiction any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the project occupant or the occupancy thereof by the project occupant (but not including, by way of example, (a) sales and use taxes, and (b) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the project occupant's obligation to make Pilot Payments in lieu of property taxes attributed to such fiscal tax year to such Affected Tax Jurisdiction under the Pilot Agreement shall be reduced by the amounts which the project occupant shall have so paid to such Affected Tax Jurisdiction in such fiscal tax year.

(8) Pilot Mortgage. Unless otherwise determined by the Agency, all Pilot Agreements shall be secured by a mortgage (a "Pilot Mortgage") upon the real property exempted by the Agency pursuant to the Exemption Form.

(9) Enforcement. An Affected Tax Jurisdiction which has not received a Pilot payment due to it under a Pilot Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such Affected Tax Jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the project documents to enforce payment and, if such Affected Tax Jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the Pilot Agreement.

(11) Late Payments. The Pilot Agreement shall provide that, if the project occupant shall fail to make any payment required by the Pilot Agreement when due, the project occupant shall be required to pay late payments at least equal to the late payments required by Section 874(5) of the Act (at the time of the last amendment of this Uniform Tax Exemption Policy, a late payment penalty equal to five percent (5%) of the amount due in the first month, and one percent (1%) per month for each month, or part thereof, that the payment due under the Pilot Agreement is delinquent beyond the first month).

(E) Required Filings. As indicated in subsection (B) above, pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an Exemption Form is filed with the Assessor of each Affected Tax Jurisdiction. Once an exemption form with respect to a particular project is filed with a particular Affected Tax Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Affected Tax Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Affected Tax Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Affected Tax Jurisdiction, and (4) the tax year to which such tax roll relates commences.

(F) Real Property Appraisals. Since the policy of the Agency stated in subsection (C)(1) above is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the respective Assessors, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the Assessor of any particular Affected Tax Jurisdiction requires one or (2) if the valuation of the project for payment in lieu of tax purposes is based on a value determined by the Applicant or by someone acting on behalf of the Applicant, rather than by an Assessor of an Affected Tax Jurisdiction or by the Agency. In lieu of an appraisal, the Agency may require that an Applicant submit to the Agency and each Assessor a certified enumeration of all project costs. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

SECTION 2. ANNUAL REVIEW OF UNIFORM TAX EXEMPTION POLICY. At least annually, the Agency shall review this Uniform Tax Exemption Policy to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. The Executive Director shall be responsible for conducting an annual review of this Uniform Tax Exemption Policy and for an evaluation of the internal control structure established to ensure compliance with this Uniform Tax Exemption Policy, which review shall be submitted to the Agency for consideration by the Agency.

