

CLOSING ITEM NO.: B-3

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

445 Delaware Avenue
Delmar, New York 12054

July 29, 2022

To Whom It May Concern:

Re: New York State Sales or Use Tax Exemption
Town of Bethlehem Industrial Development Agency
Albany Port District Commission Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987, as modified by TSB-M-14(1.1)S issued by the New York State Department of Taxation and Finance on February 12, 2014 (collectively, the "Policy Statement"), Albany Port District Commission (the "APDC") has requested a letter from Town of Bethlehem Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project (the "Project") located at Port Road South (Tax Map No. 98.01-2-1) and East of River Road (NYS Rt. 144) South of Normans Kill and North of PSEG Property (Tax Map No. 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York (the "Project Site").

The APDC has applied to and been approved for financial assistance from the Agency in the matter of completion of the Project on the Project Site. The Project includes the following: (A) (1) the acquisition of an interest in two (2) parcels of land containing in the aggregate approximately 81 acres located on Port Road South (tax map number 98.01-2-1) and East of River Road (NYS Rt. 144) south of Normans Kill and north of PSEG property (tax map number 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York (collectively, the "Land"), (2) the construction on the Land of four (4) buildings containing in the aggregate approximately 560,000 square feet of space, a bridge, related parking and various infrastructure improvements (collectively, the "Facility") and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Land, the Facility, and the Equipment being collectively hereinafter referred to as the "Project Facility"), all of the foregoing to constitute an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the APDC pursuant to the terms of a lease agreement dated as of July 1, 2022 (the "Lease Agreement") by and between the Agency and the APDC. Please be advised that on or about July 29, 2022, the Agency executed and delivered the Lease Agreement, pursuant to which the Agency appointed the APDC as agent of the Agency to acquire, construct and install the Project Facility.

Pursuant to the Lease Agreement, the APDC, as agent of the Agency, is authorized to make purchases of materials to be incorporated in the Project and machinery and equipment constituting a part of the Project, and purchases or rentals of supplies, tools, equipment, or services necessary to acquire, construct, reconstruct or install the Project, as provided in the IDA Agent or Project Operator Exempt Purchase Certificate ("Form ST-123"), a current form of which is attached hereto as Exhibit A.

To ensure that the above purchases or rentals are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York, the vendor must identify the Project on each bill and invoice for such purchases and indicate on the bill or invoice that the APDC as agent for the Agency was the purchaser (e.g., "Albany Port District Commission, as agent for Town of Bethlehem Industrial Development Agency"). In addition, the following procedures should be observed:

1. The APDC, as agent of the Agency, must complete Form ST-123 and provide same to vendor, with a copy to the Agency.
2. Each bill and invoice should identify the date of delivery and indicate the place of delivery.
3. Payment should be made by the APDC acting as agent, directly to the vendor from a requisition from a special project fund of the payor.
4. Deliveries should be made to the Project Site, or under certain circumstances (such as where the materials require additional fabrication before installation on the Project Site or for storage to protect materials from theft or vandalism prior to installation at the Project Site) deliveries may be made to a site other than the Project Site, providing the ultimate delivery of the materials is made to the Project Site. Where delivery is made to a site other than the Project Site, the purchases should be billed or invoiced by the vendor to the APDC as agent of the Agency, identify the date and place of delivery, the Agency's full name and address and the Project Site where the materials will ultimately be delivered for installation.

A contractor or subcontractor not appointed as agent or project operator of the Agency must present suppliers with Form ST-120.1, Contractor Exempt Purchase Certificate, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16).

Pursuant to Section 874(8) of the Act, the APDC, as agent of the Agency, must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the APDC under the authority granted by the Agency. The penalty for failure to file such a statement under Section 874(8) of the Act shall be the removal of authority to act as an agent for the Agency.

Pursuant to Section 874(9) of the Act, the APDC, as agent of the Agency, must file within thirty (30) days of the date the Agency designates the APDC as agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such manner as prescribed by the Commissioner of Taxation and Finance, identifying the APDC as agent of the Agency.

Pursuant to Section 875(5) of the Act, the APDC may not utilize the Thirty-Day Sales Tax Report as the basis to make any purchase exempt from sales tax, and that use of the Thirty-Day Sales Tax Report in such manner will both (A) subject the APDC to civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax as provided in the tax law and (B) be deemed to be, under articles twenty-eight and thirty-seven of the New York State tax law,

the issuance of a false or fraudulent exemption certificate or document with intent to evade tax. The APDC is required to utilize Form ST-123 to obtain the sales tax exemption.

This letter shall serve as proof of the existence of an agency contract between the Agency and the APDC for the SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES AND USE TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE APDC IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency nor the APDC as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter received by any vendor or seller to the APDC as agent for the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law Section 1132(c)(4), thereby relieving such vendor or seller from the obligation to collect sales and use tax on purchases or rentals of such materials, supplies, tools, equipment, or services by the Agency through its agent, the APDC.

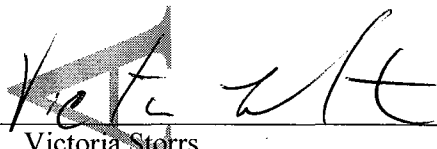
THIS LETTER SHALL BE IN EFFECT UNTIL JUNE 30, 2025.

TOWN OF BETHEL
T O B I L
INDUSTRIAL DEVELOPMENT AGENCY

In the event you have any questions with respect to the above, please do not hesitate to call Catherine Hedgeman, Esq., Executive Director of the Agency, at (518) 439-4955 ext. 1189.

Very truly yours,

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Victoria Storrs
Chair

TOWN OF BETHLEHEM

T O B I D

INDUSTRIAL DEVELOPMENT AGENCY

EXHIBIT A

IDA AGENT OR PROJECT OPERATOR
EXEMPT PURCHASE CERTIFICATE

TOWN OF BETHLEHEM

T O B I D A

INDUSTRIAL DEVELOPMENT AGENCY



New York State Department of Taxation and Finance
New York State Sales and Use Tax

ST-123
(7/14)

**IDA Agent or Project Operator
Exempt Purchase Certificate**
Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
Agent or project operator sales tax ID number (see instructions)					

Mark an **X** in one: Single-purchase certificate Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (use OSC number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yy)	/	/

Exempt purchases

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120 1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



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Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082