

# FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT

THIS FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, dated as of the 30th day of September, 2020, is by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **2800 N AMERICA LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York with offices at 2440 North America Drive, West Seneca, New York 14224 (the "Company").

#### WITNESSETH:

WHEREAS, by Resolution dated May 22, 2019 (the "Resolution"), the Agency authorized the Company to undertake the Project and act as its Agent for the purposes of acquiring, constructing and equipping the Facility and subject to the Company entering into an Agent Agreement; and

WHEREAS, the Agency and the Company entered into that certain Agent and Financial Assistance Project Agreement, dated as of May 31, 2019, as amended from time to time, (collectively, the "Agent Agreement"), whereby the Agency authorized the Company to act as its Agent for the purposes of acquiring, constructing and/or equipping the Facility; and

WHEREAS, the Company has notified the Agency that the project has not been completed and has requested an extension of the New York State and local sales and use tax exemption benefit time period provided by the Agency, which the Agency has agreed to provide to the Company; and

WHEREAS, the Agency requires a First Amendment to Agent Agreement be executed, and the Company and the Agency have agreed to execute the First Amendment to Agent Agreement to reflect the extension of the New York State and local sales and use tax exemption benefit time period provided by the Agency and any additional amendments thereto.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

The Agent Agreement is amended as follows:

- 1. Any references to the sales tax exemption expiration in the Agent Agreement shall be changed from July 31, 2020 to December 31, 2021.
- 2. Paragraph 5 of the Agent Agreement shall be amended and replaced by the following paragraphs:
  - 5. <u>Additional Provisions Respecting Insurance</u>. (a) Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and

other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for payment of the losses of the Company and the Agency as their respective interests may appear.

- (b) All such certificates of insurance of the insurers indicating that such insurance is in force and effect, and all policies (if applicable), shall be deposited with the Agency on the date hereof. At least thirty (30) days prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.
- 3. A new Exhibit A, Exhibit B-1, and Exhibit B-2 are attached hereto, and shall be made part of, and incorporated into, the Agent Agreement.

Unless otherwise amended pursuant to the terms contained herein, the terms of the Agent Agreement shall remain unchanged.

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IN WITNESS WHEREOF, the Agency and the Company have caused this First Amendment to Agent and Financial Assistance Project Agreement to be executed in their respective names, all as of the date first above written.

# ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: Kurn M. Field

Name: Karen M. Fiala Title: Assistant Treasurer

#### 2800 N AMERICA LLC

Name: Andrew J. Christie

Title: Sole Member /

# EXHIBIT A REVISED

FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN THIRTY (30) DAYS OF APPOINTMENT

[Attached Next Page]



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Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

For IDA use only

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

4.8.									
IDA information Name of IDA				IDA project number (use OSC numbering system for projects after 1998)					
Erie County Industrial Development Agency				1404-19-07A					
Street address				Telephone number					
95 Perry Street, Suite 403				(716 ) 856-6525					
City	State	ZIP code	1	Email address (optional)					
Buffalo	NY	14203							
				1					
Project operator or agent info	mation				1=				
Name of IDA project operator or agent				n <i>X</i> in the box if directly ted by the IDA: No			or Social Security number		
Street address			-	Telephone number		Primary operato	or or agent?		
City	State	State ZIP code		Email address (optional)		169 140 2			
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Project information									
Name of project									
2800 N America LLC									
Street address of project site 2800 North Americ	a Drive, and any lands	s located in Eri	ie Co. and occu	ipied by license or ea	sement durir	ng construction or it	mprovement by		
third parties for the benefit of the project.									
City	State	ZIP code		Email address (optional)					
West Seneca	NY	14224							
Purpose of project									
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#### Instructions

#### When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

#### Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

#### If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

#### **Mailing instructions**

Mail completed form to:

NYS TAX DEPARTMENT IDA UNIT W A HARRIMAN CAMPUS ALBANY NY 12227-0866

**Private delivery services –** See Publication 55, Designated Private Delivery Services.

#### **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 for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, 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?



Visit our website at www.tax.ny.gov

- · get information and manage your taxes online
- · check for new online services and features

#### Telephone assistance

Sales Tax Information Center:

518-485-2889

To order forms and publications:

518-457-5431

Text Telephone (TTY) or TDD equipment users

Dial 7-1-1 for the New York Relay Service

## EXHIBIT B-1 – REVISED

### NYS FORM ST-123 FOR COMPANY

[Attached Next Page]



New York State Department of Taxation and Finance

New York State Sales and Use Tax

Exhibit B-1

# **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 2800 N America LLC Street address Street address 2440 North America Drive City, town, or village State ZIP code City, town, or village State ZIP code West Seneca 14224 Agent or project operator sales tax ID number (see instructions) Single-purchase certificate Mark an X in one: 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. Erie County Industrial Development Agency Name of project IDA project number (use OSC number) 2800 N America LLC 1404-19-07A Street address of project site 2800 North America Drive City, town, or village State ZIP code NY 14224 Enter the date that you were appointed agent or Enter the date that agent or project operator 05 / 31 project operator (mm/dd/yy) ..... status ends (mm/dd/yy) ..... 31 21 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) 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 agencles 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 buildozer 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).

- A. 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.
- B. 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.
- C. 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?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- · check for new online services and features

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Sales Tax Information Center:
To order forms and publications:

(518) 485-2889 (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and

Speech disabilities using a TTY): (518) 485-5082

# $\underline{EXHIBIT\ B\text{-}2} - \underline{REVISED}$

## NYS FORM ST-123 FOR SUBAGENTS OF COMPANY

[Attached Next Page]



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

Exhibit B-2

**ST-123** 

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

Street address  Street address  Street address  X  City, town, or village  State  ZIP code  City, town, or village  State  ZIP code  X  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 unit 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  Erie County Industrial Development Agency  Name of project  Street address of project site  2800 N America LLC  Street address of project site  2800 North America Drive  City, town, or village  Ny 14224  Enter the date that you were appointed agent or  Enter the date that you were appointed agent or  Enter the date that you were appointed agent or  Enter the date that you were appointed agent or  Enter the date that you were appointed agent or  Enter the date that you were appointed agent or	Note: To be completed by the pa	s all entries have been completed urchaser and given to the seller. D	o not use this form to purcha	ase motor fu	el or diesel	moto	or fuel e	exempt		
State ziP code    X   Agent or project operator sales tax ID number (see autocare)	from tax. See Form FT-123, <i>IDA</i>	Agent or Project Operator Exemp	mpt Purchase Certificate for Fuel.							
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City, town, or village  State ZIP code  City, town, or village  State ZIP code  City, town, or village  Agent or project operator sales tax ID number (see analysticion)  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  Loritly 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 a 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  Eine County Industrial Development Agency  Name of project  2800 N America LLC  TOA project number (use OSC number)  1404-119-07A  Statis  ZIP code  NY 14224  Enter the date that you were appointed agent or project operator of the tast that you were appointed agent or project operator (minosity)  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  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 mended to the project, but not to operate the completed project.  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 than the intent to evade any such tax document than the intent or evade any such tax document than the intent or to	Ott addison									
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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 to 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  Fire County Industrial Development Agency  Name of IDA  Statis				av ID number (s	ee instructions)					
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City, town, or village  West Seneca  Enter the date that you were appointed agent or project operator (mm/dd/yy)			<u>, , , , , , , , , , , , , , , , , , , </u>		1707 13	-0,,,				
City, town, or village  West Seneca  Enter the date that you were appointed agent or project operator (mm/dd/yy)	2800 North America Drive									
Enter the date that you were appointed agent or project operator (mm/dd/yy)	City, town, or village				State	ZIP	code			
Enter the date that you were appointed agent or project operator (mm/dd/yy)	West Seneca				NY	14	224			
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 that document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purpose 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)	· · ·		·		itor			· 24		
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Type or print the name, title, and relationship that appear in the signature box	Signature of purchaser or purchaser's	representative (include title and relationship)				Date				
	Type or print the name, title, and relation	onship 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).

- A. 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.
- B. 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.
- C. Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tay

#### 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?



Visit our Web site at www.tax.ny.gov

- · get information and manage your taxes online
- check for new online services and features

Sales Tax Information Center:
To order forms and publications:

(518) 485-2889

Text Telephone (TTY) Hotline

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082

(518) 457-5431