STATE OF NEW YORK

11214

IN ASSEMBLY

May 1, 2026

Introduced by M. of A. KELLES -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law and the public authorities law, in relation to reforming the industrial development authority program; and to amend the tax law, in relation to adding a tax clearance process

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The section heading and subdivisions 1, 2, 3, 4, 6, 7 and 9 of section 875 of the general municipal law, as added by section 2 of part J of chapter 59 of the laws of 2013, are amended to read as follows:

Special provisions applicable to state [~~sales and compensating use~~] taxes and certain types of facilities. 1. For purposes of this section:

[~~"state~~] **(a) "State** sales and use taxes" means sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight[~~.~~]**;**

(b) "State taxes" means any or all of the following: state sales and use taxes, any mortgage recording tax imposed under section two hundred fifty-three of the tax law, any state real estate transfer tax imposed by article thirty-one of the tax law;

(c) "IDA" means an industrial development agency established by this article or an industrial development authority created by the public authorities law[~~.~~]**;**

(d) "Commissioner" means the commissioner of taxation and finance[~~.~~]**;**

(e) "ABO" means the authorities budget office established by section four of the public authorities law; and

(f) "PACB" means the public authorities control board established by article one-A of the public authorities law.

2. An IDA shall keep records of the amount of state and local sales and use tax exemption benefits **and any other state tax exemption benefits** provided to each project and each agent or project operator and shall make such records available to the commissioner upon request. Such

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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IDA shall also, within thirty days of providing financial assistance to a project that includes any amount of state [~~sales and use~~] tax exemption benefits, report to the commissioner the amount of such benefits for such project, the project to which they are being provided, together with such other information and such specificity and detail as the commissioner may prescribe. This report may be made in conjunction with the statement required by subdivision nine of section eight hundred seventy-four of this title or it may be made as a separate report, at the discretion of the commissioner. An IDA that fails to make such records available to the commissioner or to file such reports shall be prohibited from providing **any** state [~~sales and use~~] tax exemption benefits for any project unless and until such IDA comes into compliance with all such requirements.

3. (a) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy **any** state [~~sales and use~~] tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from **any** such state [~~sales and use exemptions~~] **tax exemption** benefits.

(b) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity **any** state [~~sales and use exemptions~~] **tax exemption** benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or**, as to state sales and use taxes,** which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person's agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain **any** such state [~~sales and use~~] **tax** exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the commissioner to assess and determine state [~~sales and use~~] taxes due from the person under [~~article twenty-eight of~~] the tax law, together with any relevant penalties and interest due on such amounts.

(c) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of state [~~sales and use~~] tax exemption benefits from an agent, project operator or other person or entity, the IDA shall, within thirty days of coming into possession of such amount, remit it to the commissioner, together with such information and report that the commissioner deems necessary to administer payment over of such amount. An IDA shall join the commissioner as a party in any action or proceeding that the IDA commences to recover, recapture, obtain, or otherwise seek the return of, **any** state [~~sales and use~~] tax exemption benefits from an agent, project operator or other person or entity.

(d) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (a) of this subdivision and its activities and efforts to recover, recapture, receive, or otherwise obtain **any** state [~~sales and use exemptions~~] **tax exemption** benefits described in paragraph (b) of this subdivision, together with such other information as the commissioner and the commissioner of economic development may require. The report required by this subdivision shall be

filed with the commissioner, the director of the division of the budget, the commissioner of economic development, the state comptroller, the governing body of the municipality for whose benefit the agency was created, and may be included with the annual financial statement required by paragraph (b) of subdivision one of section eight hundred fifty-nine of this title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statement described by such paragraph (b) of subdivision one of section eight hundred fifty-nine. The failure to file or substantially complete the report required by this subdivision shall be deemed to be the failure to file or substantially complete the statement required by such paragraph (b) of subdivision one of such section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (e) of subdivision one of such section eight hundred fifty-nine.

(e) This subdivision shall apply to any amounts of state [~~sales and use~~] tax exemption benefits that an IDA recovers, recaptures, receives, or otherwise obtains, regardless of whether the IDA or the agent, project operator or other person or entity characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The provisions of this subdivision shall also apply to any interest or penalty that the IDA imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that an IDA recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be state sales and use taxes**, mortgage recording tax, or real estate transfer tax, as the case may be,** and the IDA shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the state.

4. The commissioner shall deposit and dispose of any amount of any payments or moneys received from or paid over by an IDA or from or by any person or entity, or received pursuant to an action or proceeding commenced by an IDA, together with any interest or penalties thereon, pursuant to subdivision three of this section, as state sales and use taxes in accord with the provisions of article twenty-eight of the tax law**, or as mortgage recording tax imposed under section two hundred fifty-three of the tax law or real estate transfer tax imposed under article thirty-one of the tax law, as the case may be**. The amount of any such payments or moneys **in respect of sales or use taxes**, together with any interest or penalties thereon, shall be attributed to the taxes imposed by sections eleven hundred five and eleven hundred ten, on the one hand, and section eleven hundred nine of the tax law, on the other hand, or to any like taxes or fees imposed by such article, based on the proportion that the rates of such taxes or fees bear to each other, unless there is evidence to show that only one or the other of such taxes or fees was imposed or received or paid over.

6. The commissioner is hereby authorized to audit the records, actions, and proceedings of an IDA and of its agents and project operators to ensure that the IDA and its agents and project operators comply with all the requirements of this section. **In addition, the commissioner is hereby authorized to audit IDA projects and IDA agents and project operators with regard to the requirements and restrictions of this title and title eleven or fifteen of article eight of the public authorities law to ensure that job targets, investment targets, construction, and expenditures described in subdivision five-a of this section, and any exemptions from any state taxes or from local sales and compensating use**

taxes administered by the commissioner comply with the details of the project and the application as approved by the IDA. In addition, the department of economic development, the ABO, the PACB, or another person or entity may report to the commissioner that an agent or project operator has not met any such targets or goals or otherwise complied with any such provisions. If the commissioner finds that any such job targets, investment targets, construction, expenditures, or tax exemption provisions or other conditions or provisions have not been met or complied with, the commissioner shall determine the amount of any exemption from state taxes that the agent or project operator claimed and such agent or project operator shall pay such amounts as tax. If the commissioner finds that the agent or project operator has partially met such targets, goals, or conditions, the commissioner may determine the degree of compliance to determine the amount of such tax exemptions claimed that the agent or project operator must pay as tax. In making such compliance determination, the commissioner may consider the number of years or other period of time in which such agent or project operator met the targets, goals, or conditions, as compared to the total years or other period of time of the project, the percentage of compliance with regard to the number of jobs created as compared to the job targets, the severity of failure to comply with tax exemption limitations based on the number of dollars by which the agent or project operator exceeded the allowed amount of tax exemptions approved, and such other factors as the commissioner deems reasonable and pertinent. The commissioner shall be authorized to assess or otherwise bill the agent or project operator for any such amounts that the commissioner determined the agent or project operator must pay as tax, in the manner that the commissioner would assess or bill for the tax from which such exemptions were claimed. Any information the commissioner finds in the course of any such audit may be used by the commissioner to assess and determine state and local taxes of the IDA's agent or project operator.

7. In addition to any other reporting or filing requirements an IDA has under this article or other law, an IDA shall [~~also~~] maintain a public internet website and report and make available on [~~the internet~~] such website, without charge, copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. In addition, every IDA shall post on such website the following information and shall timely update all such information so that it remains current and accurate within thirty days of any change:

(a) the name and title of each member and officer of the IDA;

(b) public notice of every meeting to be held by the IDA, as required by subdivision five-c of this section;

(c) the agenda of every such meeting to be held, at least ten days prior to the commencement of the meeting;

(d) minutes of every meeting the IDA holds, together with the details of every vote each member of the IDA casts at any meeting; and

(e) a description of every project established by the IDA, together with a description of any state or local tax exemption benefits the IDA intends to provide or extend in duration, or has provided or extended, with respect to the project, including what the exemption applies to, the type of tax exempted or to be exempted and the duration and annual and total dollar value of each such exemption.

It shall also provide, without charge, copies of all such reports and information to a person who asks for [~~it~~] any of them in writing or in person. The IDA may, at the request of its agent or project operator

delete from any such copies posted on the internet or provided to a person described in the prior sentence portions of its records that are specifically exempted from disclosure under article six of the public officers law. **If the ABO finds, on its own, or after recommendation by the department of economic development, the commissioner, the PACB or any other person or entity, that an IDA has failed to comply with the requirements of this section, the ABO shall advise the IDA of its findings, and the IDA shall have thirty days to come into compliance. If the IDA fails to do so, the IDA shall not be able to establish any project or provide any financial assistance in the nature of exemptions from any state taxes. The ABO shall notify the PACB and the commissioner of the failure in compliance.**

9. To the extent that a provision of this section conflicts with a provision of any other section of this article **or with a provision of title eleven or fifteen of article eight of the public authorities law**, the provisions of this section shall control.

§ 2. Section 875 of the general municipal law is amended by adding three new subdivisions 5-a, 5-b and 5-c to read as follows:

5-a. In addition to any other requirement of this article or other law: Every IDA and its members and officers shall comply with the applicable provisions of the public officers law, including among other things the open meetings law and the freedom of information law, the applicable provisions of the public authorities law, and this title. If the ABO or any other person or entity finds that an IDA or its member or officer has failed to comply with an applicable provision of the public officers law or of the public authorities law, or with this title, the ABO or such other person or entity shall notify the PACB of such non-compliance. The IDA shall not approve any project or benefits for a project unless and until the IDA and its member or officer corrects or causes to be corrected such non-compliance and the ABO has certified that such compliance has been achieved; and such IDA shall, among other things, not provide or extend in duration any financial assistance consisting of exemption from any state tax to any project. Such an IDA that has been found not to be in compliance shall be required to correct any such non-compliance and demonstrate its compliance to the satisfaction of the ABO, before any such state tax exemption benefit shall be valid.

5-b. In addition to any other requirement of this article or other law: (a) An IDA shall be required to apply for and obtain prior approval from the PACB before the IDA can provide financial assistance consisting of any exemption equal to or greater than five million dollars from state taxes with respect to a project, or before it can increase or extend in duration any such financial assistance if such increase or extension will result in the total sum of the state tax benefit is equal to or greater than five million dollars. The IDA shall submit its application to the PACB using a form prescribed by the PACB in consultation with the ABO. Such application shall include the types and amounts of financial assistance proposed to be offered; IDA's target for the number of full-time equivalent jobs to be created in each year of such project; the IDA's target for investments in each year of such project; a schedule of construction, if any; and a plan of expenditures by the agent or project operator. Such application shall also include copies of the IDA's notice of public meeting regarding the project, minutes of the meeting's proceedings, details of votes taken at the meeting, and such other documents and other information as the PACB or the ABO may require.

(b) If the IDA submits a complete application in processible form, together with any such required documents and other information, the PACB shall approve or deny such application within forty-five days. If the PACB does not act on such application within forty-five days of receiving it, such application shall be deemed approved and the IDA shall note on its public website that such application was approved as a result of the PACB failing to vote in a timely manner. An application shall not be complete and in processible form unless it includes, among other things, a construction schedule, and specific job creation and investment targets for each year that the IDA's proposed project would be in effect. Notwithstanding the foregoing or other law, the PACB shall not approve any project that provides financial assistance consisting substantially only of exemptions from state taxes.

(c) In considering such an IDA application, the PACB shall not approve financial assistance consisting of any exemption from state taxes unless the PACB concludes that such assistance shall not provide the project or the IDA's agent or project operator with a competitive advantage over an existing business in a similar industry in that area.

(d) No financial assistance consisting of an exemption from any state taxes shall be increased or extended in duration with respect to a project or to an agent or project operator that has benefitted from any such assistance in the past unless the IDA receives the prior approval of the PACB in the manner described in this subdivision if the total sum of the state tax benefit is equal to or greater than five million dollars.

5-c. In addition to any other requirement of this article or other law, and notwithstanding any other law, an IDA shall not establish a project or provide financial assistance with respect to a project, or provide additional financial assistance with respect to an existing project, without first having received from every applicant, agent, and project operator related to the project and from every person required to collect tax, as defined in subdivision one of section eleven hundred thirty-one of the tax law, with respect to every such applicant, agent or project operator, a tax clearance under section one hundred seventy-one-x of the tax law.

§ 3. Section 862 of the general municipal law is amended by adding a new subdivision 3 to read as follows:

(3) The provisions of this section shall also apply to the industrial development authority created by title eleven of article eight of the public authorities law with the same force and effect as if the provisions of this section had been incorporated in full into such title eleven and expressly referred to the provisions of such title and to such authority, with such changes to this section as are necessary to refer to the provisions of such title eleven and to such authority created by such title.

§ 4. Section 4 of the public authorities law, as added by chapter 506 of the laws of 2009, is amended to read as follows:

§ 4. Establishment of the independent authorities budget office. There is hereby established the independent authorities budget office as an independent entity within the department of state, which shall have and exercise the powers and duties provided by this title and by section eight hundred seventy-five and related sections of the general municipal law.

§ 5. The tax law is amended by adding a new section 171-x to read as follows:

§ 171-x. Enforcement of delinquent tax liabilities through tax clearances. (1) For the purposes of this section, the term "tax liabilities" shall mean any tax, surcharge, or fee administered by the commissioner, or any penalty or interest owed by an individual or entity. The term "past-due tax liabilities" means any unpaid tax liabilities that have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review. The term "government entity" means the state of New York, or any of its agencies, political subdivisions, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada), or combination thereof.

(2) The commissioner, or the commissioner's designee, shall cooperate with any government entity that is required by law or has elected to require tax clearances to establish procedures by which the department shall receive a tax clearance request and transmit such tax clearance to the government entity, and any other procedures deemed necessary to carry out the provisions of this section. These procedures shall, to the extent practicable, require secure electronic communication between the department and the requesting government entity for the transmission of tax clearance requests to the department and transmission of tax clearances to the requesting entity. Notwithstanding any other law to the contrary, a government entity shall be authorized to share any applicant data or information with the department that is necessary to ensure the proper matching of the applicant to the tax records maintained by the department.

(3) Upon receipt of a tax clearance request, the department shall examine its records to determine whether the subject of the tax clearance request has past-due tax liabilities equal to or in excess of the dollar threshold applicable for such tax clearance request or, where no threshold has been established by law or otherwise, equal to or in excess of five hundred dollars. When a tax clearance request so requires, the department shall also determine whether (a) the subject of such request has complied with applicable tax return filing requirements for each of the past three years; and/or (b) whether a subject of such request that is an individual or entity that is a person required to register pursuant to section one thousand one hundred thirty-four of this chapter is registered pursuant to such section. The department shall deny a tax clearance if it determines that the subject of a tax clearance request has past-due tax liabilities equal to or in excess of the applicable threshold or, when the tax clearance request so requires, has not complied with applicable return filing and/or registration requirements.

(4) If a tax clearance is denied, the government entity that requested the clearance shall provide notice to the applicant to contact the department. Such notice shall be made by first class mail with a certificate of mailing and a copy of such notice also shall be provided to the department. When the applicant contacts the department, the department shall inform the applicant of the basis for the denial of the tax clearance and shall also inform the applicant (a) that a tax clearance denied due to past-due tax liabilities may be issued once the taxpayer fully satisfies past-due tax liabilities or makes payment arrangements satisfactory to the commissioner; (b) that a tax clearance denied due to failure to file tax returns may be issued once the applicant has satisfied the applicable return filing requirements; (c) that a tax clearance denied for failure to register pursuant to section one thousand one hundred thirty-four of this chapter may be issued once the applicant has

registered pursuant to such section; and (d) the grounds for challenging the denial of a tax clearance listed in subdivision five of this section.

(5) (a) Notwithstanding any other provision of law, and except as specifically provided herein, an applicant denied a tax clearance shall have no right to commence a court action or proceeding or seek any other legal recourse against the department or the government entity related to the denial of a tax clearance by the department.

(b) An applicant seeking to challenge the denial of a tax clearance must protest to the department or the division of tax appeals no later than sixty days from the date of the notification to the applicant that the tax clearance was denied. An applicant may challenge a department finding of past-due tax liabilities only on the grounds that (i) the individual or entity denied the tax clearance is not the individual or entity with the past-due tax liabilities at issue; (ii) the past-due tax liabilities were satisfied; (iii) the applicant's wages are being garnished for the payment of child support or combined child and spousal support pursuant to an income execution issued pursuant to section five thousand two hundred forty-one or five thousand two hundred forty-two of the civil practice laws and rules or another state's income withholding order as authorized under part five of article five-B of the family court act, or garnished by the department for the payment of the past-due tax liabilities at issue; or (iv) the applicant is making child support payments or combined child and spousal support payments pursuant to a satisfactory payment arrangement under section one hundred eleven-b of the social services law with a support collection unit or otherwise making periodic payments in accordance with section four hundred forty of the family court act. An applicant may challenge a department finding of failure to comply with tax return filing requirements only on the grounds that all required tax returns have been filed for each of the past three years.

(c) Nothing in this subdivision is intended to limit any applicant from seeking relief from joint and several liability pursuant to section six hundred fifty-four of this chapter, to the extent that the applicant is eligible pursuant to that section, or establishing to the department that the enforcement of the underlying tax liabilities has been stayed by the filing of a petition pursuant to the Bankruptcy Code of 1978 (Title Eleven of the United States Code).

(6) Notwithstanding any other provision of law, the department may exchange with a government entity any data or information that, in the discretion of the commissioner, is necessary for the implementation of a tax clearance requirement. However, no government entity may re-disclose this information to any other entity or person, other than for the purpose of informing the applicant that a required tax clearance has been denied, unless otherwise permitted by law.

(7) Except as otherwise provided in this section, the activities to collect past-due tax liabilities undertaken by the department pursuant to this section shall not in any way limit, restrict or impair the department from exercising any other authority to collect or enforce tax liabilities under any other applicable provision of law.

(8) Except as otherwise provided in this section, the provisions of this section are not applicable to the tax clearance required by section one hundred seventy-one-x of this article.

§ 6. This act shall take effect immediately and shall apply to (a) any project established or any agent or project operator appointed, on or after the date this act shall have become a law and any financial

assistance provided thereto, (b) any amendment or revision involving additional financial assistance, funds or benefits made on or after the date this act shall have become a law to any project established, agent or project operator appointed, or financial assistance provided, prior to that date, and (c) any state sales and compensating use tax or other state tax exemption benefits and any state sales and compensating use taxes or other taxes recovered, recaptured, received, or otherwise obtained by an industrial development agency established by the general municipal law or an industrial development authority created by title 11 or title 15 of article 8 of the public authorities law on or after such date.