

**ATTENTION:**



**Unauthorized use of this document may result in financial penalties**

**LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION**

**EXPIRATION DATE: May 7, 2014**

**ELIGIBLE PROJECT LOCATION:**

**2691 West 15<sup>th</sup> Street, Brooklyn, New York 11224 (the "Facility Realty")**

**ELIGIBLE AGENT:**

**HARBRO CORP. (the "Lessee")**

May 7, 2013

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
Sales Tax Exemption Letter

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a certain Agency and Lease Agreement, dated the date hereof (the "Agreement"), between the Agency and the Lessee, the Agency and this Letter of Authorization of Sales tax Exemption thereby and hereby authorizes the Lessee to act as its agent in connection with a project (the "Project") for the purpose of purchasing and leasing eligible items described in Annex A attached hereto for installation, equipping, furnishing, servicing and use by the Lessee at the Facility Realty.

3. Subject to the provisions of this letter, including Annex B, this agency appointment described in Section 2 above includes the power of the Lessee to delegate from time to time such agency appointment, directly or indirectly, in whole or in part, to agents, subagents, contractors, subcontractors, material men, suppliers and vendors of the Lessee and for such parties in turn to delegate, in whole or in part and from time to time, to such other parties as the Lessee chooses, provided that any such delegation is limited to the renovation, repair and equipping of the Project and any such activities are effected in compliance with this Letter of Authorization for Sales Tax Exemption (each party so designated, hereinafter an "Agent").

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4. If the Lessee, or an Agent appointed directly or indirectly by the Lessee, intends to appoint an Agent to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax pursuant to authority of this Letter of Authorization for Sales Tax Exemption, the Lessee shall comply, and shall require and cause each such Agent to comply, with the required procedures set forth on Annex B hereto with respect to the filing by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent".

5. The Lessee covenants and agrees to comply, and to cause each of its contractors, subcontractors, agents, persons or entities to comply, with the obligations, terms and conditions of Section 875, subdivision (3) of Article 18-A the General Municipal Law, attached hereto as Annex C, as such provisions may be amended from time to time.

6. As agent for the Agency, the Lessee agrees that it will attach the following rider to each contract, agreement, invoice, bill or purchase order entered into by the Lessee or by an Agent, as agent for the Agency for the renovation, repair and equipping of the Project:

"This contract, agreement, invoice, bill or purchase order is being entered into by Harbro Corp. (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent and for Harbro Corp. (the "Lessee") being the renovation, repair and equipping of a facility (the "Facility"), located at 2691 West 15th Street, Brooklyn, New York 11224 (the "Project"). The purchase, lease, rental or use of the materials, machinery, equipment, goods, services and supplies which are the subject of this contract, agreement, invoice, bill or purchase order, which has been entered into with or presented to the vendor (the "Vendor") shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this contract, agreement, invoice, bill or purchase order is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The Vendor has been provided with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") by the purchaser. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the contract, agreement, invoice, bill or purchase order as evidence that the Vendor is not required to collect sales or use tax in connection with this contract, agreement, invoice, bill or purchase order.

This contract, agreement, invoice, bill or purchase order is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any

extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this contract, agreement, invoice, bill or purchase order, the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

7. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Lessee or any Agent as agent for the Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Lessee or, as applicable, any Agent, shall be the sole party liable thereunder.

8. By execution by the Lessee of its acceptance of the terms of this Letter of Authorization for Sales Tax Exemption, the Lessee agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Lessee or by any Agent is strictly for the purposes above stated.

9. Accordingly, until the Termination Date (as defined in the Lease Agreement), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Lessee or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the Lessee and each Agent shall cease being agents of the Agency, and (i) the Lessee shall immediately notify each Agent in writing of such termination; (ii) the Lessee shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) to the Agency for cancellation; and (iii) the Lessee shall cause each Agent to perform all of its obligations as set forth in Annex B and in the Agency Agreement referred to therein.

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10. The signature of a representative of the Lessee where indicated below will indicate that the Lessee has accepted the terms hereof.

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

By: [Signature]
Name: Jeffrey Lee
Title: Executive Director

ACCEPTED AND AGREED TO BY:

HARBRO CORP.

By: [Signature]
Name: DAVID HARARI
Title: PRESIDENT

STATE OF NEW YORK )
COUNTY OF Queens ) ss.:

On the 8 day of May, in the year two thousand 2013
before me, the undersigned, personally appeared Jeffrey Lee
personally known to me or proved to me on the basis of satisfactory evidence to
be the individual whose name is subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their capacity,
and that by his/her/their signature on the instrument, the individual, or the person
upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public/Commissioner of Deeds

FRANCES TUFANO
Notary Public, State of New York
No. 01TU5080131
Qualified in Queens County
Commission Expires June 16, 2015

STATE OF NEW YORK )
COUNTY OF Kings ) ss.:

On the 2nd day of May, in the year two thousand 13
before me, the undersigned, personally appeared DAVID HARARI
personally known to me or proved to me on the basis of satisfactory evidence to
be the individual whose name is subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their capacity,
and that by his/her/their signature on the instrument, the individual, or the person
upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public/Commissioner of Deeds

MAMIN QUILLIAN
No. 01QU6042361
Notary Public, State of New York
Qualified in Kings County
My Commission Expires May 22, 2014

## Annex A

The Lessee and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

- (i) purchases of materials, goods, machinery, equipment and supplies that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more, including computers (and peripherals), telecommunications equipment, business machines and software;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods, machinery, equipment and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed);
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty; and
- (vi) Notwithstanding the foregoing, purchases or leases of the following items and the services described below are **NOT ELIGIBLE** for a sales and use tax exemption using this Sales Tax Letter:
  - a. vehicles of any sort, watercraft and rolling stock;
  - b. fine art, plants (whether potted or landscaped), artwork and other similar decorative items;
  - c. ordinary office supplies such as pencils, paper clips and paper;
  - d. any cost of utilities, cleaning service or supplies or other ordinary operating cost;
  - e. any materials or substances that are consumed in the operation of machinery;
  - f. equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
  - g. maintenance of the type as shall constitute janitorial services.

## Annex B

### Form ST-60--Required Procedures

**Introduction.** Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 “IDA Appointment of Project Operator or Agent” (“Form ST-60”) require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

**Required Procedures.** In order to comply with the foregoing law and other Agency requirements, the Lessee must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. **Agency Agreement.** Prior to submitting to the Agency a completed Form ST-60 with respect to a proposed Agent, the Lessee, or its Agents, as applicable, must enter into an agency agreement (the “Agency Agreement”) with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the “Agent’s Contract”) entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent’s Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

- “a) The Agent is hereby appointed as an agent of the Agency in connection with the materials to be provided by such Agent pursuant to a contract between Agent and *[identify Company or Company Agent]* \_\_\_\_\_ dated \_\_\_\_\_, 201\_ (the “Agent’s Contract”) for the purposes described in, and subject to the conditions and limitations set forth in, the Letter of Authorization for Sales Tax Exemption attached as Exhibit A *[attach Letter of Authorization for Sales Tax Exemption from the Agency to the Lessee]*.
- b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Lessee, of such exemptions when purchasing eligible materials in connection with the Agent’s Contract and shall not include such taxes in its Agent’s Contract price, bid or reimbursable costs, as the case may be.
- c) The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 “IDA Appointment of Project or Agent” (“Form ST-60”) to evidence that the Agency has appointed the Agent as its agent.
- d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it

presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.

- e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency and to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.
- f) In order to assist the Lessee in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Lessee (no later than January 15th following each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding calendar year in connection with the Project and the Facility. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Lessee or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Lessee by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.
- g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Lessee directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Lessee shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.
- h) The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:
  - i. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or The City of New York (the "City"), unless such default or breach has been waived in

writing by the Agency or the City, as the case may be;

- ii. has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;
- iii. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or
- iv. has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

“Entity” shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean an individual or any Entity.

- i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent’s Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Lessee’s status as agent of the Agency shall result in the immediate termination of the Agent’s status as an agent of the Agency.
- j) The Agency shall be a third party beneficiary of the Agency Agreement.
- k) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, agents, persons or entities to comply, with the obligations, terms and conditions of Section 875, subdivision (3) of Article 18-A the General Municipal Law, attached hereto as Annex A [incorporating Annex C to the Sales Tax Letter in its entirety], as such provisions may be amended from time to time.”

2. Complete and Submit Form ST-60 to the Agency. Following the execution and delivery of an Agency Agreement, the Lessee must submit to the Agency a completed Form



ST-60.

The Agency requires the Lessee to submit Form ST-60 electronically. Please download Form ST-60 via the internet by typing [www.tax.state.ny.us/pdf/2002/fillin/st/st60\\_702\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2002/fillin/st/st60_702_fill_in.pdf) into the address bar of your internet browser and saving the "fill-in" PDF of the form (using adobe acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency.

Upon completion of the form by the Agent, the Lessee must submit the form to the Agency by emailing it to [Compliance@nycedc.com](mailto:Compliance@nycedc.com).

The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Lessee within five (5) business days following such execution. The Lessee shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Lessee.

## Annex C

### General Municipal Law Article 18-A, Section 875, Subdivision (3)

“SECTION 875. SPECIAL PROVISIONS APPLICABLE TO STATE SALES AND COMPENSATING USE TAXES AND CERTAIN TYPES OF FACILITIES.

1. FOR PURPOSES OF THIS SECTION: "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. "IDA" MEANS AN INDUSTRIAL DEVELOPMENT AGENCY ESTABLISHED BY THIS ARTICLE OR AN INDUSTRIAL DEVELOPMENT AUTHORITY CREATED BY THE PUBLIC AUTHORITIES LAW. "COMMISSIONER" MEANS THE COMMISSIONER OF TAXATION AND FINANCE.

...

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 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 SUCH STATE SALES AND USE EXEMPTIONS BENEFITS.

(B) THE IDA SHALL RECOVER, RECAPTURE, RECEIVE, OR OTHERWISE OBTAIN FROM AN AGENT, PROJECT OPERATOR OR OTHER PERSON OR ENTITY STATE SALES AND USE EXEMPTIONS 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 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 SUCH STATE SALES AND USE 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, 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 STATE SALES AND USE EXEMPTIONS 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 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.”