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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

November 15, 2019

Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, New York 14202

**RE: Support and Authorization to the Return of a Portion of Sales Tax Distribution
to Towns in Erie County
IMMEDIATE CONSIDERATION REQUESTED**

Dear Honorable Members:

The County is desirous of assisting the towns in Erie County by facilitating on time “AIM-related payments” originally distributed to the Erie County Fiscal Stability Authority, Buffalo Fiscal Stability Authority and Erie County. This resolution ensures funds are returned to the State Comptroller so that they may distribute the “AIM-related payments” by December 15, 2019, in accordance with Tax Law § 1261(5-a).

Should your Honorable Body have any questions, please contact Budget Director Robert Keating.

Sincerely yours,

A handwritten signature in blue ink that reads "Mark C. Poloncarz".

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/mdc
Enclosure

cc: Robert Keating, Director, Budget & Management Department

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Division of Budget
Re: Support and Authorization to Return a Portion of Sales Tax Distribution to Towns in Erie County
Date: November 15, 2019

SUMMARY

Consent is requested to return a portion of sales tax distribution to towns in Erie County.

FISCAL IMPLICATIONS

Neutral. The County by law has no right to the sales taxes required to be withheld and distributed as “AIM-related payments.”

REASONS FOR RECOMMENDATION

OSC has advised the County that it cannot effectuate the “AIM-related payments” because it is legally required to transfer all of the sales taxes to the County’s two fiscal stability boards – The Erie County Fiscal Stability Authority (“ECFSA”) and the Buffalo Fiscal Stability Authority (“BFSA”) – without reduction. To enable OSC to make the “AIM-related payments” as required by December 15, 2019, the ECFSA and BFSA (after satisfying their obligations to bond holders and funding operating expenses) and County must return to OSC the amount of sales taxes necessary to enable OSC to make the “AIM-related payments.” ECFSA, BFSA and the County will then remit the remaining balance of sales taxes that have not been redistributed as “AIM-related payments” as sales taxes ordinarily would be – to the County, City and cities/towns/villages and school districts.

BACKGROUND INFORMATION

New York State (the “State”) law enacted earlier this year requires the State Comptroller (“OSC”) in State fiscal year 2019-2020 to withhold and pay the towns and villages in Erie County – from local sales tax – amounts equal to the base level grants that these municipalities received from the State under the AIM program in State fiscal year 2018-2019 as “AIM-related payments.” Those payments are to be made annually to towns beginning December 2019 and then villages beginning in May 2020.

CONSEQUENCES OF NEGATIVE ACTION

Failure to return “AIM-related” sales tax to OSC by December 15, 2019 would result in significant budgetary and cash flow issues for the 24 towns entitled to the “AIM-related payments,” in 2019 before the state can amend State Tax Law.

STEPS FOLLOWING APPROVAL

Erie County will work with ECFSA and BFSA to ensure the return of \$3.7 million in “AIM-related payments” to OSC for the distribution to the towns.

A RESOLUTION SUBMITTED BY
DIVISION OF BUDGET

RE: Support and Authorization to Return a Portion of Sales Tax Distribution to Towns in Erie County

WHEREAS, State Tax Law § 1261(c)(3) provides that the New York State Comptroller (“OSC”) must pay to the Erie County Fiscal Stability Authority (“ECFSA”) and Buffalo Fiscal Stability Authority (“BFSA”) sales and compensating use taxes, penalties and interest imposed by the County (other than amounts required by law to be withheld by OSC) (“Sales Tax”), so that ECFSA and BFSA may satisfy their contracts with bondholders and then pay their operating expenses prior to transferring the remaining amounts to the County and City of Buffalo; and

WHEREAS, State Tax Law § 1261(c)(5-a) requires OSC in State fiscal year 2019-2020 to withhold and pay to the towns and villages in the Erie County from the sales tax remaining, after paying ECFSA and BFSA, amounts equal to base level grants that such municipalities received from the State under the Aid and Incentives for Municipalities program in State fiscal year 2018-2019 (“AIM-related payments”); and

WHEREAS, State Tax Law § 1261(c)(5-a) requires OSC to make the AIM-related payments, annually, to towns beginning December 2019 and to villages beginning May 2020; and

WHEREAS, OSC has advised the County that it cannot effectuate the AIM-related payments because it is legally required to transfer a portion of the sales taxes to ECFSA and BFSA without reduction of such amounts; and

WHEREAS, OSC has further advised the County that it expects the State Legislature in 2020 to enact technical amendments to the State Tax Law to provide a process allowing OSC to make the AIM-related payments without impairing the rights of ECFSA, BFSA and their bondholders; and

WHEREAS, such amendment to State Tax Law will ensure that the towns and villages in Erie County receive all scheduled AIM-related payments in 2020 and beyond, but it will not provide for the distribution of \$3,709,039 in AIM-related payments to 24 towns by December 15, 2019; and

WHEREAS, the \$3,709,039 in AIM-related payments for 2019 will be taken proportionally among the three distributions of the County’s 3% Sales Tax remitted by OSC to ECFSA, BFSA and the County; and

WHEREAS, although the County, City of Buffalo, ECFSA, BFSA, OSC and New York State Division of Budget have explored a number of other avenues to ensure the towns would receive their AIM-related payments, only one solution was deemed acceptable by the parties involved; and

WHEREAS, to enable OSC to make the AIM-related payments by December 15, 2019, ECFSA and BFSA must agree, after satisfying their obligations to bondholders and funding their operating expenses, to return to OSC the amount of sales taxes necessary to enable OSC to make the AIM-related payments; and

WHEREAS, despite no legal limitation, OSC has declined to preemptively withhold a proportional amount of Sales Tax that is disbursed directly to Erie County and then distributed to the cities, towns, villages and school districts as dictated by the 1977 Sales Tax Sharing Agreement between the County and cities of Buffalo, Lackawanna and Tonawanda; and

WHEREAS, the County, the ECFSA and the BFSA are mutually interested in returning to OSC the amount of Sales Tax necessary to enable OSC to make the AIM-related payments to the towns by December 15, 2019; and

WHEREAS, any delay in these payments would lead to significant – and needless – budgetary and cashflow challenges for the 24 towns in Erie County as they approach the end of their fiscal years on December 31, 2019; and

NOW, THEREFORE, BE IT

RESOLVED, this Honorable Body hereby supports and encourages the ECFSA in its intent to return \$2,193,537.40 in Sales Tax to enable OSC to make the AIM-related payments; and be it further

RESOLVED, this Honorable Body hereby supports and encourages the City of Buffalo and BFSA in their intent to return of \$604,772.79 in Sales Tax to enable OSC to make the AIM-related payments; and be it further

RESOLVED, this Honorable Body hereby supports and encourages the County of Erie to return \$910,728.81 in Sales Tax to enable OSC to make the AIM-related payments and further authorizes the Erie County Comptroller to make such a payment;

and be it further;

RESOLVED, that certified copies of this resolution be forwarded to the County Executive, the Office of the Comptroller, the Division of Budget and Management, the Department of Law, Governor Andrew Cuomo, Comptroller Thomas DiNapoli, the Western New York Delegation to the New York State Legislature, and any other parties deemed necessary and proper.

2019-20 Aid and Incentives to Municipalities Payment Schedule

Municipality	Type	2018-19 Total AIM Amount	Deduction in Dec 2019	Deduction in May 2020	2019-20 Total AIM Amount
Akron	Village	\$24,943		\$24,943	\$24,943
Alden	Village	\$15,891		\$15,891	\$15,891
Amherst	Town	\$663,670	\$663,670		\$663,670
Angola	Village	\$19,361		\$19,361	\$19,361
Aurora	Town	\$78,698	\$78,698		\$78,698
Blasdell	Village	\$29,860		\$29,860	\$29,860
Boston	Town	\$49,689	\$49,689		\$49,689
Brant	Town	\$13,117	\$13,117		\$13,117
Cheektowaga	Town	\$820,898	\$820,898		\$820,898
Clarence	Town	\$89,544	\$89,544		\$89,544
Colden	Town	\$19,300	\$19,300		\$19,300
Collins	Town	\$20,858	\$20,858		\$20,858
Concord	Town	\$48,251	\$48,251		\$48,251
Depew	Village	\$213,280		\$213,280	\$213,280
East Aurora	Village	\$50,569		\$50,569	\$50,569
Eden	Town	\$42,127	\$42,127		\$42,127
Elma	Town	\$51,129	\$51,129		\$51,129
Evans	Town	\$96,495	\$96,495		\$96,495
Farnham	Village	\$3,534		\$3,534	\$3,534
Grand Island	Town	\$91,734	\$91,734		\$91,734
Hamburg	Village	\$102,635		\$102,635	\$102,635
Hamburg	Town	\$277,474	\$277,474		\$277,474
Holland	Town	\$24,724	\$24,724		\$24,724
Lancaster	Village	\$152,209		\$152,209	\$152,209
Lancaster	Town	\$121,895	\$121,895		\$121,895
Marilla	Town	\$35,551	\$35,551		\$35,551
Newstead	Town	\$36,711	\$36,711		\$36,711
North Collins	Town	\$22,888	\$22,888		\$22,888
North Collins	Village	\$11,969		\$11,969	\$11,969
Orchard Park	Town	\$19,919		\$19,919	\$19,919
Orchard Park	Town	\$119,524	\$119,524		\$119,524
Sardinia	Town	\$24,819	\$24,819		\$24,819
Springville	Village	\$35,518		\$35,518	\$35,518
Tonawanda	Town	\$585,199	\$585,199		\$585,199
Wales	Town	\$26,192	\$26,192		\$26,192
West Seneca	Town	\$348,552	\$348,552		\$348,552
Williamsville	Village	\$56,456		\$56,456	\$56,456
Total		\$4,445,183	\$3,709,039	\$736,144	\$4,445,183

* The Town of Alden and Villages of Kenmore and Sloan received their 2019-20 AIM Payments in September 2019. The Village of Gowanda is considered part of Cattaraugus County.

Breakdown of Erie County's 3% Sales Tax for "AIM-Related" Payments to Towns & Villages

City of Buffalo & School District Portion via BFSA:	\$604,772.79	\$120,031.05	\$724,803.84
Erie County Portion for Distribution to Cities, Towns, Villages & School Districts:	\$910,728.81	\$180,755.06	\$1,091,483.87
Erie County Portion via ECFSAs:	\$2,193,537.40	\$435,357.89	\$2,628,895.29
Total	\$3,709,039.00	\$736,144.00	\$4,445,183.00

(estimated)