You have requested our comments concerning certain proposed legislation which, if enacted, would affect a portion of the rebate procedure for State Stock Transfer Taxes. The purpose of this memorandum is to set forth our understanding of the Proposal and to confirm the Corporation's comments and suggestions relayed by telephone on March 24, 1980, to John J. Kelliher, Assistant Counsel to the Governor.

Subject to the addition of a clarifying phrase as noted below, the Corporation has no objection to the Proposal since neither the amount of Stock Transfer Taxes paid into, nor the procedure for disbursing moneys from, the Stock Transfer Tax Fund would be affected by the Proposal's provisions.

Under the terms of the Proposal, persons (or their agents) liable for the Stock Transfer Tax imposed pursuant to Section 270 of the Tax Law who satisfy their liability for such tax through the purchase of stamps from fiscal agents of the State Tax Commission would be authorized to file a claim for the rebatable portion (which, taking into account the effective date of the Proposal, would be 100% of the tax paid) immediately upon the purchase of the stamps. To be considered timely, a claim for reimbursement would have to be filed within two years of the date of purchase of the stamps to be considered timely. Under present law, these persons may not file claims for reimbursement until their transactions are complete and the stamp is actually affixed to the instrument which is transferred.

Presently, revenues from the Stock Transfer Tax, less certain deductions, are deposited into the Stock Transfer Tax Fund pursuant to Section 92-b of the State Finance Law. While in such Fund, they are available to the Corporation in accordance with its enabling legislation. To the extent amounts so deposited are not withdrawn by the Corporation, they flow quarter-annually into the Stock Transfer Incentive Fund, created under Section 92-i of the State Finance Law, where they may be disbursed to pay rebates of the tax.

It is critical to the protection of the Corporation's claim on moneys available to it in the Stock Transfer Tax Fund that the Proposal would permit amounts to be disbursed for rebate payments only from the Stock Transfer Incentive Fund after having flowed through the Stock Transfer Tax Fund -- that is, only after the Corporation has had the opportunity
to exercise its right to withdraw moneys from the Stock Transfer Tax Fund. In that regard, we suggest the addition of the following phrase (underlined) in order to rectify an existing ambiguity in the Proposal:

15(a) ... The tax commission, if satisfied that the moneys from the purchase of such stamps have been paid from the stock transfer tax fund to the stock transfer incentive fund, shall rebate the same to the person or agent who or which purchased such stamp from such fund.

With this addition to the Proposal, the Corporation has no objection to the enactment of the new legislation.

Thank you for the opportunity to comment upon the Proposal, as it is essential that the views of the Corporation be considered with regard to any proposed legislation potentially affecting any of the three revenue streams available to service its debt - the Stock Transfer Tax, the State Sales Tax within New York City and State Per Capita Aid.
TO: RICHARD A. BROWN
COUNSEL TO THE GOVERNOR

FROM: Saul Heckelman, Special Counsel
Department of Taxation and Finance

RE: 1980 Legislative Proposal #49

1. **Purpose:** To amend the Tax Law to provide an alternate method for rebate of stock transfer tax to persons liable for such tax or agents of taxpayers upon purchases of stock transfer tax stamps from the fiscal agents of the State Tax Commission.

2. **Summary of provisions:** Section 280-a of the Tax Law is amended by adding a new subdivision 15 to authorize the payment of stock transfer tax rebates to persons liable for the tax, or agents of taxpayers provided such person or agent is the purchaser of the stamps from a fiscal agent of the State Tax Commission and the claim is presented within two years of the purchase of such stamps. However, the new provision will not be applicable to taxpayers where the tax is paid and the rebate is allowed pursuant to payments by the taxpayer's broker or dealer to or through a securities exchange or affiliated clearing corporation. The amendment will not take effect until October 1, 1981 when the rates of rebate for resident and non-resident will be 100% of the tax paid. Also, the rebate will not be payable under existing law until the tax has been paid from the stock transfer tax fund to the stock transfer incentive fund, which transfer occurs four times a year. Subdivision 1 of section 280-a of the Tax Law is amended to make a technical clarifying change.

3. **Existing law:** Section 280-a of the Tax Law provides for rebates to be allowed to residents and nonresidents. Rebates are mostly paid to or through securities exchanges and their affiliated or qualified clearing corporations four times a year. Customers of member firms and registered dealers pay the stock transfer tax at the time of the transaction subject to tax less the rebatable portion. The member firm or registered dealer pays the rebatable portion of the tax four times a year and, subject to the availability of moneys in the stock transfer incentive fund, the rebate is paid to such firm or dealer four times a year. In effect, the customer does not bear the burden of the rebatable portion of the tax.

However, a minority of taxpayers must purchase stock transfer tax stamps which are affixed to denote the payment of the tax. These stamps are generally purchased from the fiscal agents of the State Tax Commission by banks, trust companies, transfer agents and other agents of taxpayers. These taxpayers also can receive their rebates four times a year but they have to purchase the stamps and affix them and thus bear the full burden of the tax until the claim is filed, processed by the Tax Department and audited by the State Comptroller.
4. **Statement in support:** This bill, by authorizing payment of the rebate after the stock transfer tax is collected and paid into the stock transfer incentive fund, will help equalize the status of taxpayers paying the tax through clearing corporations and those paying it by the use of stamps. Although the percentage of revenue obtained from stamp users is small, the bill will authorize transfer agents and others to aggregate the individual claims of taxpayers based on purchase receipts of the agents for stamps and thus both reduce the number of claims to be received and processed by the Department and also to make available to taxpayers owing small amounts of tax the rebatable portion of the tax to which they are now entitled. Now, because of the requirement of filing a claim for rebate, many taxpayers, as a practical matter, are foregoing their rebates because of the necessity of completing and mailing the claim. It is estimated that the volume of claims could be reduced from 200,000 to 6,000 by this bill.

5. **Budget implications:** This bill will have no effect on stock transfer tax collections but may increase the dollar amount of rebates, now authorized, but not paid, for lack of presentation of a claim for rebate. There will also be some reduction in the administrative costs for processing claims for rebate.

6. **Legislative history:** None.

7. **Possible objections:** The Municipal Assistance Corporation for the City of New York may object that under the bill rebates may be authorized upon the purchase rather than the affixing and canceling of the stamps. Since the affixing occurs after the purchase, indeed under some circumstances substantially after the purchase, there will be an acceleration of the time a claim for rebate is timely. However, it should be noted that the bill will not affect the amount of money paid into the stock transfer tax fund since moneys are paid into the fund upon the purchase of stamps. The bill will merely accelerate the time when a rebate is authorized to be paid.

8. **Other State agencies interested:** Department of Audit and Control.

9. **Known position of others:** It is believed that the affected corporations, both those effecting transfers of their own stock and banks who are transfer agents, and others who purchase and use stock transfer tax stamps will support this proposal.
A N A C T

to amend the tax law, in relation to allowing rebates of stock transfer tax after the purchase of stamps denoting payment of such tax

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

Section 1. Subdivision one of section two hundred eighty-a of the tax law, as amended by chapter six hundred ninety-two of the laws of nineteen hundred seventy-eight, is amended to read as follows:

1. Except as otherwise provided in subdivision fifteen of this section, where a tax shall have been paid under this article a portion of the amount paid shall be allowed as a rebate and such portion shall be paid to the taxpayer but only to the extent that moneys are available for the payment of such rebates in the stock transfer incentive fund established pursuant to section ninety-two-i of the state finance law. The portion of the amount of tax paid which is to be allowed as a rebate shall be thirty percent of the tax incurred and paid on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty and sixty percent of the tax incurred and paid on such transactions occurring on and after October first, nineteen hundred eighty and on or before September thirtieth, nineteen hundred eighty-one and all of the amount of tax incurred and paid shall be allowed as a rebate on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred eighty-one.

§ 2. Section two hundred eighty-a of the tax law is amended by adding a new subdivision fifteen to read as follows:

15. (a) For the purpose of allowing the rebate authorized
by this section to a taxpayer, other than a taxpayer regarding which subdivision six of this section is applicable, any person liable for the tax imposed by this article who or which purchases stamps issued to denote the payment of the tax imposed by this article or any agent of a taxpayer who purchases such stamps, provided such purchase was made from a fiscal agent appointed for the sale of such stamps, may claim the rebate authorized by subdivision one of this section by filing a claim in such form and containing such information as the state tax commission, by rule, regulation or instruction shall prescribe, but all such claims under this subdivision shall be presented within two years after the purchase of such stamps, provided, however, all such claims must be accompanied by the receipt for the purchase of stamps as may be approved by the tax commission. The tax commission, if satisfied that the moneys from the purchase of such stamps have been paid into the stock transfer incentive fund, shall rebate the same to the person or agent who or which purchased such stamps from such fund. All of the other provisions of this section regarding rebates shall apply to the method of rebate of tax provided for by this subdivision in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this subdivision and had expressly referred to the claim for rebate of tax provided for by this subdivision, except to the extent that any such provision is
either inconsistent with a provision of this section or is not relevant to this subdivision.

(b) If a rebate is paid in the manner provided in this subdivision, no further rebate shall be allowable under this section but any stock transfer tax paid by a taxpayer otherwise entitled to rebate under this section shall be paid to such taxpayer by the claimant under this subdivision.

(c) If a rebate is paid in the manner provided by this subdivision, any refund or redemption allowable by this article shall be reduced by the amount of rebate allowed and paid pursuant to this subdivision, any other provision of this article to the contrary notwithstanding.

(d) The state tax commission shall have all the rights and powers as set forth in section two hundred seventy-six of this article to examine transactions and require records to be kept by claimant under this subdivision as if such claimant was a person required to comply with the provisions of such section two hundred seventy-six.

(e) If any person liable for the tax or any agent of the taxpayer shall violate any provision of this subdivision or any reasonable rule, regulation or instruction made or issued pursuant thereto, such person or agent may upon notice thereof thereafter be denied rebates under this subdivision by the state tax commission in accordance with rules and regulations promulgated by such commission. Provided, that nothing herein shall limit the right to file a claim for rebate under subdivision three of this section.

(f) If the commissioner of taxation and finance makes the determination that rebates payable exceed moneys available in the stock transfer incentive fund for paying such rebates and if any person liable for the tax imposed by this article or any agent of the taxpayer shall have purchased stamps to pay the amount of tax imposed by this article without charging the taxpayer or principal for the amount of the rebatable portion of the cost of such stamps allowable to such taxpayer or
principal at the time of purchase of such stamps, such person liable for the tax or such agent shall be entitled to a rebate for such rebatable portion of such tax advanced and paid by him on behalf of such other taxpayer in the amount of the rebate allowable to such taxpayer and in the amount of any rebate allowable to himself whenever such commissioner determines that sufficient funds are available in the stock transfer incentive fund for paying such rebate.

§ 3. This act shall take effect October first, nineteen hundred eighty-one and shall apply to stock transfer tax stamps sold on and after such date.
12 July 1978

John J. Kelliher, Esq.
Assistant Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York 12224

Dear Mr. Kelliher:

Pursuant to our telephone conversation this morning, this is to confirm that the Municipal Assistance Corporation for The City of New York has no objection to the enactment of A 10775 entitled

"AN ACT to amend the tax law, in relation to the application of rebates to the maximum amount of stock transfer tax on single qualifying sales and to making several technical changes in such law, and to amend the state finance law, in relation to the municipal assistance tax fund."

Very truly yours,

[Signature]
Marilyn P. Friedman
Counsel

MFF:bba
October 13, 1977

Eugene J. Keilin, Esq.
Executive Director
Municipal Assistance Corp. for the City of New York
2 World Trade Center
New York, New York 10047

Dear Gene:

I enclose a counterpart manually executed copy of our opinion addressed to the Corporation, as well as to the Trustee, on the Stock Transfer Tax Legislation.

This is the opinion of which, together with Don Robinson's opinion previously issued, the Trustee sought from both general counsel and bond counsel at the time the rebate legislation was enacted.

If you have any questions about the opinion, please let me know.

Best personal regards.

Sincerely,

[Signature]

Allen D. Thomas

ALT/njr
Enclosure
October 13, 1977

Richard G. McClung, Esq.
Carter, Ledyard & Milburn
2 Wall Street
New York, New York 10005

Dear Dick:

As I have promised you and your colleagues over a period of time, I enclose the opinion of this firm, addressed to your client United States Trust Company of New York (as well as to Municipal Assistance Corporation), with respect to recently enacted New York State stock transfer tax legislation. The extra copy of the opinion is for your records.

If you have any questions about the enclosed opinion, please call me.

Best regards.

Sincerely,

Allen B. Thomas

cc: Eugene J. Keilin, Esq. (w/enc.)
October 13, 1977

Municipal Assistance Corporation
For the City of New York
Two World Trade Center
New York, New York 10047

United States Trust Company
of New York
45 Wall Street
New York, New York 10005

Dear Sirs:

Our client Municipal Assistance Corporation
For the City of New York (the "Corporation") has asked us whether, in our opinion, Chapter 878 of the Laws of 1977 of the State of New York (the "Chapter Law"), is consistent with Section 1202(f) of each of the Corporation's two general bond resolutions.

On July 2, 1975, the Corporation adopted its first general bond resolution (the "First General Bond Resolution"), and on November 25, 1975, the Corporation adopted its second general bond resolution (the "Second General Bond Resolution"). The First General Bond Resolution and the Second General Bond Resolution are hereinafter called the Resolutions. The Corporation has issued and has outstanding bonds pursuant to each of the Resolutions.
Municipal Assistance Corporation  
For the City of New York  

United States Trust Company  
of New York  

Section 1202(f) of the First General Bond  

Resolution provides as follows:  

"1202. Events of Default. Each of the following events is hereby declared an 'event of default,' that is to say; if  

* * * *  

"(f) the State shall for any reason fail or refuse to continue the imposition of either the Sales Tax imposed by Section 1107 of Article 28 of the Tax Law as the same may be from time to time amended or the Stock Transfer Tax imposed by Sections 270 and 270-a of Article 12 of such Law as the same may be from time to time amended or if the rates of such taxes shall be reduced to rates less than those in effect on the date of this Resolution; or . . . ."

Section 1202(f) of the Second General Bond  

Resolution provides as follows:  

"1202. Events of Default. Each of the following events is hereby declared an 'event of default,' that is to say; if  

* * * *  

"(f) the State shall for any reason fail or refuse to continue the imposition of either the Sales Tax imposed by Section 1107 of Article 28 of the Tax Law as the same may be from time to time amended or the Stock Transfer Tax imposed by Sections 270 and 270-a of Article 12 of such Law as the same may be from time to time amended or if the rates of such taxes shall be reduced to rates less than those in effect on July 2, 1975; or . . . ."
Municipal Assistance Corporation
For the City of New York

United States Trust Company
of New York

The United States Trust Company of New York
is the Trustee under each of the Resolutions.

The Chapter Law, a copy of which has previously
been made available to each of you, was enacted into law
on August 11, 1977. Certain provisions of the Chapter
Law became effective immediately upon enactment; other
provisions of the Chapter Law became effective on
October 1, 1977.

In connection with the request referred to
above, we have reviewed the Chapter Law, the Resolutions
and such other matters of law and fact as we deemed
relevant to the opinion herein expressed.

Based upon the foregoing, in our opinion, the
Chapter Law is consistent with Section 1202(f) of each of
the Resolutions.

Very truly yours,

Paul Weiss, Rifkind, Wharton & Garrison

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
CONFIDENTIAL

TO: Eugene Keilin
FROM: Andrew Decker & Dennis During
RE: Stock Transfer Tax Credits

The recent Supreme Court decision in the Boston Stock Exchange case requires that the State eliminate any discrimination between taxable sales made within the State of New York and those made outside the State. There are two principle ways to eliminate the substantive discrimination. First, the non-resident discount and the maximum tax could be extended to sales regardless of situs. Second, the non-resident discount, the maximum tax, or both could be eliminated and the remaining concession (if any) extended as above. At present, most parties agree that the future of the New York securities industry requires that the State pursue the first alternative.

The Supreme Court has placed the responsibility for correcting the unconstitutionality upon the New York State Court of Appeals. This Court may interpret the savings clauses enacted as part of the Section 2FO-a legislation as requiring the total elimination of these economically necessary incentives. Normally, it would be a relatively simple task to enact legislation to restore the non-resident discount and maximum tax, and extend them to those transactions whose taxation concerned the Supreme Court. However, legislative action to extend the incentives to conform with the Court's ruling could be construed as a reduction in rate and may be deemed an event of default for
MAC securities. Taken together, the Supreme Court decision, the MAC securities problem and various policy issues sharply limit our ability to modify the Stock Transfer Tax to achieve economic development goals.

The Municipal Assistance Corporation has requested that we analyze the problem and develop conceptual frameworks for various solutions. This paper summarizes our preliminary analysis and presents some alternatives which we either hope to be able to exclude from consideration and some which we feel deserve MAC's further attention. We have tried also to define the criteria by which a solution should be evaluated; describe key aspects of the tax as it is currently administered, and, specify three major design variables for any credit system: the nature of a funding mechanism, the nature of the credit mechanism and the extent of credit coverage.

System Design Criteria

The first constraint under which we must operate is the Supreme Court's decision that requires us to cease the discrimination against transactions made out-of-state. It is possible that the Court's concerns will be satisfied if the tax and the credit mechanism together effectively eliminate the discrimination against out-of-state sales. In this case, it will be necessary that the amount of the tax, the timing of the credit payment and the burden of compliance be the same for all transactions. This would imply that the Stock Transfer Tax could retain the current discrimination, while a separately enacted
credit against the tax would effectively eliminate any discrimination. The Supreme Court might be favorably disposed toward this approach which substantively rather than formally eliminates the discriminatory aspects of the tax.

The second constraint, the MAC bond resolution, may be less flexible. One requirement of the resolution is that bondholders' rights not be impaired by State action. Clearly, any tax and credit system cannot impair the security interest that the bondholders have in the Stock Transfer Tax. This constraint may be satisfied by providing a source of funds sufficient to guarantee that the bondholders would be protected by revenues of no lesser amount or security than the Stock Transfer Tax. Notwithstanding the above, the language of the bond resolution states clearly that a reduction in the rate of the Stock Transfer Tax shall be an event of default. This appears to require some artfulness in the design of a credit system that satisfactorily extends benefits to the transactions of concern to the Supreme Court.

A third constraint is the State constitutional prohibition of gifts and loans of credit or money by the State or the City to a private "person". It may not be possible for the State or City to pay some or all of the Stock Transfer Tax for any taxpayer. Since it also appears that a direct credit against the Stock Transfer Tax may be construed as a reduction in the rate of tax, we see another instance of the need for artfulness in designing a system to achieve the extension of the credit.

The fourth set of constraints includes all the less well defined policy objectives of the State, the City and MAC. These
include not hindering the flow of Stock Transfer Tax revenues to the City; keeping the cost of tax and credit administration and compliance low; and, restoring the ability of the State to modify the tax structure in the future in response to the changing economics of the securities industry.

The Current Transfer Tax Process

The Stock Transfer Tax is payable by one of four means: (1) through a registered clearing corporation; (2) directly to the Tax Commission; (3) by the use of stamps; and, (4) by the use of metered stamps.

The first method, payment through a registered clearing corporation, accounts for roughly ninety-five percent of annual revenues. The law requires that any tax liability generated by "any sale, delivery or transfer of stock ... executed or effected within the State of New York by a member of any securities exchange ... be paid to the affiliated clearing corporation." Brokers are required to settle with the clearing corporation on a daily basis which on the following day transmits the funds to the state's fiscal agent.

The second method, direct payment, accounts for approximately one percent of tax revenues. This method is designed for payment of taxes by registered dealers not required to clear through a registered clearing corporation. Dealers paying directly to the Tax Commission are required to file a weekly report detailing their total tax liability.

The third and fourth methods, stamps and metered stamps,
account for the remaining four percent of revenues. Both involve the prepayment of the tax and subsequent use of either stamps (in various denominations) or metered stamps as evidence of tax liability having been discharged. People using stamps or meters are required to purchase stamps from, or have their meters set by the state's fiscal agent or its subagents.

The tax requires no returns detailing the nature of the individual transactions that accrued the tax. Enforcement depends on audit of brokers' and dealers' records. The absence of individual returns detailing tax liability in each transaction is a significant limiting feature of the Stock Transfer Tax. There are, in addition, two other limiting features. First, in the case of stamps and meters, the actual payment of the tax (the point of sale of the stamps) and the accrual and discharge of a tax liability (the point of use of the stamps) are separated by some unpredictable amount of time. This will produce an outstanding inventory of tax stamps (and stored stamp tax value in meters) at any point in time. In general, the value of the outstanding inventory will be somewhat predictable. But monitoring the precise use of stamps and meters will be impossible.

The second limiting feature of the tax is the audit or enforcement problem. The law imposes liability for the tax upon the transferor, the transferee, their agents and, if a transfer on the books of a corporation is involved, the corporation and its agents (transfer agents). Since everyone is liable for the tax, regardless of arrangements made by any one party, a fair degree of scrutiny is applied to transactions to ensure that the proper tax is paid. In
the presence and adequacy of funding. Without such a funding mechanism, a credit for stock transfer taxes paid would have to be either applied against other taxes or rebated with a delay or else risk being construed as a reduction in rate. The first two alternatives are undesirable and the third impossible in light of the MAC bond resolution.

A funding mechanism can be instituted to provide sufficient resources to permit credits against stock transfer taxes paid without impairing the security of MAC bondholders pursuant to Sec. 1202 of the Bond Resolution. The credit fund would receive money from one of three sources as is illustrated in Figure One. Either the State or the City might be able to appropriate money to the credit fund on an annual basis. The availability of the credit would then be subject to continuing appropriations by either the State or the City. Money could also come from Stock Transfer Tax revenues after their release from the Stock Transfer Tax Fund but before their transmission to the City's General Fund. The credit would then be contingent upon the availability of Stock Transfer Tax revenues after the potential debt service requirements of MAC. In any case, if no money was available in the credit fund, transfer taxes would be collected at the full rate without benefit of any credits until such time as the credit fund would be replenished.

Determining the precise level of funding for the credit fund would be difficult, given the lack of knowledge about the actual use of stamps and meters. It would, however, be possible to determine an appropriate level commensurate with the requirements
ALTERNATE FLOW OF FUNDS IN CREDIT

FUNDING MECHANISM
of the bondholders' potential debt coverage needs. This would have some adverse impact upon the cash flow to the City. The timing of the payments would also be complicated particularly during the start-up period.

In any credit system it will be necessary to have current information about the amount of credits taken to assure adequate funding in the credit fund. The design of the credit mechanism is then important for it will determine the availability and cost of gathering information.

Monitoring credits taken against taxes paid through a registered clearing corporation will require only slight modifications in the bookkeeping systems at both brokerage houses and the clearing corporations. These modifications will not be substantially different than those required at the institution of the market maker credit system. For those taxes paid directly to the Tax Commission, slight modifications will be required in the forms presently filed on a weekly basis.

Monitoring credits taken against taxes paid by stamps or meters is more difficult. A credit system would require two or more different types of stamps; one as evidence of taxes paid and the others as evidence of credits taken for either the non-resident discount or the maximum tax. There would also be accounting problems stemming from the inventory of outstanding stamps, and the misuse and over acquisition of discount stamps.

The nature of the credit system will be largely determined by the scope of the coverage. The larger the group of transaction classes affected by the credit system, the more simple and
direct the credit system must be. Coverage options can be divided into four categories; (1) a credit system covering all non-resident and maximum tax eligible transactions; (2) a credit system covering both non-resident and maximum tax transactions, and all market maker credits; (3) a credit system covering only the smaller group of transaction classes directly at issue in the Boston Stock Exchange case (that is, non-residents selling out-of-state with either a taxable transfer or delivery in New York); and, a credit system covering non-resident discounts, maximum tax, market maker credits, and any new discounts desired.

An alternative to the funding and credit mechanism discussed above would involve the creation of negotiable tax credits that would be earned upon payment of the full Stock Transfer Tax. These credits would be fully negotiable and honored as payment for certain taxes or other debts to the State of New York. Such a solution might still run the risk of violating the gift and loan provision of the State constitution. In addition, the credits would almost certainly be worth less to a taxpayer located outside New York (say Chicago) than to a resident taxpayer. On this basis, the Supreme Court might find that such a mechanism continues the effective discrimination against interstate commerce.

The design and necessary implementation work for any particular credit system depends upon the various policy choices made on the issues discussed above. Our analysis has led us, however, to propose that we exclude two design features from further consideration. First, no tax returns should be required
that mandate information about individual transactions. The
tax currently employs few accounting returns, none of which
require information about specific transactions. Although
such returns would provide a great deal of information (in-
cluding that information necessary in determining the amount
of funding required to maintain the adequacy of the protection
afforded bondholders under the above funding mechanisms) the
additional compliance and administrative costs would be pro-
hibitively great. Second, payment of the tax, receipt of a
credit and settlement of the transaction by retail securities
customers must continue to be simultaneous. Delayed receipt of
the credit by customers would both weaken the desirable in-
centives created by the credit and dramatically increase the
costs of complying with the tax. Delayed payment would also
make compliance and enforcement more difficult.
Municipal Assistance Corporation
For The City of New York

MEMORANDUM

Date: 29 September 1977

To: FILES

From: Marilyn F. Friedman

Re: Stock Transfer Tax Decision

At approximately 4:00 P.M. on September 14, 1977, John Compani of the State Tax Commission called to advise me that the State Court of Appeals had rendered a decision in the Boston Stock Exchange case. The Court held that pursuant to Section 11 of Chapter 827 of the Laws of 1968, the rates of tax provided in Section 270 of the Tax Law shall be deemed applicable for all purposes. John advised me that the Tax Commission had received a copy of the slip opinion on September 13, 1977.

I promptly called Allen Thomas at Paul, Weiss and Donald Robinson at Hawkins, Delafield to advise them that the decision had come down and to discuss (1) whether the decision had any disclosure implication, and (2) the practical ramifications of the decision. That afternoon and the following day, September 15, 1977, discussions took place with respect to these two issues.

With respect to the practical ramifications, it was agreed among the lawyers that: (a) prospectively, the decision will probably affect only the non-resident rate reduction, as the maximum tax has been extended to cover in-state and out-of-state sales pursuant to the recently enacted stock transfer tax legislation. Under such legislation, the non-resident rate reduction is not to be repealed until October 1, 1977, to be replaced at that time by a rebate mechanism which, again, will not distinguish in-state and out-of-state sales. Therefore, if an order is entered prior to October 1, 1977, with respect to this matter, non-residents will be required to pay full stock transfer tax rates for the period between the entry of the order and October 1, 1977, (b) retrospectively, the State Tax Commission could be required to retroactively assess persons who benefited either from the non-resident rate reduction or the maximum tax for all or any portion of the period between the enactment of Section 270-a in 1968 and the effective date of the order.
Both Allen Thomas and Don Robinson agreed that the decision requires no amendatory disclosure. Among the points discussed in this regard were the following:

1. The possibility of this decision was disclosed in the Official Statement.

2. This decision would not appear to result in decreased revenues to MAC in the foreseeable future. In fact, if the Tax Commission makes some retroactive assessment the direct result of the decision would be to increase stock transfer tax revenues by the amount of non-resident and maximum tax benefits which accrued to stock transferors under Section 270-a while it was in effect. The Legislature could act to waive such retrospective assessment. The possibility of such legislative action, and the consequences thereof, were also disclosed in the Official Statement.

Following my conversations with Allen Thomas and Don Robinson, I spoke with David Blair of White & Case to inform him of the decision and advise him that we would be keeping him informed of future developments with respect to the decision, in the event that it appeared that such developments would affect the bonds purchased in the September 14 closing. David raised the issue of disclosure, but indicated that his analysis was similar to ours, that is, that no additional disclosure would be required. I suggested that if he had any further questions with respect to the matter, he should contact Allen Thomas.
August 1, 1977

United States Trust Company
of New York
130 John Street
New York City, New York 10038

Dear Sir:

We have examined the provisions of New York State Senate Bill 5671 introduced on June 20, 1977, and have reviewed the provisions of the resolutions authorizing the issuance of bonds by the Municipal Assistance Corporation For The City of New York, being, respectively, the General Bond Resolution adopted July 2, 1975 and the Second General Bond Resolution adopted November 25, 1975, each as amended and supplemented to the date hereof (collectively, the "Resolutions"), and in our opinion the procedures with respect to the levy, collection, payment and rebate of the Stock Transfer Tax established by said Bill do not violate any of the provisions of the Resolutions.

Very truly yours,

Hawkins, Delafield & Wood
Introduced by COMMITTEE ON RULES—read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the tax law, in relation to determining the credit for stock transfer tax against the taxes imposed by articles nine-a and twenty-three thereof, to providing for an increase in the rate of the stock transfer tax applicable to nonresidents, and to providing a rebate for stock transfer taxes paid, to amend the state finance law, in relation to the stock transfer tax fund and to creating a stock transfer incentive fund, to amend chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six relating to enabling any city having a population of one million or more to raise tax revenue by authorizing the imposition of taxes on general, financial, insurance and transportation corporations and on unincorporated businesses, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the general corporation tax and city unincorporated business income tax in the city of New York, to amend the administrative code of the city of New York, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the taxes imposed under titles R and S thereof and to amend chapter fifty of the laws of nineteen hundred seventy-seven, relating to making appropriations for the support of government, in relation to increasing the appropriation from the stock transfer tax fund and to providing an appropriation to the stock transfer incentive fund and to repeal certain provisions of the tax law relating thereto

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

Section 1. Subdivision fourteen of section two hundred ten of the tax law is hereby amended by adding thereto a new paragraph, to be paragraph (d), to read as follows:

(d) Provided, however, that the credit provided under this subdivision shall be

EXPLANATION—Matter in italics is new; matter in brackets {} is old law to be omitted.
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
(provided for under the provisions of section two hundred eighty-a of article twelve of
this chapter) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.
§ 2. The section heading and subdivisions one and three of section two
hundred seventy-a of such law are hereby repealed.
§ 3. Subdivision two of section two hundred seventy-a of such law is hereby
repealed.
§ 4. Subdivision one of section two hundred seventy-d of such law, as
amended by chapter eight hundred forty-two of the laws of nineteen hundred
seventy-six, is hereby amended to read as follows:
1. In addition to the tax imposed by subdivision one of section two hundred
seventy of this article, there is hereby imposed and shall immediately accrue and
be collected a like additional tax on all sales, agreements to sell, memoranda of
sales and all deliveries or transfers of shares or certificates subject to tax under
such subdivision during the period commencing on August first, nineteen
hundred seventy-five and ending July thirty-first, nineteen hundred seventy-
eight. Such additional tax is at the rate of twenty-five per cent of the rates of tax
on sales or transfers under subdivision two of section two hundred seventy and
on sales under subdivision one of section two hundred seventy-a and [the
maximum amount of tax on a single taxable sale under subdivision two of
section two hundred seventy-a] the maximum amount of tax on a single qualifying
sale under section two hundred seventy-e of this article. Provided, however, that
the tax so calculated shall not be carried out in its computation beyond four
decimal points, that is, it shall be computed to the nearest one-hundredth of
one cent.
§ 5. Such law is hereby amended by adding thereto a new section, to be
section two hundred seventy-e, to read as follows:
§ 270-e. Maximum amounts of tax. 1. Notwithstanding the provisions of section
two hundred seventy of this chapter, where any transaction subject to the tax imposed
by this article involves a sale which relates to shares or certificates of the same class
and issued by the same issuer, the amount of tax upon any such transaction which
involves such single qualifying sale shall not exceed the sum of three hundred fifty
dollars, provided, however, that such transactions involving sales by any member of a
securities exchange or by any registered dealer, who is permitted or required
pursuant to any rules and regulations promulgated by the tax commission pursuant
to the provisions of section two hundred eighty-one-a of this chapter to pay the taxes
imposed by this article without the use of the stamps prescribed by this article,
pursuant to one or more orders to sell such shares or certificates placed with the same
member of a securities exchange or the same registered dealer on one day, by the same
person, each relating to shares or certificates of the same class and issued by the same
issuer, all of which sales are executed on the same day (regardless of whether it be the
day of the placing of the orders to sell), shall, for the purposes of this subdivision one,
be considered to constitute a single qualifying sale.
2. All the provisions of this article shall apply with respect to the maximum
amounts of tax provided for by this section to the same extent and in the same manner
and with the same force and effect as if the language of such provisions had been
incorporated in full into this section and had expressly referred to the maximum
amounts of tax provided for under this section, except to the extent that any such pro-
vision is either inconsistent with a provision of this section or is not relevant to this
section. Provided, further, any reference in this article to the maximum amounts of
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tax on a single taxable sale under subdivision two of section two hundred seventy-six of
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this article shall mean the maximum amounts of tax on a single qualifying sale
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provided for by this section. The term "tax" as used in this article shall include the
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maximum amounts of tax provided for by this section as well as the taxes imposed by
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subdivisions one of sections two hundred seventy and two hundred seventy-six of this
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article, and a reference to such tax, subdivision one of section two hundred seventy or
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subdivision two of section two hundred seventy-six shall include the maximum
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amounts of tax provided for by this section or this subdivision, as the case may be.
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§ 6. Such law is hereby amended by adding thereto a new section, to be
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section two hundred eighty-six, to read as follows:
15 § 280-a. Rebate for stock transfer tax paid; penalty for false claims. 1. Where a
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tax shall have been paid under this article a portion of the amount paid shall be
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allowed as a rebate and shall be paid to the taxpayer but only to the extent that moneys
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are available for the payment of such rebates in the stock transfer incentive fund
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established pursuant to section ninety-two-i of the state finance law. The portion of
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the amount paid which is to be rebated shall be thirty percent of the tax incurred and
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paid on transactions subject to the stock transfer tax occurring on and after October
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first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen
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hundred eighty and sixty percent of the tax incurred and paid on such transactions
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occurring on and after October first, nineteen hundred eighty and on or before
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September thirtieth, nineteen hundred eighty-one and all of the amount of tax
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incurred and paid shall be rebated on transactions subject to the stock transfer tax
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occurring on and after October first, nineteen hundred eighty-one.
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2. Notwithstanding the provisions of subdivision one of this section, the portion of
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the amount of stock transfer tax paid which is to be rebated to a nonresident shall be
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fifty percent of tax incurred and paid on transactions subject to stock transfer tax
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occurring on and after October first, nineteen hundred seventy-seven and on or before
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July thirty-first, nineteen hundred seventy-eight and thirty-seven and one-half
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percent with respect to such transactions occurring on and after August first,
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nineteen hundred seventy-eight and on or before September thirtieth, nineteen
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hundred eighty, and thereafter the portions set forth in subdivision one of this section
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shall be applicable.
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3. Except as provided in subdivision six of this section, rebates may be paid only
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upon the filing of a claim for rebate with the state tax commission. All claims for
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rebate shall be presented in such form and contain such information as the state tax
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commission, by rule, regulation or instruction, shall prescribe and shall be presented
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within two years after the affixing and cancelling of stock transfer tax stamps or
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posters of the tax otherwise than by the use of stamps.
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4. Every such claim shall include a certificate by or on behalf of the party
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presenting the same to the effect that it is just, true and correct, that the amount of
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stock transfer tax stated thereon has been paid to the state and that the amount of
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rebate requested is actually due and owing. The state tax commission, if satisfied that
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the tax has actually been paid, shall rebate the same in accordance with the provisions
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of this section on the audit and warrant of the state comptroller on vouchers approved
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by the commissioner of taxation and finance.
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5. The state tax commission shall grant or deny such claim in the manner
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provided in section two hundred eighty-six of this article and the remaining provisions of
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such section, relating to determination of tax, hearing, decision of the state tax
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commission, the exclusive manner of review of such decision, and the requirement of
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an undertaking, shall apply to the provisions of this section with the same force and
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effect as if the language of such section had been incorporated in full into this section
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and had expressly referred to the rebate under this section, except to the extent that
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any such provision is either inconsistent with or not relevant to this section. All of the
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other provisions of this article relating to refunds shall apply to the rebate of tax
provided for by this section in the same manner and with the same force and effect as
if the language of such provisions had been incorporated in full into this section and
had expressly referred to the rebates of tax provided for under this section, except to
the extent that any such provision is either inconsistent with a provision of this
section or is not relevant to this section and except that the term “refund” as used in
such provisions shall be read as “rebate”.
6. (a) Notwithstanding the provisions of section two hundred eighty-one-a of this
article, rebates provided for in this section shall be allowed, without the filing of the
claims required by subdivision three of this section, in the manner and upon the filing
of the report referred to in paragraph (b) of this subdivision in the case where
payment of the tax imposed by this article is made by any member of any securities
exchange or any registered dealer who or which is permitted or required pursuant to
the provisions of such section two hundred eighty-one-a to pay such tax without the
use of the stamps prescribed by this article.
(b) On the written report required to be made to an exchange, affiliated clearing
corporation or authorized agency by each such member or dealer under such section
two hundred eighty-one-a there shall also be shown the amount of the rebate of such
tax allowable by this section. The net amount required to be paid for the account of the
tax commission to such exchange, affiliated clearing corporation or authorized
agency and remitted to the tax commission pursuant to such section shall be the
amount of tax shown to be due on such written report (determined without regard to
any rebate allowable under this section) less the amount of any such rebate, subject to
the provisions of subdivision eight of this section. Notwithstanding the provisions of
section two hundred eighty-one-a of this article, on the next-to-the-last business day of
the department of taxation and finance in each of the months of September,
December, March and June, each such member or dealer shall show on such report
the aggregate amount of rebates shown daily on such report for the period of three full
months ending on such next-to-the-last business day. On the last business day of each
of such months, an amount equal to such aggregate amount shall be paid by such
member or dealer for the account of the tax commission to such exchange, affiliated
clearing corporation or authorized agency and remitted by such exchange, affiliated
clearing corporation or authorized agency to the tax commission by separate check or
wire transfer. The amount so remitted shall constitute the total amount of rebates
provided in subdivisions one and two of this section payable in the manner described
in this subdivision, which amount shall be included in the amount required to be paid
from the stock transfer tax fund into the stock transfer incentive fund on each such last
day pursuant to sections ninety-two-b and ninety-two-i of the state finance law;
provided, however, that if such exchange, affiliated clearing corporation or
authorized agency shall determine that the payment by any member or dealer of any
tax imposed by this article will be jeopardized by delay, it shall forthwith notify the
tax commission of such condition, or if the tax commission believes that the collection
of any tax will be jeopardized by delay, it may determine the amount of such tax and
assess the same against any such member or dealer prior to the filing of his report
and prior to the date when his report is required to be made to an exchange, affiliated
clearing corporation or authorized agency. The amount so determined shall become
due and payable to the tax commission by the member or dealer against whom such a
jeopardy assessment is made, as soon as notice thereof is given to him personally or
by registered or certified mail. The provisions of section two hundred seventy-nine-a
shall apply to any such determination except to the extent that they may be
inconsistent with the provisions of this subdivision. The tax commission may abate
any jeopardy assessment if it finds that jeopardy does not exist. The collection of any
jeopardy assessment may be stayed by filing with the tax commission a bond issued
by a surety company authorized to transact business in this state and approved by the
superintendent of insurance as to solvency and responsibility, conditioned upon
payment of the amount assessed, or any lesser amount to which such assessment may
be reduced by the tax commission or by a proceeding under article seventy-eight of the
civil practice law and rules as provided in section two hundred seventy-nine of
this chapter such payment to be made when the assessment or any such reduction
thereof shall have become final and not subject to further review. If such a bond is
filed and thereafter a proceeding under article seventy-eight of the civil practice law
and rules is commenced as provided in section two hundred seventy-nine a, deposit of
the taxes assessed shall not be required as a condition precedent to the commencement
of such proceeding. Where a jeopardy assessment is made, any property seized for
the collection of the tax shall not be sold (i) until expiration of the time to apply for a
hearing as provided in such section, and (ii) if such application is timely filed, until
the expiration of ninety days after the tax commission mailed notice of its
determination to the person against whom the assessment is made; provided, however,
such property may be sold at any time if such person has failed to attend a hearing of
which he has been duly notified, or if he consents to the sale, or if the tax commission
determines that the expenses of conservation and maintenance will greatly reduce the
net proceeds, or if the property is perishable. The amount of any and all rebates of the
tax imposed by this article paid pursuant to this paragraph shall be credited or
caused to be credited by such exchange, affiliated clearing corporation, or authorized
agency to or for the benefit of the taxpayer incurring liability for such tax.

(c) If a rebate is paid in the manner provided in this subdivision, no further
rebate shall be allowable but any stock transfer tax paid to a member or dealer by a
taxpayer otherwise entitled to rebate under this section shall be paid by such member or
dealer to the taxpayer.

(d) The amounts of the rebates provided for under subdivisions one and two of this
section paid in the manner provided in this subdivision shall be known separately on
all reports prescribed by the tax commission under such section and shall be
evidenced by such certification as the tax commission may prescribe.

(e) The tax commission may require any such member or registered dealer to file
with the department of taxation and finance a bond issued by a surety company
approved by the superintendent of insurance as to solvency and responsibility and
authorized to transact business in the state, in such amount as the tax commission
may fix, to secure the payment of any taxes due from such member or dealer
pursuant to section two hundred eighty-one a. The tax commission may require that
such a bond be filed before any tax due under this article from any such member or
dealer may be reported and paid under the provisions of this subdivision, or at any
time when it: judgment the same is necessary as a protection to the revenue under
this article. In lieu of such bond, such member or dealer may deposit securities
approved by the tax commission, in such amount as it may prescribe, which
securities shall be kept in the joint custody of the comptroller and the commissioner of
taxation and finance and may be sold by the tax commission if it becomes necessary
so to do in order to recover any sums due from such person pursuant to this article;
but no such sale shall be held until after such person shall have had opportunity to
litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if
any, above the sums due under this article, shall be returned to such member or dealer.

7. If the commissioner of taxation and finance makes the determination that
rebates payable exceed moneys available in the stock transfer incentive fund for
paying such rebates and if any member or dealer shall advance and pay the amount
of tax, imposed by this article without taking account of rebates, either for himself or
for which any other taxpayer is entitled to claim a rebate pursuant to the provisions
of subdivision six of this section, such member or dealer shall be entitled to a rebate
for the amount of such tax advanced and paid by him on behalf of such other taxpayer
in the amount of the rebate allowable to such taxpayer and in the amount of the rebate
allowable to himself whenever such commissioner determines that sufficient funds are
available in the stock transfer incentive fund for paying such rebate.

8. The amount of any erroneous or excessive rebate paid or allowed under this
section may be determined by the state tax commission and may be recovered from
such claimant in the same manner as a tax imposed under this article, provided,
however, that any such determination shall be made within five years after the date of
such erroneous or excessive rebate.

9. Any taxpayer, broker or dealer who or which files or causes to be filed any
claim for or report of rebate permitted or required under this article which is willfully
false shall be guilty of a felony.

10. If any part of any claim for or report of rebate of stock transfer tax is false or
fraudulent, any person who files such claim or makes such report shall, in addition
to any other penalties provided by this article, be subject to a penalty of five hundred
dollars for each and every violation. The state tax commission may determine the
amount of any such penalty to be due from any such person in the same manner as
the tax imposed by this article, provided, however, that any such determination shall
be made at any time.

11. The state tax commission shall make rules and regulations and issue
instructions to effectuate the purposes of this section and to provide for payments to
and from and administration of the stock transfer tax fund and the stock transfer
incentive fund and shall have all the rights and powers as set forth in section two
hundred seventy-six of this article to examine transactions and require records to be
kept and declarations and certifications to be made and kept as may be required for
such purposes. If any member or dealer described in subdivision six of this section
shall violate any provision of this section or any reasonable rule, regulation or
instruction made or issued pursuant thereto, such member or dealer may upon notice
thereof thereafter be denied rebates by the state tax commission in accordance with
rules and regulations promulgated by such commission. Provided, that nothing
herein shall limit the right to file a claim for rebate under this section.

12. For the purposes of this section the following terms shall have the following
meanings:

(a) A "nonresident" shall mean an individual or group of individuals jointly
owning securities (but including partnerships only if organized and operating solely
for the purpose of investing in securities) selling or trading or delivering or
transferring on his or their own account, who is not, or no one of whom is, a resident.

(b) A "resident" means an individual who on the day upon which the tax imposed
by section two hundred seventy of this chapter accrues,

(1) regardless of where he resides or is domiciled, (i) is a member of a securities
exchange within this state which is registered with the securities and exchange
commission of the United States; (ii) is a dealer in securities required to be registered
with the attorney general of the state of New York; (iii) acts as a dealer in securities
or as a broker or agent in transactions concerned with the sale, purchase, delivery or
transfer of securities; or (iv) is a member of or a person employed in a managerial
capacity by a firm, company, association or organization, or an officer or director of
or a person employed in a managerial capacity by a corporation, which is a member
organization of a securities exchange, a dealer in securities, or a broker or
agent, described in clause (i), (ii) or (iii) of this subparagraph, or

(2) is domiciled in this state, unless on such day he maintained no permanent
place of abode in this state, maintained a permanent place of abode elsewhere and
during the one year period ending on such day spent in the aggregate, not more than
thirty days of such period in this state, or

(3) is not domiciled in this state, but on such day maintained in this state, a per-
manent place of abode unless such abode is due solely to such individual's being in
the armed forces of the United States, or
regardless of where he resides, maintains a permanent place of business
within this state or is employed within this state.

(c) No transaction shall be deemed to be a nonresident transaction and entitled to
rebate payable or allowable in subdivision two unless (1) the papers or documents
upon or to which are required to be placed or affixed the stamps required by sub-
division four of section two hundred seventy of this chapter, to denote the payment of
the tax commission signed by the person making the sale or transfer, setting forth
facts to show that the transaction is made by a nonresident; or (2) in the case of trans-
actions executed or effected within this state (or transaction executed or effected out-
side this state but subject to the tax imposed by this article) by any member or member
organization of any securities exchange within this state which is registered with the
securities and exchange commission of the United States (hereinafter in this section
referred to as a "member of a securities exchange") or by any person, firm, cor-
poration, company or association required to be registered with the attorney general
of the state of New York as a dealer in securities other than upon any such exchange
(hereinafter in this section referred to as a "registered dealer"), who is permitted or
required pursuant to any rules and regulations promulgated by the tax commission
pursuant to the provisions of section two hundred eighty-one-a of this chapter, to pay
the tax imposed by this article without the use of the stamps prescribed by this article,
if the transaction is certified, in such form as the tax commission may prescribe, in the
report required to be made to such exchange, or its affiliated clearing corporation or
any authorized agency by rules and regulations promulgated by the tax commission
pursuant to section two hundred eighty-one-a of this chapter, as being a transaction
by a nonresident. The certification in such report may be made by such member of a
securities exchange or registered dealer if he either (i) has obtained from such
resident a declaration in the form prescribed by the tax commission, or (ii) has met
requirements set forth in rules and regulations promulgated by the tax commission
establishing that the transaction is made by a nonresident and (iii) has not, on or
after the date of obtaining such declaration or its delivery and filing, received from
such nonresident either a notice of cancellation, in the form prescribed in clause (iii)
of subparagraph two of paragraph (d) of this subdivision, or has no knowledge or
reasonable grounds to believe that the status of such nonresident as a nonresident has
changed.

(d) (1) Any person who shall knowingly make any false statement in a
declaration provided for by paragraph (c) of this subdivision shall be guilty of a
misdemeanor and upon conviction thereof shall be liable to a fine of not less than five
hundred nor more than one thousand dollars, or be imprisoned for not more than one
year, or both such fine and imprisonment, in the discretion of the court.

(2) Any person who

(i) having executed, filed with and delivered to a member of a securities exchange
or a registered dealer a declaration provided for by paragraph (c) of this subdivision;
(ii) thereafter causes knowingly to be a nonresident;
(iii) fails to execute, file and deliver a notice of cancellation of such declaration,
with and to such member or dealer; and
(iv) after ceasing to be such a nonresident and prior to the execution, filing and
delivery of such notice of cancellation, with intent to cause a rebate to be made from
the stock transfer incentive fund in excess of the rebate allowable to residents under
subdivision one of this section, places and allows to be executed an order with such
member or dealer where the sale, agreement to sell, memorandum of sale, delivery or
transfer of any shares or certificates described in section two hundred seventy of this
chapter is subject to the taxes imposed by this chapter; shall be guilty of a
misdemeanor and upon conviction thereof shall be liable to a fine of not less than five
hundred nor more than one thousand dollars, or be imprisoned for not more than one
year, or be subject to both such fine and imprisonment, in the discretion of the court.
13. The state tax commission may provide that where a declaration has been
executed, filed and delivered to a member of a securities exchange or a registered
dealer under subdivision one of section two hundred seventy-a of this article and kept
by such member or dealer pursuant to rules, regulations and instructions of the state
tax commission, such declaration shall constitute the declaration of the nonresident
under subdivision twelve of this section.

§ 7. Subsection (e) of section seven hundred one of such law is hereby
amended by adding thereto a new paragraph, to be paragraph four, to read as
follows:

(4) Provided, however, that the credit provided under this subsection shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subsection (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
(provided for under the provisions of section two hundred eighty-a of article twelve of
this chapter) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subsection with respect to any tax incurred in market making transactions occurring
on or after October first, nineteen hundred eighty-one.

§ 8. Subdivisions three and four of section ninety-two-b of the state finance
law, as amended by chapter one hundred sixty-eight of the laws of nineteen
hundred seventy-five, are hereby amended to read as follows:

3. The moneys received from such tax and other sources in such fund, after
deducting the amount the commissioner of taxation and finance shall determine
to be necessary for reasonable costs of the state tax commission in
administering, collecting and distributing such tax, commencing with the fiscal
year ending March thirty-first, nineteen hundred seventy-seven, shall be
appropriated to (i) the municipal assistance corporation for the city of New
York created pursuant to title three of article ten of the public authorities law in
order to enable such corporation to fulfill the terms of any agreements made
with the holders of its notes and bonds and to carry out its corporate purposes
including the maintenance of the capital reserve fund and (ii) to the extent such
moneys are not required by such corporation as provided in subdivision seven of
section ninety-two-d of [the state finance law as added by a chapter of the laws
of nineteen hundred seventy-five] this chapter and, after deducting the amount
such commissioner shall determine to be necessary for reasonable costs of the state tax
commission in administering and making distributions in accordance with the
provisions of section two hundred eighty-a of the tax law from the stock transfer
incentive fund, to the stock transfer incentive fund created pursuant to section ninety-
two-i of this chapter to enable rebates to be made from such fund under the provisions
of section two hundred eighty-a of the tax law and (iii) to the extent such moneys are
not required by such fund, as certified by the commissioner of taxation and finance,
the balance shall be appropriated to the city of New York, for the support of local
government.

4. After the deduction of such costs of the state tax commission in
administering, collecting and distributing such tax, the balances in [such] the
stock transfer tax fund so appropriated shall be distributed and paid on the last
day of September, December, March and June into the special account
established for the municipal assistance corporation for the city of New York in
the municipal assistance tax fund established pursuant to subdivision one of
section ninety-two-d of [the state finance law as added by a chapter of the laws
of nineteen hundred seventy-five] this chapter, unless and to the extent the
balances in such fund on each such last day are not required by such corporation
as provided in said subdivision seven of said section ninety-two-d of [the state
finance law] in which case the balance not so required, if any, after the deduction
of such costs of the state tax commission in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund shall be distributed and paid to the stock transfer incentive fund in the custody of the commissioner of taxation and finance established pursuant to section ninety-two-i of this chapter and unless to the extent that the balances in the stock transfer tax fund on each such last day are not required by the stock transfer incentive fund as provided in such section ninety-two-i of this chapter in which case the balance not so required, if any, shall be distributed and paid to the chief fiscal officer of the city of New York to be paid into the treasury of the city to the credit of the general fund, and on each such day, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering, collecting and distributing such tax during such quarterly period and shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. In no event shall any amount (other than the amount to be deducted for administering, collecting and distributing such tax) be distributed or paid from the stock transfer tax fund to any person other than the municipal assistance corporation for the city of New York unless and until the aggregate of all payments certified to the comptroller as required by such corporation in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, which remain unappropriated or unpaid to such corporation shall have been appropriated to such corporation and shall have been paid in full provided, however, that no person, including such corporation or the holders of its notes or bonds shall have any lien on such tax and such agreements shall be executory only to the extent of the balances available to the state in such fund. If the balances in such fund are not required by such corporation pursuant to the provisions of this subdivision, on each such last day of September, December, March and June, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund during such quarterly period and he shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. To the extent such moneys are not required by such corporation, as provided in subdivision seven of section ninety-two-d of this chapter, no amount thereof (other than such amount to be deducted for administering, collecting and distributing such tax and such costs in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund) shall be distributed or paid from the stock transfer tax fund other than to such stock transfer incentive fund in the custody of the commissioner of taxation and finance unless and until the aggregate of all payments certified to the comptroller by such commissioner pursuant to the provisions of such incentive fund as necessary to provide payments on account of rebates authorized pursuant to section two hundred eighty-a of the tax law which remain unappropriated or unpaid to such fund shall have been appropriated to such fund and shall have been paid in full provided, however, that no person, including any taxpayer under article twelve of the tax law or any member or dealer referred to in subdivision six of section two hundred eighty-a of such law, shall have any lien on this fund or the stock transfer incentive fund.

§ 9. Subdivision seven of section ninety-two-d of such law, as added by chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

7. In the event that the amount of revenues in the special account established for the municipal assistance corporation for the city of New York in the municipal assistance tax fund which have been appropriated to such
corporation shall at any time be less than the amount which the chairman of
such corporation has certified to the comptroller as required in order to comply
with its agreements with the holders of its notes and bonds and to carry out its
corporate purposes, including the maintenance of the capital reserve fund, then
and in such event the comptroller shall forthwith certify to the commissioner of
taxation and finance the amount of the difference between the revenues in such
special account and the amount so certified as required by such corporation and
upon receipt of such certificate the commissioner of taxation and finance shall
approve a voucher for payment of the amount of such difference into such
special account in the municipal assistance tax fund from the stock transfer tax
fund established pursuant to subdivision one of section ninety-two-b of [the
state finance law] this chapter at the next date for payment from such fund as
provided in subdivision four of such section, anything in said section to the
contrary notwithstanding. In the case of every fiscal year commencing after June
thirtieth, nineteen hundred seventy-eight, the comptroller shall, before the last day of
September, December, March and June of each such fiscal year, certify to the
commissioner of taxation and finance the amount from the stock transfer tax fund, if
any, determined by the comptroller to be required during the next following three
months in order to provide the amounts certified by the chairman of the municipal
assistance corporation for the city of New York, or if no such amount is necessary, a
statement to that effect. The foregoing certificate or statement, as the case may be,
shall be made regardless of the amount of revenues in the special account established
for the municipal assistance tax fund which have been appropriated to such
corporation.

§ 10. Such law is hereby amended by adding thereto a new section, to be
section ninety-two-i, to read as follows:

§ 98-1. Stock transfer incentive fund. 1. There is hereby established in the sole
custody of the commissioner of taxation and finance a special fund to be known as
the stock transfer incentive fund.

2. Such fund shall consist of moneys paid thereto from the stock transfer tax fund
as provided in subdivision four of section ninety-two-b of this chapter and all other
moneys appropriated, credited or transferred thereto from any other fund or source
pursuant to law.

3. On the last day of each of the months of September, December, March and June
of each year commencing December thirty-first, nineteen hundred seventy-seven, the
commissioner of taxation and finance shall determine the sum of (i) the amounts
allowable as rebates of the tax that is imposed by article twelve of the tax law and is
paid on transactions executed or effected during the three calendar months ending on
the next to the last business day of each such month, pursuant to subdivision one of
section two hundred eighty-six of the tax law and (ii) such amounts allowable as
rebates pursuant to subdivision two of such section.

4. On the last day of each such month the commissioner of taxation and finance
shall certify to the director of the budget, the state comptroller and the chief fiscal
officer of the city of New York each of the amount finally determined under clauses
(i) and (ii) of subdivision three of this section.

6. The amount so certified on such last day under subdivision four of this section
shall constitute the amount required to be paid into the stock transfer incentive fund
from the stock transfer tax fund pursuant to section ninety-two-b of this chapter.

6. (a) (1) For the period beginning August first, nineteen hundred seventy-eight
and ending June thirtieth, nineteen hundred seventy-nine, on the last day of each of
the months of September, December, March and June, the commissioner of taxation
and finance shall certify to the comptroller the amount of the tax imposed by this
article collected during the three month period ending on each such last day, except
that on September thirtieth, nineteen hundred seventy-eight, the commissioner shall
certify only the amount of such tax collected on and after August first, nineteen hundred seventy-eight. The state comptroller shall pay forthwith an amount equal to one-half of twenty-five percent of the amount so certified from the general fund of the state of New York to the extent that moneys have been appropriated and made available therefor, provided, however, that in no event shall the amount so paid exceed sixteen million dollars in the state fiscal year beginning April first, nineteen hundred seventy-eight.

(2) Upon receipt of each certification of the commissioner of taxation and finance provided for in subdivision four of this section, on and after December thirty-first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty, the state comptroller shall pay forthwith an amount equal to one-half of the amount certified by such commissioner as rebates allowable under the provisions of clause (i) of subdivision three of this section from the general fund of the state of New York to the fund created pursuant to this section, to the extent that moneys have been appropriated and made available therefor. Upon receipt of the certification of the commissioner of taxation and finance provided for in subdivision four of this section, on and after October first, nineteen hundred eighty, the state comptroller shall pay forthwith an amount equal to one-half of the amounts certified by such commissioner as rebates allowable under the provisions of clauses (i) and (ii) of subdivision three of this section from the general fund of the state of New York, to the fund created pursuant to this section, to the extent that moneys have been appropriated and made available therefor.

(b) Provided, however, that the amounts paid from the general fund of the state of New York under paragraph (a) of this subdivision in the state fiscal year beginning April first, nineteen hundred seventy-nine shall not exceed fifty million dollars; and in the state fiscal year beginning April first, nineteen hundred eighty such amounts shall not exceed ninety million dollars and in the state fiscal year beginning April first, nineteen hundred eighty-one and in every state fiscal year thereafter such amounts shall not exceed one hundred twenty million dollars.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, the state comptroller shall, in addition to the payments to be made under paragraph (a) of this subdivision, also pay to the credit of the fund created pursuant to this section an amount equal to one-half of the costs deducted by such commissioner for the costs of the state tax commission in administering and making distributions in accordance with the provisions of subdivision four of section ninety-two-b of this chapter.

7. If on the day the commissioner of taxation and finance makes the determinations required under subdivision three of this section, he determines that, as a result of the payments made into the stock transfer incentive fund pursuant to subdivision five and six of this section, the amounts in such fund exceed the amounts determined pursuant to clauses (i) and (ii) of subdivision three of this section for the three calendar months ending on the next-to-the-last business day preceding the day on which such determination is made, the amount of such excess shall be paid forthwith to the chief fiscal officer of the city of New York for support of local government.

8. Notwithstanding any provision of general or special law to the contrary, all moneys of such fund shall be deposited by the commissioner of taxation and finance in any responsible bank, banking house or trust company as may be approved by the comptroller. All amounts so deposited shall be kept separate and apart and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance. All deposits of moneys of such fund shall be secured by obligations of the United States or of the state having a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give security for such deposits. Any such moneys deposited in such fund may, in the discretion of the commissioner of taxation and finance, be invested in obligations of the United States.
or of the state or in other obligations, the principal of and interest on which are

guaranteed by the United States or by the state.

9. Out of such moneys deposited in the fund created by this section, the
commissioner of taxation and finance shall, except for rebates payable in the manner
described in subdivision six of section two hundred eighty-a of the tax law, make the
payments required to be paid on claims for rebates made pursuant to section two
hundred eighty-a of the tax law, but in no event shall such rebates be paid prior to the
last day of each of the months of September, December, March and June with respect
to taxes paid during the period of three calendar months ending on each such last
day. Out of moneys deposited in the fund created by this section, the commissioner of
taxation and finance shall pay to each exchange, affiliated clearing corporation or
authorized agency which shall have remitted amounts to the tax commissioner, in the
manner set forth in subdivision six of section two hundred eighty-a of the tax law, the
rebates payable pursuant to subdivisions one and two of such section, the rebates
payable in the manner described in subdivision six of section two hundred eighty-a of
the tax law not later than the day after the day the tax equal to the amount of such
rebates is remitted to the tax commissioner under such subdivision and paid to the fund
created by this section from the stock transfer tax fund pursuant to section ninety-
two-b of this chapter. Upon such payment the liability of the state therefor shall be
fully discharged.

10. In the event that moneys deposited in the fund created by this section are
insufficient to pay such rebates, the city of New York shall pay any such deficiency
to such fund in accordance with local law.

11. The commissioner of taxation and finance shall not be held liable for any
inaccuracy in any certification under this section.

§ 11. Subsection four-a of part two of section one of chapter seven hundred
seventy-two of the laws of nineteen hundred sixty-six relating to enabling any
city having a population of one million or more to raise tax revenue by
authorizing the imposition of taxes on general, financial, insurance and
transportation corporations and on unincorporated businesses, is hereby
amended by adding thereto a new subdivision, to be subdivision four, to read as
follows:

(4) Provided, however, that the credit provided under this subdivision shall be
allowed only to the extent that the amount of credit allowable with respect to market
transactions under the provisions of this subdivision (determined without
regard to the provisions of this subdivision) exceeds fifty percent of all rebates
(provided for under the provisions of section two hundred eighty-a of article twelve of
the tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is allowed. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions occurring
on or after October first, nineteen hundred eighty-one.

§ 12. Subsection (c) of subsection one hundred one contained in section two
of such chapter is hereby amended by adding thereto a new paragraph, to be
paragraph four, to read as follows:

(4) Provided, however, that the credit provided under this subdivision shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
(provided under the provisions of section two hundred eighty-a of article twelve of the
tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.

§ 13. Subdivision eleven of section R46-4.0 of the administrative code of the
city of New York is hereby amended by adding thereto a new paragraph, to be paragraph (d), to read as follows:

(d) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates provided for under the provisions of section two hundred eighty-a of article twelve of the tax law allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

§ 14. Subdivision (e) of section S46-3.0 of such code is hereby amended by adding thereto a new paragraph, to be paragraph four, to read as follows:

(4) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates provided for under the provisions of section two hundred eighty-a of article twelve of the tax law allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

§ 15. Section one of chapter fifty of the laws of nineteen hundred seventy-seven, relating to making appropriations for support of government is hereby amended to read as follows:

Stock Transfer Tax Fund

For payment to the municipal assistance tax fund for payment to the municipal assistance corporation for the city of New York, to the extent required to comply with the agreements between such corporation and the holders of its notes and bonds, and for the corporate purposes of such corporation and to the extent not required by such corporation for such purposes, for payment to the stock transfer incentive fund to the extent required to comply with the certification of the commissioner of taxation and finance provided under section ninety-two-i of the state finance law and to the extent not required by such certification of the commissioner of taxation and finance, for payment to the city of New York for support of local government, provided, however, that the maximum amount to be paid shall not exceed the collections from the stock transfer tax pursuant to article 12 of the tax law, less administrative costs as certified by the commissioner of taxation and finance for deposit to the credit of the general fund—state [purpose] purposes fund ....... [250,000,000] 270,000,000

§ 16. The sum of three hundred thousand dollars ($300,000), or so much thereof as may be necessary, is hereby appropriated during the fiscal year commencing April first, nineteen hundred seventy-seven to the stock transfer incentive fund created pursuant to section ninety-two-i of the state finance law for the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law out of any moneys available in the state treasury in the general fund for purposes of providing rebates pursuant to subdivision two of section two hundred eighty-a of the tax law.
§ 17. This act shall take effect immediately, except that the provisions of
section two of this act shall take effect October first, nineteen hundred seventy-
seven.

Note.—Subdivision two of section two hundred seventy-six of the tax law, proposed to be repealed
by section three of this act, relates to maximum amounts of tax under the stock transfer tax imposed
by article twelve of the tax law, which are continued under section two hundred seventy-six of such law
as added by section six of this act.

Subdivisions one and three of section two hundred seventy-six of the tax law, proposed to be repealed
on October first, nineteen hundred seventy-seven by this act, relate to the reduced rates of stock
transfer tax provided for nonresidents. These reduced rates will be accounted for through the rebate
mechanism provided by this act.
July 25, 1977

Mr. Felix G. Rohatyn  
Chairman  
Municipal Assistance Corporation  
Two World Trade Center  
New York, New York 10047

Dear Felix:

I would like to take this opportunity to personally thank you for your efforts in phasing-out the effect of the stock transfer tax. Both your recognition of the problem, and your willingness to devote your time and that of your staff, were of utmost importance to the passage of the transfer tax legislation.

Without the stock transfer tax, I am confident that the superiority of the financial marketplace in New York will assure a strong and growing industry which will provide jobs and tax revenue for both New York City and State.

Very truly yours,

[Signature]
STATE OF NEW YORK

6671

1977-1978 Regular Sessions

IN SENATE

June 20, 1977

Introduced by COMMITTEE ON RULES—read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the tax law, in relation to determining the credit for stock transfer tax against the taxes imposed by articles nine-a and twenty-three thereof, to providing for an increase in the rate of the stock transfer tax applicable to nonresidents, and to providing a rebate for stock transfer taxes paid, to amend the state finance law, in relation to the stock transfer tax fund and to creating a stock transfer incentive fund, to amend chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six relating to enabling any city having a population of one million or more to raise tax revenue by authorizing the imposition of taxes on general, financial, insurance and transportation corporations and on unincorporated businesses, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the general corporation tax and city unincorporated business income tax in the city of New York, to amend the administrative code of the city of New York, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the taxes imposed under titles R and S thereof and to amend chapter fifty of the laws of nineteen hundred seventy-seven, relating to making appropriations for the support of government, in relation to increasing the appropriation from the stock transfer tax fund and to providing an appropriation to the stock transfer incentive fund and to repeal certain provisions of the tax law relating thereto

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

1 Section 1. Subdivision fourteen of section two hundred ten of the tax law is hereby amended by adding thereto a new paragraph, to be paragraph (d), to read as follows:

4 (d) Provided, however, that the credit provided under this subdivision shall be

EXPLANATION—Matter in italics is new; matter in brackets [] is old law to be omitted.
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all related
(provided for under the provisions of section two hundred eighty-a of article twelve of
this chapter) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
 occurring on or after October first, nineteen hundred eighty-one.
§ 2. The section heading and subdivisions one and three of section two
hundred seventy-a of such law are hereby repealed.
§ 3. Subdivision two of section two hundred seventy-a of such law is hereby
repealed.
§ 4. Subdivision one of section two hundred seventy-d of such law, as
amended by chapter eight hundred forty-two of the laws of nineteen hundred
seventy-six, is hereby amended to read as follows:
1. In addition to the tax imposed by subdivision one of section two hundred
seventy of this article, there is hereby imposed and shall immediately accrue and
be collected a like additional tax on all sales, agreements to sell, memoranda of
sales and all deliveries or transfers of shares or certificates subject to tax under
such subdivision during the period commencing on August first, nineteen
hundred seventy-five and ending July thirty-first, nineteen hundred seventy-
eight. Such additional tax is at the rate of twenty-five per cent of the rates of tax
on sales or transfers under subdivision two of section two hundred seventy and
on sales under subdivision one of section two hundred seventy-a and [the
maximum amount of tax on a single taxable sale under subdivision two of
section two hundred seventy-a] the maximum amount of tax on a single qualifying
sale under section two hundred seventy-e of this article. Provided, however, that
the tax so calculated shall not be carried out in its computation beyond four
decimal points, that is, it shall be computed to the nearest one-hundredth of
one cent.
§ 5. Such law is hereby amended by adding thereto a new section, to be
section two hundred seventy-e, to read as follows:
§ 270-e. Maximum amounts of tax. 1. Notwithstanding the provisions of section
two hundred seventy of this chapter, where any transaction subject to the tax imposed
by this article involves a sale which relates to shares or certificates of the same class
and issued by the same issuer, the amount of tax upon any such transaction which
involves such single qualifying sale shall not exceed the sum of three hundred fifty
dollars, provided, however, that such transactions involving sales by any member of a
securities exchange or by any registered dealer, who is permitted or required
pursuant to any rules and regulations promulgated by the tax commission pursuant
to the provisions of section two hundred eighty-one of this chapter to pay the taxes
imposed by this article without the use of the stamps prescribed by this article,
pursuant to one or more orders to sell such shares or certificates placed with the same
member of a securities exchange or the same registered dealer on one day, by the same
person, each relating to shares or certificates of the same class and issued by the same
issuer, all of which sales are executed on the same day (regardless of whether it be the
day of the placing of the orders to sell), shall, for the purposes of this subdivision one,
be considered to constitute a single qualifying sale.
2. All the provisions of this article shall apply with respect to the maximum
amounts of tax provided for by this section to the same extent and in the same manner
and with the same force and effect as if the language of such provisions had been
incorporated in full into this section and had expressly referred to the maximum
amounts of tax provided for under this section, except to the extent that any such pro-
vision is either inconsistent with a provision of this section or is not relevant to this
section. Provided, further, any reference in this article to the maximum amounts of
tax on a single taxable sale under subdivision two of section two hundred seventy-a of
this article shall mean the maximum amounts of tax on a single qualifying sale
provided for by this section. The term "tax" as used in this article shall include the
maximum amounts of tax provided for by this section as well as the taxes imposed by
subdivisions one of sections two hundred seventy and two hundred seventy-d of this
article, and a reference to such tax, subdivision one of section two hundred seventy or
subdivision two of section two hundred seventy-a shall include the maximum
amounts of such tax provided for by this section or this subdivision, as the case may be.
§ 6. Such law is hereby amended by adding thereto a new section, to be
section two hundred eighty-a, to read as follows:
§ 280-a. Rebate for stock transfer tax paid; penalty for false claims. 1. Where a
tax shall have been paid under this article a portion of the amount paid shall be
allowed as a rebate and shall be paid to the taxpayer but only to the extent that moneys
are available for the payment of such rebates in the stock transfer incentive fund
established pursuant to section ninety-two-i of the state finance law. The portion of
the amount paid which is to be rebated shall be thirty percent of the tax incurred and
paid on transactions subject to the stock transfer tax occurring on and after October
first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen
hundred eighty and sixty percent of the tax incurred and paid on such transactions
occurring on and after October first, nineteen hundred eighty and on or before
September thirtieth, nineteen hundred eighty-one and all of the amount of tax
incurred and paid shall be rebated on transactions subject to the stock transfer tax
occurring on and after October first, nineteen hundred eighty-one.
2. Notwithstanding the provisions of subdivision one of this section, the portion of
the amount of stock transfer tax paid which is to be rebated to a nonresident shall be
fifty percent of tax incurred and paid on transactions subject to stock transfer tax
occurring on and after October first, nineteen hundred seventy-seven and on or before
July thirty-first, nineteen hundred seventy-eight and thirty-seven and one-half
percent with respect to such transactions occurring on and after August first,
vinteen hundred seventy-eight and on or before September thirtieth, nineteen
hundred eighty, and thereafter the portions set forth in subdivision one of this section
shall be applicable.
3. Except as provided in subdivision six of this section, rebates may be paid only
upon the filing of a claim for rebate with the state tax commission. All claims for
rebate shall be presented in such form and contain such information as the state tax
commission, by rule, regulation or instruction, shall prescribe and shall be presented
within two years after the affixing and cancelling of stock transfer tax stamps or
payment of the tax otherwise than by the use of stamps.
4. Every such claim shall include a certificate by or on behalf of the party
presenting the same to the effect that it is just, true and correct, that the amount of
stock transfer tax stated thereon has been paid to the state and that the amount of
rebate requested is actually due and owing. The state tax commission, if satisfied that
the tax has actually been paid, shall rebate the same in accordance with the provisions
of this section on the audit and warrant of the state comptroller on vouchers approved
by the commissioner of taxation and finance.
5. The state tax commission shall grant or deny such claim in the manner
provided in section two hundred eighty of this article and the remaining provisions of
such section, relating to determination of tax, hearing, decision of the state tax
commission, the exclusive manner of review of such decision, and the requirement of
an undertaking, shall apply to the provisions of this section with the same force and
effect as if the language of such section had been incorporated in full into this section
and had expressly referred to the rebate under this section, except to the extent that
any such provision is either inconsistent with or not relevant to this section. All of the
other provisions of this article relating to refunds shall apply to the rebate of tax
provided for by this section in the same manner and with the same force and effect as
if the language of such provisions had been incorporated in full into this section and
had expressly referred to the rebates of tax provided for under this section, except to
the extent that any such provision is either inconsistent with a provision of this
section or is not relevant to this section and except that the term "refund" as used in
such provisions shall be read as "rebate".
6. (a) Notwithstanding the provisions of section two hundred eighty-one-a of this
article, rebates provided for in this section shall be allowed, without the filing of the
claim required by subdivision three of this section, in the manner and upon the filing
of the report referred to in paragraph (b) of this subdivision in the case where
payment of the tax imposed by this article is made by any member of any securities
exchange or any registered dealer who or which is permitted or required pursuant to
the provisions of such section two hundred eighty-one-a to pay such tax without the
use of the stamps prescribed by this article.
(b) On the written report required to be made to an exchange, affiliated clearing
corporation or authorized agency by each such member or dealer under such section
two hundred eighty-one-a there shall also be shown the amount of the rebate of such
tax allowable by this section. The net amount required to be paid for the account of the
tax commission to such exchange, affiliated clearing corporation or authorized
agency and remitted to the tax commission pursuant to such section shall be the
amount of tax shown to be due on such written report (determined without regard to
any rebate allowable under this section) less the amount of any such rebate, subject to
the provisions of subdivision eight of this section. Notwithstanding the provisions of
section two hundred eighty-one-a of this article, on the next-to-the-last business day of
December, March and June, each such member or dealer shall show on such report
the aggregate amount of rebates shown daily on such report for the period of three full
months ending on such next-to-the-last business day. On the last business day of each
of such months, an amount equal to such aggregate amount shall be paid by such
member or dealer for the account of the tax commission to such exchange, affiliated
clearing corporation or authorized agency and remitted by such exchange, affiliated
clearing corporation or authorized agency to the tax commission by separate check or
wire transfer. The amount so remitted shall constitute the total amount of rebates
provided in subdivisions one and two of this section payable in the manner described
in this subdivision, which amount shall be included in the amount required to be paid
from the stock transfer tax fund into the stock transfer incentive fund on each such last
day pursuant to sections ninety-two-b and ninety-two-i of the state finance law;
provided, however, that if such exchange, affiliated clearing corporation or
authorized agency shall determine that the payment by any member or dealer of any
tax imposed by this article will be jeopardized by delay, it shall forthwith notify the
tax commission of such condition, or if the tax commission believes that the collection
of any tax will be jeopardized by delay, it may determine the amount of such tax and
assess the same against any such member or dealer prior to the filing of his report
and prior to the date when his report is required to be made to an exchange, affiliated
clearing corporation or authorized agency. The amount so determined shall become
due and payable to the tax commission by the member or dealer against whom such a
jeopardy assessment is made, as soon as notice thereof is given to him personally or
by registered or certified mail. The provisions of section two hundred seventy-nine-a
shall apply to any such determination except to the extent that they may be
inconsistent with the provisions of this subdivision. The tax commission may abate
any jeopardy assessment if it finds that jeopardy does not exist. The collection of any
jeopardy assessment may be stayed by filing with the tax commission a bond issued
by a surety company authorized to transact business in this state and approved by the
superintendent of insurance as to solvency and responsibility, conditioned upon
payment of the amount assessed, or any lesser amount to which such assessment may
be reduced by the tax commission or by a proceeding under article seventy-eight of the
civil practice law and rules as provided in section two hundred seventy-nine-a of
this chapter such payment to be made when the assessment or any such reduction
thereof shall have become final and not subject to further review. If such a bond is
filed and thereafter a proceeding under article seventy-eight of the civil practice law
and rules is commenced as provided in section two hundred seventy-nine-a, deposit of
the taxes assessed shall not be required as a condition precedent to the commencement
of such proceeding. Where a jeopardy assessment is made, any property seized for
the collection of the tax shall not be sold (i) until expiration of the time to apply for a
hearing as provided in such section, and (ii) if such application is timely filed, until
the expiration of ninety days after the tax commission mailed notice of its
determination to the person against whom the assessment is made; provided, however,
such property may be sold at any time if such person has failed to attend a hearing of
which he has been duly notified, or if he consents to the sale, or if the tax commission
determines that the expenses of conservation and maintenance will greatly reduce the
net proceeds, or if the property is perishable. The amount of any and all rebates of the
tax imposed by this article paid pursuant to this paragraph shall be credited or
caused to be credited by such exchange, affiliated clearing corporation, or authorized
agency to or for the benefit of the taxpayer incurring liability for such tax.
(c) If a rebate is paid in the manner provided in this subdivision, no further
rebate shall be allowable but any stock transfer tax paid to a member or dealer by a
taxpayer otherwise entitled to rebate under this section shall be paid by such member
or dealer to the taxpayer.
(d) The amounts of the rebates provided for under subdivisions one and two of this
section paid in the manner provided in this subdivision shall be known separately on
all reports prescribed by the tax commission under such section and shall be
evidenced by such certification as the tax commission may prescribe.
(e) The tax commission may require any such member or registered dealer to file
with the department of taxation and finance a bond issued by a surety company
approved by the superintendent of insurance as to solvency and responsibility and
authorized to transact business in the state, in such amount as the tax commission
may fix, to secure the payment of any taxes due from such member or dealer
pursuant to section two hundred eighty-one-a. The tax commission may require that
such a bond be filed before any tax due under this article from any such member or
dealer may be reported and paid under the provisions of this subdivision, or at any
time when in its judgment the same is necessary as a protection to the revenues under
this article. In lieu of such bond, such member or dealer may deposit securities
approved by the tax commission, in such amount as it may prescribe, which
securities shall be kept in the joint custody of the comptroller and the commissioner of
taxation and finance and may be sold by the tax commission if it becomes necessary
so to do in order to recover any sums due from such person pursuant to this article;
but no such sale shall be held until after such person shall have had opportunity to
litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if
any, above the sums due under this article, shall be returned to such member or dealer.
7. If the commissioner of taxation and finance makes the determination that
rebates payable exceed moneys available in the stock transfer incentive fund for
paying such rebates and if any member or dealer shall advance and pay the amount
of tax, imposed by this article without taking account of rebates, either for himself or
for which any other taxpayer is entitled to claim a rebate pursuant to the provisions
of subdivision six of this section, such member or dealer shall be entitled to a rebate
for the amount of such tax advanced and paid by him on behalf of such other taxpayer
in the amount of the rebate allowable to such taxpayer and in the amount of the rebate
allowable to himself whenever such commissioner determines that sufficient funds are
available in the stock transfer incentive fund for paying such rebate.

8. The amount of any erroneous or excessive rebate paid or allowed under this
section may be determined by the state tax commission and may be recovered from
such claimant in the same manner as a tax imposed under this article, provided,
however, that any such determination shall be made within five years after the date of
such erroneous or excessive rebate.

9. Any taxpayer, broker or dealer who or which files or causes to be filed any
claim for or report of rebate permitted or required under this article which is willfully
false shall be guilty of a felony.

10. If any part of any claim for or report of rebate of stock transfer tax is false or
fraudulent, any person who files such claim or makes such report shall, in addition
to any other penalties provided by this article, be subject to a penalty of five hundred
dollars for each and every violation. The state tax commission may determine the
amount of any such penalty to be due from any such person in the same manner as
the tax imposed by this article, provided, however, that any such determination shall
be made at any time.

11. The state tax commission shall make rules and regulations and issue
instructions to effectuate the purposes of this section and to provide for payments to
and from and administration of the stock transfer tax fund and the stock transfer
incentive fund and shall have all the rights and powers as set forth in section two
hundred seventy-six of this article to examine transactions and require records to be
kept and declarations and certifications to be made and kept as may be required for
such purposes. If any member or dealer described in subdivision six of this section
shall violate any provision of this section or any reasonable rule, regulation or
instruction made or issued pursuant thereto, such member or dealer may upon notice
thereof thereafter be denied rebates by the state tax commission in accordance with
rules and regulations promulgated by such commission. Provided, that nothing
herein shall limit the right to file a claim for rebate under this section.

12. For the purposes of this section the following terms shall have the following
meanings:

(a) A "nonresident" shall mean an individual or group of individuals jointly
owning securities (but including partnerships only if organized and operating solely
for the purpose of investing in securities) selling or trading or delivering or
transferring on his or their own account, who is not, or no one of whom is, a resident.

(b) A "resident" means an individual who on the day upon which the tax imposed
by section two hundred seventy of this chapter accrues.

(1) Regardless of where he resides or is domiciled, (i) is a member of a securities
exchange within this state which is registered with the securities and exchange
commission of the United States; (ii) is a dealer in securities required to be registered
with the attorney general of the state of New York; (iii) acts as a broker or agent in transactions concerned with the sale, purchase, delivery or
transfer of securities; or (iv) is a member of or a person employed in a managerial
capacity by a firm, company, association or organization, or an officer or director of
or a person employed in a managerial capacity by a corporation, which is a member
organization of a securities exchange, a dealer in securities, or a dealer, broker or
agent, described in clause (i), (ii) or (iii) of this subparagraph, or

(2) is domiciled in this state, unless on such day he maintained no permanent
place of abode in this state, maintained a permanent place of abode elsewhere and
during the one year period ending on such day spent in the aggregate, not more than
thirty days of such period in this state, or

(3) is not domiciled in this state, but on such day maintained in this state, a per-
manent place of abode unless such abode is due solely to such individual's being in
the armed forces of the United States, or
(4) regardless of where he resides, maintains a permanent place of business
within this state or is employed within this state.
(c) No transaction shall be deemed to be a nonresident transaction and entitled to
rebate payable or allowable in subdivision two unless (1) the papers or documents
upon or to which are required to be placed or affixed the stamps required by sub-
division four of section two hundred seventy of this chapter, to denote the payment of
the tax commission signed by the person making the sale or transfer, setting forth
facts to show that the transaction is made by a nonresident; or (2) in the case of trans-
actions executed or effected within this state (or transaction executed or effected out-
side this state but subject to the tax imposed by this article) by any member or member
organization of any securities exchange within this state which is registered with the
securities and exchange commission of the United States (hereinafter in this section
referred to as a "member of a securities exchange") or by any person, firm, cor-
poration, company or association required to be registered with the attorney general
of the state of New York as a dealer in securities other than upon any such exchange
(hereinafter in this section referred to as a "registered dealer"), who is permitted or
required pursuant to any rules and regulations promulgated by the tax commission
pursuant to the provisions of section two hundred eighty-one of this chapter, to pay
the tax imposed by this article without the use of the stamps prescribed by this article,
the transaction is certified, in such form as the tax commission may prescribe, in the
report required to be made to such exchange, or its affiliated clearing corporation or
any authorized agency by rules and regulations promulgated by the tax commission
pursuant to section two hundred eighty-one of this chapter, as being a transaction
by a nonresident. The certification in such report may be made by such member of a
securities exchange or registered dealer if he either (i) has obtained from such
resident a declaration in the form prescribed by the tax commission, or (ii) has met
requirements set forth in rules and regulations promulgated by the tax commission
establishing that the transaction is made by a nonresident and (iii) has not, on or
after the date of obtaining such declaration or its delivery and filing, received from
such nonresident either a notice of cancellation, in the form prescribed in clause (iii)
of subparagraph two of paragraph (d) of this subdivision, or has no knowledge or
reasonable grounds to believe that the status of such nonresident as a nonresident has
changed.
(d) (1) Any person who shall knowingly make any false statement in a
declaration provided for by paragraph (c) of this subdivision shall be guilty of a
misdemeanor and upon conviction thereof shall be liable to a fine of not less than five
hundred nor more than one thousand dollars, or be imprisoned for not more than one
year, or be subject to both such fine and imprisonment, in the discretion of the court.
Any person who—
(i) having executed, filed with and delivered to a member of a securities exchange
or a registered dealer a declaration provided for by paragraph (c) of this subdivision;
(ii) thereafter ceases knowingly to be a nonresident;
(iii) fails to execute, file and deliver a notice of cancellation of such declaration,
with and to such member or dealer; and
(iv) after ceasing to be such a nonresident and prior to the execution, filing and
delivery of such notice of cancellation, with intent to cause a rebate to be made from
the stock transfer incentive fund in excess of the rebate allowable to residents under
subdivision one of this section, places and allows to be executed an order with such
member or dealer where the sale, agreement to sell, memorandum of sale, delivery or
transfer of any shares or certificates described in section two hundred seventy of this
chapter is subject to the taxes imposed by this chapter; shall be guilty of a
misdemeanor and upon conviction thereof shall be liable to a fine of not less than five
hundred nor more than one thousand dollars, or be imprisoned for not more than one
year, or be subject to both such fine and imprisonment, in the discretion of the court.
13. The state tax commission may provide that where a declaration has been
executed, filed and delivered to a member of a securities exchange or a registered
dealer under subdivision one of section two hundred seventy-a of this article and kept
by such member or dealer pursuant to rules, regulations and instructions of the state
tax commission, such declaration shall constitute the declaration of the nonresident
under subdivision twelve of this section.

§ 7. Subsection (e) of section seven hundred one of such law is hereby
amended by adding thereto a new paragraph, to be paragraph four, to read as
follows:

[(4) Provided, however, that the credit provided under this subsection shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subsection (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all relates
(provided for under the provisions of section two hundred eighty-a of article twelve of
this chapter) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subsection with respect to any tax incurred in market making transactions occurring
on or after October first, nineteen hundred eighty-one.

§ 8. Subdivisions three and four of section ninety-two-b of the state finance
law, as amended by chapter one hundred sixty-eight of the laws of nineteen
hundred seventy-five, are hereby amended to read as follows:

3. The moneys received from such tax and other sources in such fund, after
deducting the amount the commissioner of taxation and finance shall determine
to be necessary for reasonable costs of the state tax commission in
administering, collecting and distributing such tax, commencing with the fiscal
year ending March thirty-first, nineteen hundred seventy-seven, shall be
appropriated to (i) the municipal assistance corporation for the city of New
York created pursuant to title three of article ten of the public authorities law in
order to enable such corporation to fulfill the terms of any agreements made
with the holders of its notes and bonds and to carry out its corporate purposes
including the maintenance of the capital reserve fund and (ii) to the extent such
moneys are not required by such corporation as provided in subdivision seven of
section ninety-two-d of [the state finance law as added by a chapter of the laws
of nineteen hundred seventy-five] this chapter and, after deducting the amount
such commissioner shall determine to be necessary for reasonable costs of the state tax
commission in administering and making distributions in accordance with the
provisions of section two hundred eighty-a of the tax law from the stock transfer
incentive fund, to the stock transfer incentive fund created pursuant to section ninety-
two-i of this chapter to enable relates to be made from such fund under the provisions
of section two hundred eighty-a of the tax law and (iii) to the extent such moneys are
not required by such fund, as certified by the commissioner of taxation and finance.
the balance shall be appropriated to the city of New York, for the support of local
government.

4. After the deduction of such costs of the state tax commission in
administering, collecting and distributing such tax, the balances in [such] the
stock transfer tax fund so appropriated shall be distributed and paid on the last
day of September, December, March and June into the special account
established for the municipal assistance corporation for the city of New York in
the municipal assistance tax fund established pursuant to subdivision one of
section ninety-two-d of [the state finance law as added by a chapter of the laws
of nineteen hundred seventy-five] this chapter, unless and to the extent the
balances in such fund on each such last day are not required by such corporation
as provided in said subdivision seven of said section ninety-two-d [of the state
finance law] in which case the balance not so required, if any, after the deduction
of such costs of the state tax commission in administering and making distributions
in accordance with the provisions of section two hundred eighty-a of the tax law from
the stock transfer incentive fund shall be distributed and paid to the stock transfer
incentive fund in the custody of the commissioner of taxation and finance established
pursuant to section ninety-two-i of this chapter and unless and to the extent that the
balances in the stock transfer tax fund on each such last day are not required by the
stock transfer incentive fund as provided in such section ninety-two-i of this chapter
in which case the balance not so required, if any, shall be distributed and paid to
the chief fiscal officer of the city of New York to be paid into the treasury of the
city to the credit of the general fund, and on each such day, the commissioner of
taxation and finance shall certify to the comptroller the amount deducted for
administering, collecting and distributing such tax during such quarterly period
and shall pay such amount into the general fund of the state treasury to the
credit of the state purposes fund therein. In no event shall any amount (other
than the amount to be deducted for administering, collecting and distributing
such tax) be distributed or paid from the stock transfer tax fund to any person
other than the municipal assistance corporation for the city of New York unless
and until the aggregate of all payments certified to the comptroller as required
by such corporation in order to comply with its agreements with the holders of
its notes and bonds and to carry out its corporate purposes, including the
maintenance of the capital reserve fund, which remain unappropriated or
unpaid to such corporation shall have been appropriated to such corporation
and shall have been paid in full provided, however, that no person, including
such corporation or the holders of its notes or bonds shall have any lien on such
tax and such agreements shall be executed only to the extent of the balances
available to the state in such fund. If the balances in such fund are not required by
such corporation pursuant to the provisions of this subdivision, on each such last day
of September, December, March and June, the commissioner of taxation and finance
shall certify to the comptroller the amount deducted for administering and making
distributions in accordance with the provisions of section two hundred eighty-a of the
tax law from the stock transfer incentive fund during such quarterly period and he
shall pay such amount into the general fund of the state treasury to the credit of the
state purposes fund therein. To the extent such moneys are not required by such
corporation, as provided in subdivision seven of section ninety-two-d of this chapter,
no amount thereof (other than such amount to be deducted for administering,
collecting and distributing such tax and such costs in administering and making
distributions in accordance with the provisions of section two hundred eighty-a of the
tax law from the stock transfer incentive fund) shall be distributed or paid from the
stock transfer tax fund other than to the stock transfer incentive fund in the custody
of the commissioner of taxation and finance unless and until the aggregate of all
payments certified to the comptroller by such commissioner pursuant to the
provisions of such incentive fund as necessary to provide payments on account of
rebates authorized pursuant to section two hundred eighty-a of the tax law which
remain unappropriated or unpaid to such fund shall have been appropriated to such
fund and shall have been paid in full provided, however, that no person, including
any taxpayer under article twelve of the tax law or any member or dealer referred to
in subdivision six of section two hundred eighty-a of such law, shall have any lien on
this fund or the stock transfer incentive fund.

§ 9. Subdivision seven of section ninety-two-d of such law, as added by
chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, is
hereby amended to read as follows:

7. In the event that the amount of revenues in the special account established
for the municipal [assistant] assistance corporation for the city of New York in
the municipal assistance tax fund which have been appropriated to such
corporation shall at any time be less than the amount which the chairman of
such corporation has certified to the comptroller as required in order to comply
with its agreements with the holders of its notes and bonds and to carry out its
corporate purposes, including the maintenance of the capital reserve fund, then
and in such event the comptroller shall forthwith certify to the commissioner of
taxation and finance the amount of the difference between the revenues in such
special account and the amount so certified as required by such corporation and
upon receipt of such certificate the commissioner of taxation and finance shall
approve a voucher for payment of the amount of such difference into such
special account in the municipal assistance tax fund from the stock transfer tax
fund established pursuant to subdivision one of section ninety-two-b of [the
state finance law] this chapter at the next date for payment from such fund as
provided in subdivision four of such section, anything in said section to the
contrary notwithstanding. In the case of every fiscal year commencing after June
thirty-first, nineteen hundred seventy-eight, the comptroller shall, before the last day of
September, December, March and June of each such fiscal year, certify to the
commissioner of taxation and finance the amount from the stock transfer tax fund, if
any, determined by the comptroller to be required during the next following three
months in order to provide the amounts certified by the chairman of the municipal
assistance corporation for the city of New York, or if no such amount is necessary, a
statement to that effect. The foregoing certificate or statement, as the case may be,
shall be made regardless of the amount of revenues in the special account established
for the municipal assistance tax fund which have been appropriated to such
corporation.

§ 10. Such law is hereby amended by adding thereto a new section, to be
section ninety-two-i, to read as follows:

§ 92-i. Stock transfer incentive fund. 1. There is hereby established in the sole
custody of the commissioner of taxation and finance a special fund to be known as
the stock transfer incentive fund.

2. Such fund shall consist of moneys paid thereto from the stock transfer tax fund
as provided in subdivision four of section ninety-two-b of this chapter and all other
moneys appropriated, credited or transferred thereto from any other fund or source
pursuant to law.

3. On the last day of each of the months of September, December, March and June
of each year commencing December thirty-first, nineteen hundred seventy-seven, the
commissioner of taxation and finance shall determine the sum of (i) the amounts
allowable as rebates of the tax that is imposed by article twelve of the tax law and is
paid on transactions executed or effected during the three calendar months ending on
the next-to-the-last business day of each such month pursuant to subdivision one of
section two hundred eighty-a of the tax law and (ii) such amounts allowable as
rebates pursuant to subdivision two of such section.

4. On the last day of each such month the commissioner of taxation and finance
shall certify to the director of the budget, the state comptroller and the chief fiscal
officer of the city of New York each of the amount finally determined under clauses
(i) and (ii) of subdivision three of this section.

5. The amount so certified on such last day under subdivision four of this section
shall constitute the amount required to be paid into the stock transfer incentive fund
from the stock transfer tax fund pursuant to section ninety-two-b of this chapter.

6. (a) (1) For the period beginning August first, nineteen hundred seventy-eight
and ending June thirty-first, nineteen hundred seventy-nine, on the last day of each of
the months of September, December, March and June, the commissioner of taxation
and finance shall certify to the comptroller the amount of the tax imposed by this
article collected during the three month period ending on each such last day, except
that on September thirty-first, nineteen hundred seventy-eight, the commissioner shall

certify only the amount of such tax collected on and after August first, nineteen
hundred seventy-eight. The state comptroller shall pay forthwith an amount equal to
one-half of twenty-five percent of the amount so certified from the general fund of the
state of New York to the extent that monies have been appropriated and made available therefor; provided, however, that in no event shall the amount so paid exceed
sixteen million dollars in the state fiscal year beginning April first, nineteen
hundred seventy-eight.

(2) Upon receipt of each certification of the commissioner of taxation and finance
provided for in subdivision four of this section, on and after December thirty-first,
nine hundred seventy-nine and on or before September thirtieth, nineteen
hundred eighty, the state comptroller shall pay an amount equal to one-half
of the amount certified by such commissioner as relates allowable under the
provisions of clause (i) of subdivision three of this section from the general fund of
the state of New York to the fund created pursuant to this section, to the extent that
monies have been appropriated and made available therefor. Upon receipt of the
certification of the commissioner of taxation and finance provided for in subdivision
four of this section, on and after October first, nineteen hundred eighty, the state
comptroller shall pay an amount equal to one-half of the amounts certified
by such commissioner as relates allowable under the provisions of clauses (i) and (ii)
of subdivision three of this section from the general fund of the state of New York, to
the fund created pursuant to this section, to the extent that monies have been
appropriated and made available therefor.

(b) Provided, however, that the amounts paid from the general fund of the state of
New York under paragraph (a) of this subdivision in the state fiscal year beginning
April first, nineteen hundred seventy-nine shall not exceed fifty million dollars; and
in the state fiscal year beginning April first, nineteen hundred eighty such amounts
shall not exceed ninety million dollars and in the state fiscal year beginning April
first, nineteen hundred eighty-one and in every state fiscal year thereafter such
amounts shall not exceed one hundred twenty million dollars.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, the state
comptroller shall, in addition to the payments to be made under paragraph (a) of this
subdivision, also pay to the credit of the fund created pursuant to this section an
amount equal to one-half of the costs deducted by such commissioner for the costs of
the state tax commission in administering and making distributions in accordance
with the provisions of subdivision four of section ninety-two-b of this chapter.

7. If on the day the commissioner of taxation and finance makes the
determinations required under subdivision three of this section, he determines that, as
a result of the payments made into the stock transfer incentive fund pursuant to
subdivision five and six of this section, the amounts in such fund exceed the amounts
determined pursuant to clauses (i) and (ii) of subdivision three of this section for the
three calendar months ending on the next-to-the-last business day preceding the day
on which such determination is made, the amount of such excess shall be paid
forthwith to the chief fiscal officer of the city of New York for support of local
government.

8. Notwithstanding any provision of general or special law to the contrary, all
money of such fund shall be deposited by the commissioner of taxation and finance
in any responsible bank, banking house or trust company as may be approved by the
comptroller. All amounts so deposited shall be kept separate and apart and shall not
be commingled with any other moneys in the custody of the commissioner of taxation
and finance. All deposits of monies of such fund shall be secured by obligations of the
United States or of the state having a market value equal at all times to the amount
of the deposit and all banks and trust companies are authorized to give security for
such deposits. Any such moneys deposited in such fund may, in the discretion of the
commissioner of taxation and finance, be invested in obligations of the United States
city of New York is hereby amended by adding thereto a new paragraph, to be
paragraph (d), to read as follows:
(d) Provided, however, that the credit provided under this subdivision shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
(provided for under the provisions of section two hundred eighty-a of article twelve of
the tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.
§ 14. Subdivision (c) of section S46-3.0 of such code is hereby amended by
adding thereto a new paragraph, to be paragraph four, to read as follows:
(4) Provided, however, that the credit provided under this subdivision shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
(provided for under the provisions of section two hundred eighty-a of article twelve of
the tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.
§ 15. Section one of chapter fifty of the laws of nineteen hundred seventy-
seven, relating to making appropriations for support of government is hereby
amended to read as follows:

Stock Transfer Tax Fund
For payment to the municipal assistance tax fund for payment
to the municipal assistance corporation for the city of New
York, to the extent required to comply with the agreements
between such corporation and the holders of its notes and
bonds, and for the corporate purposes of such corporation
and to the extent not required by such corporation for such
purposes, for payment to the stock transfer incentive fund to the
extent required to comply with the certification of the com-
mmissioner of taxation and finance provided under section
ninety-two-i of the state finance law and to the extent not
required by such certification of the commissioner of taxation
and finance, for payment to the city of New York for support
of local government, provided, however, that the maximum
amount to be paid shall not exceed the collections from the
stock transfer tax pursuant to article 12 of the tax law, less
administrative costs as certified by the commissioner of tax-
ation and finance for deposit to the credit of the general
fund—state [purpose] purposes fund . . . [250,000,000] 270,000,000
§ 16. The sum of three hundred thousand dollars ($300,000), or so much
thereof as may be necessary, is hereby appropriated during the fiscal year com-
mencing April first, nineteen hundred seventy-seven to the stock transfer in-
centive fund created pursuant to section ninety-two-i of the state finance law for
the amount the commissioner of taxation and finance shall determine to be
necessary for reasonable costs of the state tax commission in administering and
making distributions in accordance with the provisions of section two hundred
eighty-a of the tax law out of any moneys available in the state treasury in the
general fund for purposes of providing rebates pursuant to subdivision two of
section two hundred eighty-a of the tax law.
or of the state or in other obligations, the principal of and interest on which are
guaranteed by the United States or by the state.

9. Out of such moneys deposited in the fund created by this section, the
commissioner of taxation and finance shall, except for rebates payable in the manner
described in subdivision six of section two hundred eighty-a of the tax law, make the
payments required to be paid on claims for rebates made pursuant to section two
hundred eighty-a of the tax law, but in no event shall such rebates be paid prior to the
last day of each of the months of September, December, March and June with respect
to taxes paid during the period of three calendar months ending on each such last
day. Out of moneys deposited in the fund created by this section, the commissioner of
taxation and finance shall pay to each exchange, affiliated clearing corporation or
authorized agency which shall have remitted amounts to the tax commission, in the
manner set forth in subdivision six of section two hundred eighty-a of the tax law, the
rebate payable pursuant to subdivisions one and two of such section, the rebates
payable in the manner described in subdivision six of section two hundred eighty-a of
the tax law not later than the day after the day the tax is paid to the amount of such
rebates remitted to the tax commission under such subdivision and paid to the fund
created by this section from the stock transfer tax fund pursuant to section ninety-
three-a of this chapter. Upon such payment the liability of the state therefor shall be
fully discharged.

10. In the event that moneys deposited in the fund created by this section are
insufficient to pay such rebates, the city of New York shall pay any such deficiency
to such fund in accordance with local law.

11. The commissioner of taxation and finance shall not be held liable for any
inaccuracy in any certification under this section.

§ 11. Subsection four-a of part two of section one of chapter seven hundred
seventy-two of the laws of nineteen hundred sixty-six relating to enabling any
city having a population of one million or more to raise tax revenue by
authorizing the imposition of taxes on general, financial, insurance and
transportation corporations and on unincorporated businesses, is hereby
amended by adding thereto a new subdivision, to be subdivision four, to read as
follows:

(4) Provided, however, that the credit provided under this subsection shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subsection (determined without
regard to the provisions of this subdivision) exceeds fifty percent of all rebates
received under the provisions of section two hundred eighty-a of article twelve of
the tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is allowed. No credit shall be allowed under this
subsection with respect to any tax incurred in market making transactions occurring
on or after October first, nineteen hundred eighty-one.

§ 12. Subdivision (c) of subsection one hundred one contained in section two
of such chapter is hereby amended by adding thereto a new paragraph, to be
paragraph four, to read as follows:

(4) Provided, however, that the credit provided under this subdivision shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this paragraph (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
received under the provisions of section two hundred eighty-a of article twelve of the
tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subsection with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.

§ 13. Subdivision eleven of section R49-4.0 of the administrative code of the
§ 17. This act shall take effect immediately, except that the provisions of section two of this act shall take effect October first, nineteen hundred seventy-seven.

Note.—Subdivision two of section two hundred seventy-six of the tax law, proposed to be repealed by section three of this act, relates to maximum amounts of tax under the stock transfer tax imposed by article twelve of the tax law, which are continued under section two hundred seventy-six of such law as added by section six of this act.

Subdivisions one and three of section two hundred seventy-six of the tax law, proposed to be repealed on October first, nineteen hundred seventy-seven by this act, relate to the reduced rates of stock transfer tax provided for nonresidents. These reduced rates will be accounted for through the rebate mechanism provided by this act.
§ 92-b Stock Transfer Tax Fund

3. The moneys received from such tax and other sources in such fund, after deducting the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering, collecting and distributing such tax, commencing September 30, 1977, shall be appropriated as follows:

[to (i)] (i) to the municipal assistance corporation for the city of New York created pursuant to title three of article ten of the public authorities law in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund, [and] (ii) to the extent such moneys are not required by such corporation as provided in subdivision seven of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five to the stock transfer incentive fund established by section ninety-two-h of this chapter, for the payment of rebates of the tax imposed by article twelve of the tax law as provided by section two hundred seventy-y of the tax law as added by a chapter of the laws of nineteen hundred seventy-seven and (iii) to the extent such moneys are not required for the purposes set forth in clauses (i) and (ii) of this subdivision, to the city of New York, for the support of local government.

4. After the deduction of such costs of the state tax commission in administering, selecting and distributing such tax, the balances in such fund so appropriated shall be distributed
tax fund established pursuant to subdivision one of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five, unless and to the extent the balances in such fund on each such last day are not required by such corporation as provided in said subdivision seven of said section ninety-two-d of the state finance law in which case the balance not so required, if any, shall be paid into the stock transfer incentive fund established pursuant to subdivision one of section ninety-two-h of this chapter, unless and to the extent that the balances in such fund on each such last day are not required to be deposited in such stock transfer incentive fund as provided in subdivision three of section ninety-two-h of this chapter, in which case the balance not so required, if any, shall be distributed and paid to the chief fiscal officer of the city of New York to be paid into the treasury of the city to the credit of the general fund, and on each such date, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering, collecting and distributing such tax during such quarterly period and shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. In no event shall ... to the state in such fund.

5. In no fiscal year shall the total amount paid from the fund exceed the total collections during such fiscal year from the stock transfer tax pursuant to the provisions of article twelve of the tax law and as deposited to the credit of the stock transfer tax fund, plus income earned on such collections.
§ 92-h  Stock transfer incentive fund.  [new]

1. There is hereby established in the custody of the commissioner of taxation and finance a special fund to be known as the stock transfer incentive fund.

2. Such fund shall consist of moneys paid into the same by the commissioner of taxation and finance from the stock transfer tax fund as provided in subdivision four of section ninety-two-b of this chapter and all other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law.

3. On or before the 25th day of each of the months of September, December, March and June of each year commencing September 25, 1977, the commissioner of taxation and finance shall determine the sum of (i) the aggregate amounts estimated to be payable during the next succeeding three calendar months pursuant to section two hundred seventy-y of the tax law as rebates of the tax imposed by article twelve of the tax law, (ii) the amount of reserves estimated to be necessary to account for fluctuations in the amount of such rebates to become payable during such period, and (iii) the aggregate amount of such rebates estimated to be payable but unpaid on the last day of the month in which such determination is made. Such sum, less the amount of moneys on deposit in the stock transfer incentive fund which the commissioner of taxation and finance determines shall remain available for the payment of such rebates during such three-month period, shall constitute the amount required pursuant to subdivision four of section ninety-two-b of this chapter to be paid on the last day of each such month into the stock transfer incentive fund for the payment of such rebates.

4. The commissioner of taxation and finance shall pay, solely from the moneys on deposit in the stock transfer incentive fund, the rebates due and payable under section two-hundred-seventy-y of the tax law, in the manner provided...
4. The commissioner of taxation and finance shall pay, solely from the moneys on deposit in the stock transfer incentive fund, the rebates due and payable under section two hundred seventy-y of the tax law, in the manner provided in subdivision nine of this section. The commissioner of taxation and finance shall each day pay or transfer from the stock transfer incentive fund to the stock transfer tax fund all amounts credited that day pursuant to paragraph b of subdivision three of section two hundred seventy-y against the tax imposed by article twelve of the tax law in the manner provided in subdivision nine of this section.

5. Commencing September 30, 1977, no later than ten days following the last day of each of the months of September, December, March and June of each year, the commissioner of taxation and finance shall certify to the comptroller the aggregate amount of rebates of the tax imposed by article twelve of the tax law paid during the three-month period ending on such day pursuant to section two hundred seventy-y of the tax law. No later than five days after receipt of such certification, the comptroller shall pay to the stock transfer incentive fund an amount equal to fifty per centum of the amount so certified, to the extent that moneys have been appropriated and made available therefor, but in no event shall the aggregate amount so paid exceed $108 million in any fiscal year; provided, however, that if the comptroller shall fail to make such payment, the rebate of the tax imposed by article twelve of the tax law to be paid during the three-month period beginning on the last day of September, December, March or June next succeeding such failure shall be one-half of the amount described in section two hundred seventy-y of the tax law.
6. (a) On or before September 25, 1977, the commissioner of taxation and finance shall certify to the comptroller the amount, as determined pursuant to subdivision three of this section, required pursuant to subdivision four of section ninety-two-b of this chapter to be paid on September 30, 1977 into the stock transfer incentive fund for the payment of rebates of the tax imposed by article twelve of the tax law. Prior to September 30, 1977, the comptroller shall pay into the stock transfer incentive fund an amount equal to the amount so certified.

(b) On or before the 25th day of each of the months of September, December, March and June of each year commencing December 25, 1977, the commissioner of taxation and finance shall certify to the comptroller the amount, as determined pursuant to subdivision three of this section, required pursuant to subdivision four of section ninety-two-b of this chapter to be paid on the last day of each such month into the stock transfer incentive fund for the payment of rebates of the tax imposed by article twelve of the tax law.

If the amount of such certification exceeds the net amount of the Stock Transfer Tax Fund on the last day of the preceding quarter therefore paid into the stock transfer incentive fund pursuant to this section, the comptroller shall pay the amount of such excess into such fund prior to the last day of the month of such certification. If the net amount therefore paid into the stock transfer incentive fund pursuant to this section exceeds the amount of such certification, the amount not otherwise paid shall be deducted from the amount which would otherwise be paid to the chief fiscal officer of the City of New York pursuant to section ninety-two-b of this chapter and shall be transferred to the general fund.

If the net closing balance of the STTF exceeds the amount of such certification, the amount of such excess shall be distributed to the city otherwise due to the city and paid into the STTF.
(c) As of any date, the net amount paid into the stock transfer incentive fund pursuant to this section shall mean the amount initially paid into such fund pursuant to paragraph (a) of this subdivision plus the total of all additional amounts paid prior to such date into such fund pursuant to paragraph (b) of this subdivision less the total of all amounts theretofore transferred to the general fund pursuant to paragraph b [deducted prior to such date pursuant to such paragraph (b) from the amounts that would otherwise be paid to the chief fiscal officer of the City of New York.]

7. If on any day the commissioner of taxation and finance determines that, as a result of the payments made into the stock transfer incentive fund pursuant to subdivision five of this section, the amounts in such fund exceed the amount, as determined pursuant to subdivision three of this section, required for the payment of rebates during the period ending on the next succeeding last day of September, December, March or June of each year, such amounts shall be forthwith paid to the chief fiscal officer of the City of New York.

8. Moneys in the stock transfer incentive fund shall be kept separate and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance. All deposits of such moneys shall, if required by the commissioner of taxation and finance, be secured by obligations of the United States or of the state having a market value equal at all times to the amounts of deposits and all banks and trust companies are authorized to give security for such deposits. Any such moneys in such fund may, in the discretion of the commissioner of taxation and finance,
be invested in obligations of the United States or the state or in other obligations, the principal of and interest on which are guaranteed by the United States or by the state.

9. All payments from the stock transfer incentive fund, other than payments or transfers to the stock transfer tax fund, shall be made on audit and warrant of the comptroller on vouchers approved by the commission of taxation and finance. Payments or transfers from the stock transfer incentive fund to or for the credit of the stock transfer tax fund shall be made in such manner as the commissioner of taxation and finance determines to be appropriate to make such payments or transfers on a daily basis.
§270-x. Maximum amounts of tax. 1. Notwithstanding the provisions of section two hundred seventy of this chapter, on and after July 1, 1978, the maximum amounts of tax set forth in subdivision two of this section shall apply, in the case of those transactions subject to tax under section two hundred seventy and described in subdivision two of this section.

2. Where any transaction subject to the tax imposed by this article involves a sale which relates to shares or certificates of the same class and issued by the same issuer, the amount of tax upon any such transaction which involves such single taxable sale shall not exceed the sum of three hundred fifty dollars; provided, however, that sales by any member of a securities exchange or by any registered dealer, who is permitted or required pursuant to any rules and regulations promulgated by the tax commission pursuant to the provisions of section two hundred eighty-one-a of this chapter to pay the taxes imposed by this article without the use of the stamps prescribed by this article, pursuant to one or more orders placed with the same member of a securities exchange or the same registered dealer on one day, by the same person, each relating to shares or certificates of the same class and issued by the same issuer, all of which sales are executed on the same day (regardless of whether it be the day of the placing of the orders), shall, for the purposes of this subdivision two, be considered to constitute a single taxable sale.
Draft 6/3/77

Exhibit D

§270-y. Rebates of tax. 1. Notwithstanding the
provisions of sections two hundred seventy-two hundred
seventy-d, or two hundred seventy-x of this chapter, rebates
of the tax imposed by such sections and paid on any transaction
involving sale made on or after September 1, 1977 shall be
paid forthwith to the person, firm, company, corporation or
association which has incurred the liability for such tax,
to the extent that moneys are available therefor in the
stock transfer incentive fund established pursuant to section
ninety-two-h of the state finance law, as provided in subdivi-
sions two and three of this section.

2. (a) Subject to subdivision five of section
ninety-two-h of the state finance law, and except as provided
in paragraphs b and c of this subdivision, the rebates pro-
vided in subdivision one of this section shall be paid in the
following percentages of the tax paid on transactions involving
sales made during the periods set forth in the following table:

<table>
<thead>
<tr>
<th>Period</th>
<th>Rebate</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 1979 to September 30, 1980</td>
<td>30%</td>
</tr>
<tr>
<td>October 1, 1980 to September 30, 1981</td>
<td>60%</td>
</tr>
<tr>
<td>October 1, 1981 and thereafter</td>
<td>100%</td>
</tr>
</tbody>
</table>

(b) [Marketer rebate to be 100% beginning
on July 1, 1978 — TO BE DRAFTED.]

(c) (1) During the periods set forth in the
following table, the rebates provided in subdivision one of this
section shall be paid in the following percentages of the tax
paid on transactions involving sales by a non-resident:

<table>
<thead>
<tr>
<th>Period</th>
<th>Rebate</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 1977 to July 31, 1978</td>
<td>50%</td>
</tr>
<tr>
<td>August 1, 1978 to September 30, 1980</td>
<td>37.5%</td>
</tr>
</tbody>
</table>
Commencing on October 1, 1980, such rebates shall be paid pursuant to paragraph a of this subdivision irrespective of whether or not such sales were made by a non-resident.

(2) [Insert and re-number §§270-a(1)(b) and (c) and 270-a(3).]

3. (a) Except as provided in paragraph b of this subdivision, the rebates described in this section shall be payable upon the filing with the tax commission of a stock transfer tax rebate application in accordance with rules and regulations promulgated by the tax commission.

(b) Notwithstanding any other provision of this article, the tax commission shall by rules and regulations provide that in lieu of the payment of rebates provided for in this section, credits, in the amounts which would otherwise be payable as such rebates, shall be made or effected against taxes which are imposed by this article (i) on any sale, delivery or transfer by any member of any securities exchange which is registered with the securities and exchange commission of the United States, provided that such taxes are permitted to be paid to such exchange or to an affiliated clearing corporation pursuant to section two hundred eighty-one-a of this chapter by the person, firm, corporation, company or association executing or effecting the sale, delivery or transfer, without the use of the stamps prescribed by this article, and (ii) on any sale or transfer executed or effected by any person, firm, corporation, company or association required to be registered with the attorney general of the state of New York as a dealer in securities, other than upon any such exchange, provided that such taxes are permitted to be paid to an agency duly authorized by the tax commission pursuant to section two hundred eighty-one-a of this chapter by the person, firm, company, corporation or association executing or effecting such sale or transfer, without the use of the stamps prescribed by this article. Any such credit shall be made or effected to or
for the benefit of such exchange, or in the discretion of the
tax commission, to an affiliated clearing corporation, or to
such authorized agency, without the filing of the application
required by paragraph a of this subdivision, on the filing of
the report hereinafter referred to, provided that on or before
the date such credit is effected an amount equal to such credit
is transferred or paid from the stock transfer incentive fund
established pursuant to section ninety-two-h of the state
finance law to the stock transfer tax fund. On the written
report required to be made to such exchange, affiliated
clearing corporation or authorized agency by each such person,
firm, corporation, company, or association pursuant to section
two hundred eighty-one-a showing the amount of tax payable on
all such sales, deliveries or transfers, which report shall be
filed with the tax commission as a pre-condition for the
issuance of the credit herein provided for, there shall
also be shown the amount to be credited against such amount
of tax pursuant to this section. To the extent that credits
against the amount of tax shown to be due on such report are
made pursuant to this section, the amount required to be paid
(for the account of the tax commission) to such exchange,
affiliated clearing corporation or authorized agency pursuant
to section two hundred eighty-one-a shall be the amount of tax
shown to be due on such written report less the amount of any
such credit. For the purposes of this section, the term
"affiliated clearing corporation" shall, if it has a place of
business in this state, include a clearing corporation as
declared in subsection three of section 8-102 of the uniform
commercial code and a clearing corporation affiliated with a
national securities exchange or association registered with
the securities and exchange commission of the United States.
Any and all credits against the tax imposed by this article

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effected pursuant to this paragraph to or for the benefit of
an exchange, affiliated clearing corporation or authorized agency
shall be credited, or caused to be credited, by such exchange,
affiliated clearing corporation or authorized agency to or
for the benefit of the person, firm, corporation, company or
association which has incurred the liability for such tax.

4. On any day, moneys shall be deemed to be avail-
able in the stock transfer incentive fund for the payment of
such rebates only if the opening balance on deposit therein and
available for the payment of rebates and credits exceeds the
minimum residual value, as defined in the next sentence, or
such greater amount as the commissioner of taxation and finance
shall determine to be required for the payment of such rebates
on such day. The "minimum residual value" for any day shall
equal two and one half times the amount which the commissioner
of taxation and finance determines would have been required to
be rebated on the most active trading day on all national
exchanges in the State which has occurred during the immediately
preceding thirteen-month period if, on such most active trading
day, rebates or credits had been paid or effected at the per-
cent in effect on the day for which the minimal residual value
is being calculated. The commissioner of taxation and finance
is authorized to make a preliminary determination as to
whether or not moneys will be available in the stock transfer
incentive fund for the payment of rebates or the effecting of
credits on any day, but such preliminary determination shall
not be made more than seven business days prior to the date
with respect to which such preliminary determination is being
made.
5. If [after any determination of minimum residual value,] the commissioner of taxation and finance determines that rebates paid or credits effected have exceeded moneys available in the stock transfer incentive fund for paying such rebates or effecting such credits, such commissioner shall take such steps as he deems necessary, including not effecting further credits pursuant to paragraph b of subdivision three of this section, to collect the full tax due and imposed by this article to recover a rebate paid or a credit effected in error.
MEMORANDUM
May 27, 1977

Re: MAC Stock Transfer Tax Proposals

I. Outline of Proposal

1. Section 270-a of the Tax Law will be repealed in its entirety, thereby eliminating the "maximum tax" and the "non-resident reduction" for sales made within the State.

2. The "market-maker exemption" enacted by Chapter 842 of the Laws of 1976 will be repealed.

3. The 25% stock transfer tax surcharge will expire as scheduled on July 31, 1978.

4. By amendment to the Tax Law, the "maximum tax" will be extended to all transactions regardless of place of sale.

5. Rebates of the tax imposed by Section 270 of the Tax Law, as limited by the "maximum tax," will be paid to taxpayers, but only after MAC has certified (against gross tax receipts each quarter) that its debt service requirements have been made. Rebates will be paid only to the extent that monies are available therefor in a new fund to be known as the "stock transfer incentive fund."

6. In addition to the elimination of the stock transfer tax surcharge, rebates will increase each year from 6.25% during the City's 1978-1979 fiscal year to 100% during the City's
1981-1982 fiscal year except for the rebates on "market-maker" transactions, which will be 100% beginning in the City's 1978-1979 fiscal year.

7. Except for those taxpayers who actually purchase stamps, the method of paying rebates will be to effect an instantaneous credit against the stock transfer tax due each day, but only to the extent that sufficient moneys are available that day in the stock transfer incentive fund to make the credit.

8. The stock transfer incentive fund will be initially funded by the State or by the State and the City. The State will also pay the City each quarter an amount equal to 50% of the total rebates paid that quarter.

II. Legislative Proposals

1. Section 92-b of the State Finance Law will be amended to provide for payments of stock transfer tax revenues to the stock transfer incentive fund, after certification of MAC's requirements, but before payment to the City. (Exhibit A)

2. A new Section 92-h of the State Finance Law will establish the stock transfer incentive fund and provide for payments to such fund from stock transfer tax revenues at the end of each quarter, in the amount estimated by the State Tax Commissioner to be payable as rebates in the next succeeding quarter. (Exhibit B)
3. A new Section 270-x will be added to the Tax Law providing for a "maximum tax" on all transactions, regardless of place of sale, in the amount of $350. (Exhibit C)

4. A new Section 270-y will be added to the Tax Law providing for (i) the payment of rebates to the extent moneys are available in the stock transfer incentive fund, (ii) the amount of rebates, (iii) and the method of payment. (Exhibit D)

5. Legislation will be drafted to repeal the current Section 270-a of the Tax Law and the various provisions constituting the "market-maker exemption" (c. 842, L. 1976). Section 281-a of the Tax Law may also be amended to comply with proposed Section 270-y(3)(b).
§ 92-b Stock Transfer Tax Fund

3. The moneys received from such tax and other sources in such fund, after deducting the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering, collecting and distributing such tax, commencing July 1, 1978, shall be appropriated as follows: (i) to the municipal assistance corporation for the city of New York created pursuant to title three of article ten of the public authorities law in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund, (ii) to the extent such moneys are not required by such corporation as provided in subdivision seven of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five to the stock transfer incentive fund established by section ninety-two-h of this chapter law, for the payment of rebates of the tax imposed by article twelve of the tax law as provided by section two hundred seventy of the tax law as added by a chapter of the laws of nineteen hundred seventy-seven and (iii) to the extent such moneys are not required for the purposes set forth in clauses (i) and (ii) of this subdivision, to the city of New York, for the support of local government.

4. After the deduction of such costs of the state tax commission in administering, selecting and distributing such tax, the balances in such fund so appropriated shall be distributed and paid on the last day of September, December, March and June into the special account established for the municipal assistance corporation for the city of New York in the municipal assistance
tax fund established pursuant to subdivision one of
section ninety-two-d of the state finance law as added by a
chapter of the laws of nineteen hundred seventy-five, unless
and to the extent the balances in such fund on each such last
day are not required by such corporation as provided in said
subdivision seven of said section ninety-two-d of the state
finance law in which case the balance not so required, if any,
shall be paid into the stock transfer incentive fund established
pursuant to subdivision one of section ninety-two-h of this
chapter, unless and to the extent that the balances in such
fund on each such last day are not required to be deposited in
such stock transfer incentive fund as provided in subdivision
three of section ninety-two-h of this chapter, in which case
the balance not so required, if any, shall be distributed and
paid to the chief fiscal officer of the city of New York to be
paid into the treasury of the city to the credit of the general
fund, and on each such date, the commissioner of taxation and
finance shall certify to the comptroller the amount deducted
for administering, collecting and distributing such tax during
such quarterly period and shall pay such amount into the general
fund of the state treasury to the credit of the state purposes
fund therein. In no event shall . . . to the state in such fund.

5. In no fiscal year shall the total amount paid from
the fund exceed the total collections during such fiscal year
from the stock transfer tax pursuant to the provisions of article
twelve of the tax law and as deposited to the credit of the stock
transfer tax fund, plus interest earned on such collections.
§92-h  Stock transfer incentive fund. [new]

1. There is hereby established in the custody of the commissioner of taxation and finance a special fund to be known as the stock transfer incentive fund.

2. Such fund shall consist of moneys paid into the same by the commissioner of taxation and finance from the stock transfer tax fund as provided in subdivision four of section ninety-two-b of this chapter and all other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law.

3. On the last day of September, December, March and June of each year commencing July 1, 1978, the commissioner of taxation and finance shall determine the sum of (i) the aggregate amounts estimated to be payable during the next succeeding three-month period pursuant to section two hundred seventy-y of the tax law as rebates of the tax imposed by article twelve of the tax law, (ii) the amount of reserves estimated to be necessary to account for periodic fluctuations in the amount of such rebates to become payable during such period, and (iii) the aggregate amount of such rebates payable but remaining unpaid on the date of such determination. Such sum, less the amount of moneys on deposit in the stock transfer incentive fund which the commissioner of taxation and finance determines are then available for the payment of such rebates during such three-month period, shall constitute the amount required pursuant to subdivision four of section ninety-two-b of this chapter to be paid on each such last day into the stock transfer incentive fund for the payment of such rebates.

4. The commissioner of taxation and finance shall pay, solely from the moneys on deposit in the stock transfer incentive fund, the rebates due and payable under section two hundred seventy-y of the tax law, in the manner provided
in subdivision eight of this section. The commissioner of taxation and finance shall each day pay or transfer from the stock transfer incentive fund to the stock transfer tax fund all amounts credited that day pursuant to paragraph b of subdivision three of section two hundred seventy-six against the tax imposed by article twelve of the tax law in the manner provided in subdivision eight of this section.

5. Commencing July 1, 1978, no later than thirty days following the last day of September, December, March and June of each year, the commissioner of taxation and finance shall certify to the comptroller the aggregate amount of rebates of the tax imposed by article twelve of the tax law paid during such fiscal year pursuant to section two hundred seventy-six of the tax law. No later than ten days after receipt of such certification, the comptroller shall pay to the chief fiscal officer of the city of New York an amount equal to fifty per centum of the amount so certified but only to the extent that moneys have been appropriated and made available therefor; provided however that if the comptroller shall fail to make such payment, the rebate of the tax imposed by article twelve of the tax law to be paid during the three-month period beginning on the last day of September, December, March or June next succeeding such failure shall be one-half of the amount described in section two hundred seventy-six of the tax law.

6. On or before June 30, 1978, the commissioner of taxation and finance shall determine the sum of (i) the aggregate amounts estimated to be payable during the next succeeding three-month period pursuant to section two hundred seventy-six of the tax law as rebates of the tax imposed by article twelve of the tax law and (ii) the amount of reserves estimated to be necessary to account for periodic fluctuations in the amount of such rebates.
in subdivision eight of this section. The commissioner of taxation and finance shall each day pay or transfer from the stock transfer incentive fund to the stock transfer tax fund all amounts credited that day pursuant to paragraph b of subdivision three of section two hundred seventy-y against the tax imposed by article twelve of the tax law in the manner provided in subdivision eight of this section.

5. Commencing July 1, 1978, no later than thirty days following the last day of September, December, March and June of each year, the commissioner of taxation and finance shall certify to the comptroller the aggregate amount of rebates of the tax imposed by article twelve of the tax law paid during such fiscal year pursuant to section two hundred seventy-y of the tax law. No later than ten days after receipt of such certification, the comptroller shall pay to the chief fiscal officer of the city of New York an amount equal to fifty per centum of the amount so certified but only to the extent that moneys have been appropriated and made available therefor; provided however that if the comptroller shall fail to make such payment, the rebate of the tax imposed by article twelve of the tax law to be paid during the three-month period beginning on the last day of September, December, March or June next succeeding such failure shall be one-half of the amount described in section two hundred seventy-y of the tax law.

6. On or before June 30, 1978, the commissioner of taxation and finance shall determine the sum of (i) the aggregate amounts estimated to be payable during the next succeeding three-month period pursuant to section two hundred seventy-y of the tax law as rebates of the tax imposed by article twelve of the tax law and (ii) the amount of reserves estimated to be necessary to account for periodic fluctuations in the amount of such rebates.
to become payable during such period. Such sum shall be paid into the stock transfer incentive fund on July 1, 1978 and the moneys therefor shall be provided as follows:

[TO BE DRAFTED]

7. Moneys in the stock transfer incentive fund, shall be kept separate and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance. All deposits of such moneys shall, if required by the commissioner of taxation and finance, be secured by obligations of the United States or of the state having a market value equal at all times to the amounts of deposits and all banks and trust companies are authorized to give security for such deposits. Any such moneys in such fund may, in the discretion of the commissioner of taxation and finance, be invested in obligations of the United States or the state or in other obligations, the principal of and interest on which are guaranteed by the United States or by the state.

8. All payments from the stock transfer incentive fund, other than payments or transfers to the stock transfer tax fund, shall be made on audit and warrant of the comptroller on vouchers approved by the commission of taxation and finance. Payments or transfers from the stock transfer incentive fund to or for the credit of the stock transfer tax fund shall be made in such manner as the commissioner of taxation and finance determines to be appropriate to make such payments or transfers on a daily basis.
§270-x. Maximum amounts of tax. 1. Notwithstanding the provisions of section two hundred seventy of this chapter, on and after July 1, 1978, the maximum amounts of tax set forth in subdivision two of this section shall apply, in the case of those sales subject to tax under section two hundred seventy and described in subdivision two of this section.

2. Where any transaction subject to the tax imposed by this article involves a sale which relates to shares or certificates of the same class and issued by the same issuer, the amount of tax upon any such transaction which involves such single taxable sale shall not exceed the sum of three hundred fifty dollars; provided, however, that sales by any member of a securities exchange or by any registered dealer, who is permitted or required pursuant to any rules and regulations promulgated by the tax commission pursuant to the provisions of section two hundred eighty-one-a of this chapter to pay the taxes imposed by this article without the use of the stamps prescribed by this article, pursuant to one or more orders placed with the same member of a securities exchange or the same registered dealer on one day, by the same person, each relating to shares or certificates of the same class and issued by the same issuer, all of which sales are executed on the same day (regardless of whether it be the day of the placing of the orders), shall, for the purposes of this subdivision two, be considered to constitute a single taxable sale.
[New] §270-y. Rebates of tax. 1. Notwithstanding the provisions of section two hundred seventy of this chapter, rebates of the tax imposed by such section and paid on any transaction involving a sale made on or after July 1, 1978 shall be paid to the person, firm, company, corporation or association which has incurred the liability for such tax, forthwith to the extent that moneys have been appropriated and are available therefor in the stock transfer incentive fund established pursuant to section ninety-two-h of the state finance law, as provided in subdivisions two and three of this section.

2. (a) Except as provided in paragraph b of this subdivision, on transactions involving sales made during the periods set forth in the following table, the rebates provided in subdivision one of this section shall be paid or effected in the following percentages of the tax paid on such transactions:

<table>
<thead>
<tr>
<th>Period</th>
<th>Rebate</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 1978 to June 30, 1979</td>
<td>6.25%</td>
</tr>
<tr>
<td>July 1, 1979 to June 30, 1980</td>
<td>37.50%</td>
</tr>
<tr>
<td>July 1, 1980 to June 30, 1981</td>
<td>68.75%</td>
</tr>
<tr>
<td>July 1, 1981 and thereafter</td>
<td>100%</td>
</tr>
</tbody>
</table>

(b) [Market-maker rebate to be 100% beginning on July 1, 1978, -- TO BE DRAFTED.]

3. (a) Except as provided in paragraph b of this subdivision, the rebates described in this section shall be paid upon the filing with the tax commission of a stock transfer tax rebate application in accordance with rules and regulations promulgated by the tax commission.

(b) Notwithstanding any other provision of this article, the tax commission shall by rules and regulations provide that in lieu of the payment rebates provided for in this section (i) credits, in the amounts which would otherwise be payable as such rebates, against taxes which are imposed by this article on any sale, delivery or transfer by any member of any

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securities exchange which is registered with the securities and
exchange commission of the United States and which are permitted
to be paid to such exchange or to an affiliated clearing corpora-
tion pursuant to section two hundred eighty-one-a of this chapter
by the person, firm, corporation, company or association executing
or effecting the sale, delivery or transfer, without the use of
the stamps prescribed by this article, shall be made or effected
to or for the benefit of such exchange, or in the discretion of
the tax commission, to an affiliated clearing corporation, with-
out the filing of the application required by paragraph a of this
subdivision, provided that on or before the date such credit is
effected an amount equal to such credit is transferred or paid
from the stock transfer incentive fund established pursuant to
section ninety-two-h of the state finance law to the stock
transfer tax fund; and (ii) credits, in the amounts which would
otherwise be payable as such rebates, against taxes which are
imposed by this article on any sale or transfer executed or
effected by any person, firm, corporation, company or associa-
tion required to be registered with the attorney general of the
state of New York as a dealer in securities, other than upon
any such exchange, and which are permitted to be paid to an
agency duly authorized by the tax commission pursuant to section
two hundred eighty-one-a of this chapter by the person, firm,
company, corporation or association executing or effecting such
sale or transfer, without the use of the stamps prescribed by
this article, shall be made or effected to or for the benefit of
such authorized agency, without the filing of the application re-
quired by paragraph a of this subdivision, provided that on or before
the date such credit is effected an amount equal to such credit
transferred or paid from the stock transfer incentive fund es-
established pursuant to section ninety-two-h of the state finance
law to the stock transfer tax fund. On the written report re-
quired to be made to such exchange, affiliated clearing corpora-
tion or authorized agency by each such person, firm, corporation,
company, or association pursuant to section two hundred eighty-one-a showing the amount of tax payable on all such sales, deliveries or transfers, there shall also be shown the amount to be credited to such amount of tax pursuant to this section. To the extent that credits against the amount of tax shown to be due on such report are made pursuant to this section, the amount required to be paid for the account of the tax commission to such exchange, affiliated clearing corporation or authorized agency pursuant to section two hundred eighty-one-a shall be the amount of tax shown to be due on such written report less the amount of any such credit. For the purposes of this section the term "affiliated clearing corporation" shall, if it has a place of business in this state, include a clearing corporation as defined in subsection three of section 8-102 of the uniform commercial code and a clearing corporation affiliated with a national securities exchange or association registered with the securities and exchange commission of the United States. Any and all credits against the tax imposed by this article effected pursuant to this paragraph to or for the benefit of an exchange, affiliated clearing corporation or authorized agency shall be credited, or caused to be credited, by such exchange, affiliated clearing corporation or authorized agency to or for the benefit of the person, firm, corporation, company or association which has incurred the liability for such tax.

4. On any day, moneys shall be deemed to be available in the stock transfer incentive fund for the payment of such rebates only if the opening balance on deposit therein exceeds the minimum residual value, as defined in the next sentence, or such greater amount as the commissioner of taxation and finance shall determine to be required for the payment of such rebates on such day. The "minimum residual value" for any day shall equal two and one half times the amount which the commissioner of taxation and finance determines would have been required to be rebated on
the most active trading day on all national exchanges in the State which has occurred during the immediately preceding thirteen-month period if, on such most active trading day, rebates or credits had been paid or effected at the percent in effect on the day for which the minimal residual value is being calculated. The commissioner of taxation and finance is authorized to make a preliminary determination as to whether or not moneys will be available in the stock transfer incentive fund for the payment of rebates or the effecting of credits on any day, but such preliminary determination shall not be made more than seven business days prior to the date with respect to which such preliminary determination is being made.

5. If after the determination of the minimum residual value the commissioner of taxation and finance discovers that moneys were not in fact available in the stock transfer incentive fund for paying rebates or effecting credits, such commissioner shall take such steps as he deems necessary, including not crediting any amount pursuant to paragraph b of subdivision three of this section, to collect the full tax due and imposed by this article or to recover a rebate paid in error.
May 20, 1977

Mr. Steven Weinstein
Deputy Director
Municipal Assistance Corporation
For The City of New York
Two World Trade Center - Room 4540
New York, New York 10048

Dear Steve:

Enclose are three copies of the Stock Transfer Tax proposals.

Sincerely,

Eugene W. Harper

EWH:md
Enclosures (3)

HAND DELIVERY
MEMORANDUM
May 20, 1977

Re: MAC Stock Transfer Tax Proposals

I. Outline of Proposal

1. Section 270-a of the Tax Law will be repealed in its entirety, thereby eliminating the "maximum tax" and the "non-resident reduction" for sales made within the State.

2. The "market-maker exemption" enacted by Chapter 842 of the Laws of 1976 will be repealed.

3. By amendment to the Tax Law, the "maximum tax" will be extended to all transactions regardless of place of sale.

4. Rebates of the tax imposed by Section 270 of the Tax Law, as limited by the "maximum tax," will be paid to taxpayers, but only after MAC has certified (against gross tax receipts each quarter) that its debt service requirements have been made. Rebates will be paid only to the extent that moneys are available therefor in a new fund to be known as the "stock transfer incentive fund."

5. Rebates will increase by 25 percentage points each year from 25% during fiscal 1979 to 100% during fiscal 1982, except for the rebates on "market-maker" transactions, which will be 100% beginning in fiscal 1979.
6. The method of paying rebates will be to effect an instantaneous credit against the stock transfer tax due each day, but only to the extent that sufficient moneys are available that day in the stock transfer incentive fund to make the credit.

II. Legislative Proposals

1. Section 92-b of the State Finance Law will be amended to provide for payments of stock transfer tax revenues to the stock transfer incentive fund, after certification of MAC's requirements, but before payment to the City. (Exhibit A)

2. A new Section 92-h of the State Finance Law will establish the stock transfer incentive fund and provide for payments to such fund from stock transfer tax revenues at the end of each quarter, in the amount estimated by the State Tax Commissioner to be payable as rebates in the next succeeding quarter. (Exhibit B)

3. A new Section 270-x will be added to the Tax Law providing for a "maximum tax" on all transactions, regardless of place of sale, in the amount of $350. (Exhibit C)

4. A new Section 270-y will be added to the Tax Law providing for (i) the payment of rebates to the extent moneys are available in the stock transfer incentive fund, (ii) the amount of rebates, (iii) and the method of payment. (Exhibit D)
5. Legislation will be drafted to repeal the current Section 270-a of the Tax Law and the various provisions constituting the "market-maker exemption" (c. 842, L. 1976).
§92-b Stock Transfer Tax Fund

3. The moneys received from such tax and other sources in such fund, after deducting the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering, collecting and distributing such tax, commencing with the fiscal year ending March thirty-first, nineteen hundred seventy-seven, shall be appropriated as follows: [to (i)] (i) to the municipal assistance corporation for the city of New York created pursuant to title three of article ten of the public authorities law in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund, [and] (ii) to the extent such moneys are not required by such corporation as provided in subdivision seven of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five to the stock transfer incentive fund established by section ninety-two-h of the state finance law, for the payment of rebates of the tax imposed by section two hundred seventy of the tax law as provided by section two hundred seventy-y of the tax law as added by a chapter of the laws of nineteen hundred seventy-seven and (iii) to the extent such moneys are not required for the purposes set forth in the preceding clauses (i) and (ii) of this subdivision, to the city of New York, for the support of local government.

4. After the deduction of such costs of the state tax commission in administering, selecting and distributing such tax, the balances in such fund so appropriated shall be distributed and paid on the last day of September, December, March and June into the special account established for the municipal assistance corporation for the city of New York in the municipal assistance
tax fund established pursuant to subdivision one of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five, unless and to the extent the balances in such fund on each such last day are not required by such corporation as provided in said subdivision seven of said section ninety-two-d of the state finance law in which case the balance not so required, if any, shall be paid into the stock transfer incentive fund established pursuant to subdivision one of section ninety-two-h of this chapter, unless and to the extent that the balances in such fund on each such last day are not required to be deposited in such stock transfer incentive fund as provided in subdivision three of section ninety-two-h of this chapter, in which case the balance not so required, if any, shall be distributed and paid to the chief fiscal officer of the city of New York to be paid into the treasury of the city to the credit of the general fund, and on each such date, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering, collecting and distributing such tax during such quarterly period and shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. In no event shall ... to the state in such fund.

§92-b(7) [new]

7. No later than thirty days following the last day of each fiscal year ending after the effective date of this section the commissioner of taxation and finance shall certify to the comptroller the aggregate amount of rebates of the tax imposed under section two hundred seventy-a of the tax law paid pursuant to section two hundred seventy-y of the tax law during such fiscal year. No later than ten days after receipt of such certification, the comptroller shall pay to the chief fiscal officer of the city of New York an amount equal to fifty per centum of the amount so certified but only to the extent that monies have been appropriated and made available therefor.
§92-h Stock transfer incentive fund. [new]

1. There is hereby established in the custody of the commissioner of taxation and finance a special fund to be known as the stock transfer incentive fund.

2. Such fund shall consist of moneys paid into the same by the commissioner of taxation and finance from the stock transfer tax fund as provided in subdivision four of section ninety-two-b of this chapter and all other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law.

3. On the last day of September, December, March and June of each year, the commissioner of taxation and finance shall determine the aggregate amount estimated to be payable during the next succeeding three-month period as rebates of the tax imposed by section two hundred seventy of the tax law pursuant to section two hundred seventy-eight of the tax law, plus the amount of reserves estimated to be necessary to account for periodic fluctuations in the amount of such rebates to become payable during such period, plus the aggregate amount of such rebates payable but remaining unpaid on the date of such determination. The amount of such determination, less the amount of moneys in the stock transfer incentive fund which the commissioner of taxation and finance determines are then available for the payment of such rebates during such three-month period, shall constitute the amount required pursuant to subdivision four of section ninety-two-b of this chapter to be paid on each such last day into the stock transfer incentive fund for the payment of such rebates. Solely from the moneys in the stock transfer incentive fund, the commissioner of taxation and finance shall pay, in accordance with section two hundred seventy-eight of the tax law, the rebates due and payable thereunder, in the manner provided in subdivision five of this section.
4. Moneys in the stock transfer incentive fund, shall be kept separate and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance. All deposits of such moneys shall, if required by the commissioner of taxation and finance, be secured by obligations of the United States or of the state having a market value equal at all times to the amounts of deposits and all banks and trust companies are authorized to give security for such deposits. Any such moneys in such fund may, in the discretion of the commissioner of taxation and finance, be invested in obligations, the principal of and interest on which are guaranteed by the United States or by the state.

5. All payments from the stock transfer incentive fund, other than payments or transfers to the stock transfer tax fund, shall be made on audit and warrant of the comptroller on vouchers approved by the commissioner of taxation and finance. Payments from the stock transfer incentive fund to or for the credit of the stock transfer tax fund shall be made in such manner as the commissioner of taxation and finance determines to be appropriate to achieve transfer to and from such funds on a daily basis.
§270-x. Maximum amounts of tax. 1. Notwithstanding the provisions of section two hundred seventy of this chapter, on and after July 1, 1978, the maximum amounts of tax set forth in subdivision two of this section shall apply, in the case of those sales subject to tax under section two hundred seventy and described in subdivision two of this section.

2. Where any sale subject to the tax imposed by this chapter relates to shares or certificates of the same class and issued by the same issuer the amount of tax upon any such single taxable sale shall not exceed the sum of three hundred fifty dollars; provided, however, that sales by any member of a securities exchange or by any registered dealer, who is permitted or required pursuant to any rules and regulations promulgated by the tax commission pursuant to the provisions of section two hundred eighty-one-a of this chapter to pay the taxes imposed by this article without the use of the stamps prescribed by this article, pursuant to one or more orders placed with the same member of a securities exchange or the same registered dealer on one day, by the same person, each relating to shares or certificates of the same class and issued by the same issuer, all of which sales are executed on the same day (regardless of whether it be the day of the placing of the orders), shall, for the purposes of this subdivision two, be considered to constitute a single taxable sale.
§270-y. Rebates of tax. 1. Notwithstanding the provisions of section two hundred seventy of this chapter, rebates of the tax imposed by such section and paid on any sale made on or after July 1, 1978 shall be paid or credited, to the person, firm, company, corporation or association executing or effecting the sale, forthwith to the extent that moneys have been appropriated and are available therefor in the stock transfer incentive fund established pursuant to section ninety-two-h of the finance law, as provided in subdivisions two and three of this section. On any day, moneys shall be deemed to be available in the stock transfer incentive fund for the payment of such rebates only if the opening balance on deposit therein on such day exceeds three million dollars or such greater amount as the commissioner of taxation and finance shall determine to be required for the payment of such rebates on such day.

2. (a) Except as provided in paragraph b of this subdivision, on sales made during the periods set forth in the following table, the rebates described in subdivision one of this section shall be paid in the amounts set forth in such table (expressed as a percentage of the tax paid on such sales):

<table>
<thead>
<tr>
<th>Period</th>
<th>Rebate</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 1978 to June 30, 1979</td>
<td>25%</td>
</tr>
<tr>
<td>July 1, 1979 to June 30, 1980</td>
<td>50%</td>
</tr>
<tr>
<td>July 1, 1980 to June 30, 1981</td>
<td>75%</td>
</tr>
<tr>
<td>July 1, 1981 and thereafter</td>
<td>100%</td>
</tr>
</tbody>
</table>

(b) [Market-maker rebate to be 100% beginning on July 1, 1978, TO BE DRAFTED.]

(c) The rebate so calculated shall not be carried out in its computation beyond four decimal points, that is, it shall be computed to the nearest one one-hundredths of one cent.

3. (a) Except as provided in paragraph b of this subdivision, the rebates described in this section shall be paid upon the filing with the tax commission of a stock transfer tax rebate return in accordance with rules and regulations promulgated by the tax commission.
(b) Notwithstanding any other provision of this article, the tax commission may by rules and regulations provide that the rebates of the taxes imposed by this article on any sale, delivery or transfer by any member of any securities exchange which is registered with the securities and exchange commission of the United States and permitted to be paid to such exchange or to an affiliated clearing corporation pursuant to section two hundred eighty-one-a of this chapter by the person, firm, corporation, company or association executing or effecting the sale, delivery or transfer, without the use of the stamps prescribed by this article, rebates on such taxes shall be credited to such exchange, or in the discretion of the tax commission, to an affiliated clearing corporation, with or without the filing of the return required by paragraph a of this subdivision, provided that on the date of such credit an amount equal to such credit is credited to or deposited into the stock transfer tax fund; and that the rebates of the taxes imposed by this article on any sale or transfer executed or effected by any person, firm, corporation, company or association required to be registered with the attorney general of the state of New York as a dealer in securities, other than upon any such exchange, and permitted to be paid to an agency duly authorized by the tax commission pursuant to section two hundred eighty-one-a of this chapter by the person, firm, company, corporation or association executing or effecting such sale or transfer, without the use of the stamps prescribed by this article, may be credited to such authorized agency with or without the filing of the return required by paragraph a of this subdivision, provided that on the date of such credit an amount equal to such credit is credited to or deposited into the stock transfer tax fund. On the written report required to be made to such exchange, affiliated clearing corporation or authorized agency by each such person, corporation, firm, company, or association pursuant to section two hundred eighty-one-a showing the amount of tax payable on all such sales, deliveries or transfers, there
shall also be shown the amount of rebates payable on or credited
to such amount of tax pursuant to subdivision one of this section.
To the extent that rebates of the amount of tax shown to be due on
such report are credited pursuant to subdivision one of this section,
the amount required to be paid for the account of the tax commis-
sion to such exchange, affiliated clearing corporation or authorized
agency pursuant to section two hundred eighty-one-a shall be the
amount of tax shown to be due on such written report less the
amount of any rebates so credited. For the purposes of this sec-
tion the term "affiliated clearing corporation" shall, if it has
a place of business in this state, including a clearing corporation
as defined in subsection three of section 8-102 of the uniform
commercial code and a clearing corporation affiliated with a
national securities exchange or association registered with the
securities and exchange commission of the United States.
MEMORANDUM

To: EJK
From: MFP
Date: 18 May 1977
Re: Difficulties of Amending MAC Bond Resolutions to Deal with Stock Transfer Tax Changes

A. Time consuming:
   1. Bearer instruments make time period longer and make it more difficult to induce owners to amend.
   2. We don't have a captive audience; people are willing to hold bonds as is or sell them.
   3. Time for publication, distribution of consent form.

B. Legal problems:
   1. Disclosure required as to effect of not getting consent.
   2. Peripheral argument that consent of all bondholders is required because change may affect payment.

C. Practical problems:
   1. Effect of amendment on market for existing bonds.
      a. Public perception is hazy and hurts market.
      b. Bond rating agency is cautious and lowers rating (c.f. Moody's) which hurts market.
   2. Unlikely to get consent without inducement (c.f. Tri-borough bond amendment which took two years with interest increase).
C. Practical problems (continued):

3. Effect of amendment on issuance of new MAC bonds, City and State bonds is negative.

4. Mechanism for change is difficult to find -- new revenue source would be most likely and that would cost great deal.

5. Effect of failing is (i) to lose industry, and (ii) to kill market.
DRAFT

17 May 1977

TO: E.J. Keilin

FROM: Decker and During

RE: Stock Transfer Tax

The proposed rebate system has two objectives. First, it is designed to reduce and eventually eliminate the economic effects of the Stock Transfer Tax. This is viewed as a necessary step in maintaining New York City as "the World's leading financial center". Second, the rebate system is designed to protect MAC Bondholders to whom receipts of the Stock Transfer Tax are pledged as a secondary revenue stream for debt service on outstanding MAC Bonds.

The rebate system is designed to satisfy three design criteria. First, that it provide instantaneous rebates directly to the customers. Although it was considered, it is believed that it would be unwise to require brokers to finance the "float" of Transfer Tax rebates. That is, customers (primarily sellers) should retain the principle liability for the tax and also be the direct recipient of the rebate. It would be ill-advised to reduce the brokerage community's capital base by any amount required to "float" customers' tax rebates. Further, it is believed that separating payment and rebates of the tax would create economic disincentives and present significant administrative problems. Therefore, the proposed rebate system would have instantaneous rebates to the customer and
would not require the broker to carry or float any funds on behalf of customers.

The second design criteria is administrative feasibility. The rebate system cannot impose burdensome accounting or reporting requirements on the brokers, dealers or clearing corporations. The rebate system must be manageable however, and generate the appropriate information for the protection of the bondholders. Further, the rebate system must be reliable to prevent an increase in the cost of doing business due to uncertainties. Therefore, the proposed rebate system would include the following modifications to the Stock Transfer Tax law:

1. Section 270-a of the Stock Transfer Tax law (the non-resident discount and maximum tax) would be repealed.

2. the maximum tax would be reinstated as a new section. The new maximum tax would be applicable regardless of the location of the sale and would be at the same level as the old one.

3. the 25% surcharge imposed on August 1, 1975 would be repealed at the time the rebate system is initiated.

4. a special fund would be established to support the instantaneous rebates while not impairing the rights of MAC Bondholders. The availability of rebates would be subject to adequate funds being in the special fund. It should be noted that if, for any unforeseen and presently unexpected
reason, the fund should have inadequate monies on
deposit, the rebate program would be suspended and
the customer liable for the full tax. It is not
anticipated that this will happen.

5. a gradually escalating across-the-board percentage
rebate would be available to Stock Transfer Tax
payors. This rebate could start at 25% in each of
the following three years. In the fifth year, the
rebate would amount to 100% of tax liability. In
all cases, tax liability would be subject to the
maximum tax now available and to be re-enacted
under this proposal. These rebates would be applied
directly to the customers tax liability in a manner
to be illustrated below.

The third design criteria is that is meet the constitutional
requirements of the Boston Stock Exchange case and that it
not violate the MAC Bond Resolutions. We believe this proposal
satisfies both constraints. [possibly a quote by Hawkins].

The proposed system would work as follows: A special fund --
the Stock Transfer Incentive Fund or STIF -- would be esta-
blished. Prior to the commencement of the rebate program,
the STIF would be funded from government revenues to a level
commensurate with the next period's rebate requirements.
Eventually the fund would have on deposit an amount sufficient
to cover a full quarter's transfer tax revenues. Initially,
these funds would come from Stock Transfer Tax revenues re-
leased by MAC as prescribed in its Bond Resolutions.
In the first year of the rebate program, the seller of a stock would be able to take an instantaneous rebate of 25% on his tax liability. (The customer would still benefit from the maximum tax of $350.) This rebate would rise to 100% in the fifth year. For customers executing their sale with a broker who clears through a registered clearing agency, the rebate would be netted out by the broker. This would be done by showing a "NET NEW YORK TRANSFER TAX" on the customer confirmation instead of the present "NEW YORK TRANSFER TAX."

For example, a customer with a $100 tax liability, gets a $25 rebate in the first year. The customer confirmation from the broker would show only the net amount, or $75. The firm's blotter would also carry only the net amount, that is each transaction would shown only its net tax.

The firm's total tax liability would be entered in the firm's general ledger as two items, however. There would be a credit to a "Transfer Tax payable" account equaling the grossed up amount of total net tax. That is the total net tax would be multiplied by some factor to produce the total full tax liability. For example, in the first year where the rebate is an across-the-board 25% of tax liability, a firm's customer total net tax might be $7,500 on a given day. The firm would then gross this up to the total gross tax liability of $10,000. The firm would enter the $10,000 in its general ledger as a credit to taxes payable and debit $7,500 from customers accounts and debit $2,500 from a rebate receivable.
The firm would then report both the $10,000 gross taxes and the $7,500 net taxes to the State Clearing tax. The clearing corporation would then on settlement day debit the firm's settlement account $7,500, but report the gross liability of $10,000 and the net liability of $7,500 to the State. The State would then transfer $2,500 from the Stock Transfer Tax Incentive Fund completing the cycle.

Reviewing the mechanism briefly, is as follows. The broker shows only the net tax on the customer's confirmation. The broker also carries only the net tax on the blotter or journals. The broker, however, carries both the net and the grossed up tax on the general ledger and reports both to the Stock Clearing Corporation. The broker debits the customer account for the net tax and is in no different position than at present. The Clearing Corporation reports both the grossed up and net tax liabilities to the State. The Clearing Corporation debits the firm's settling account for only the net tax. Again, the broker is in the same position as at present.

This mechanism will work well until the fifth year when the net tax will always be zero. At that time it will be necessary for the broker to develop an analysis routine to determine an appropriate amount to report as gross liability, for it is obviously impossible to gross up zero.

For taxpayers not clearing through a registered clearing agency, it will be necessary to file a return for a refund of taxes paid.
May 3, 1977

BY HAND

Marilyn Friedman, Esq.
General Counsel
Municipal Assistance Corporation for
the City of New York
Two World Trade Center
New York, N.Y. 10048

Re: MAC - Legislative proposal regarding
Stock Transfer Tax

Dear Marilyn:

Enclosed pursuant to our meeting yesterday is a
draft of proposals regarding the stock transfer tax. Don
would like to have a meeting tomorrow morning on the subject.

Sincerely,

Eugene W. Harper, Jr.

EWH, Jr./ec
MEMORANDUM

May 3, 1977

MAC - Legislative proposal regarding Stock Transfer Tax

A. Assumptions

1. Section 270-a will be deleted in its entirety from the Tax Law, either by the Court of Appeals or by the Legislature.

2. The Stock Transfer Tax will be imposed at the full rate set forth in §270 of the Tax Law.

3. By amendment to the Tax Law, all taxpayers previously entitled to the benefits of "non-resident reduction" and the "maximum tax" under §270-a of the Tax Law will be entitled to a "rebate" of a portion of the Stock Transfer Tax paid, the effect of which will be to extend, without regard to the place of sale, the benefits previously granted by §270-a. The "rebate" will be paid from Stock Transfer Tax revenues if and only to the extent that such revenues are available after debt service requirements for MAC Bonds have been satisfied.

B. Proposals

1. Subdivisions 3 and 4 of §92-b of the State Finance Law should be amended to reflect the flow of funds from the Stock Transfer Tax Fund, to MAC, to the Stock Trans-
fer. Incentive Fund for rebate, and finally, to the City. Exhibit A hereto sets forth the proposed amendments.

2. The State Finance Law should be amended to establish a new State fund entitled the "Stock Transfer Incentive Fund," in the custody of the Commissioner of Taxation. Exhibit B sets forth a proposed new Section 92-h of the State Finance Law.

C. **Comment**

1. The proposals assume that the Stock Transfer Incentive Fund will be funded initially from payments of the Stock Transfer Tax made during the quarter immediately preceding the effective date of the amendments. The effective date should be the last day of September, December, March or June, the dates on which Stock Transfer Tax revenues flow to the City.

2. The State may appropriate to the Stock Transfer Incentive Fund the portion of any overall reduction in Stock Transfer Tax revenues for which it wishes to compensate the City.
3. The moneys received from such tax and other sources in such fund, after deducting the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering, collecting and distributing such tax, commencing with the fiscal year ending March thirty-first, nineteen hundred seventy-seven, shall be appropriated as follows: [to (i)]

(i) to the municipal assistance corporation for the city of New York created pursuant to title three of article ten of the public authorities law in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund, [and] (ii) to the extent such moneys are not required by such corporation as provided in subdivision seven of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five for the payment of rebates of the tax imposed by section two hundred seventy of the tax law as provided by section two hundred seventy [-] of the tax law as added by a chapter of the laws of nineteen hundred seventy-seven and (iii) to the extent such moneys are not required for the purposes set forth in the preceding clauses (i) and (ii) of this subdivision, to the City of New York, for the support of local government.

4. After the deduction of such costs of the state tax commission in administering, selecting and distributing such tax, the balances in such fund so appropriated shall be distributed and paid on the last day of September, December, March and June into the special account established for the municipal assistance corporation for the city of New York in the municipal assistance corporation fund.
section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five, unless and to the extent the balances in such fund on each such last day are not required by such corporation as provided in said subdivision seven of said section ninety-two-d of the state finance law in which case the balance not so required, if any, shall be paid into the stock transfer incentive fund established pursuant to subdivision one of section ninety-two-h of this chapter, unless and to the extent that the balances in such fund on each such last day are not required in such stock transfer incentive fund as provided in subdivision three of section ninety-two-h of this chapter for the payment of rebates of the tax imposed by section two hundred seventy of the tax law as provided by section two hundred seventy[- ] of the tax law, in which case the balance not so required, if any, shall be distributed and paid to the chief fiscal officer of the city of New York to be paid into the treasury of the city to the credit of the general fund, and on each such date, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering, collecting and distributing such tax during such quarterly period and shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. ...
§92-h  

Stock transfer incentive fund.  
[new]

1. There is hereby established in the custody of the commissioner of taxation and finance a special fund to be known as the stock transfer incentive fund.

2. Such fund shall consist of moneys paid into the same by the commissioner of taxation and finance from the stock transfer tax fund as provided in subdivision four of section ninety-two-b of this chapter and all other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law.

3. On the last day of September, December, March and June of each year, the commissioner of taxation and finance shall determine the aggregate amount to be paid during the next succeeding three-month period as rebates of the tax imposed by section two hundred seventy of the tax law as required pursuant to section two hundred seventy [- ] of the tax law, plus the aggregate amount of such rebates payable but remaining unpaid on the date of such determination. The amount of such determination, less the amount of moneys in the stock transfer incentive fund which the commissioner of taxation and finance determines are then available for the payment of such rebates during such three-month period, shall constitute the amount required pursuant to subdivision four of section ninety-two-b of this chapter to be paid on each such last day into the stock transfer incentive fund for the payment of such rebates. To the extent that such rebates are paid from revenues derived from the tax imposed by section two hundred seventy of the tax law, such rebates shall be paid solely from moneys in the stock transfer incentive fund, as provided in subdivision five of this section.
4. Moneys in the stock transfer incentive fund shall be kept separate and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance. All deposits of such moneys shall, if required by the commissioner of taxation and finance, be secured by obligations of the United States or of the state having a market value equal at all times to the amounts of deposits and all banks and trust companies are authorized to give security for such deposits. Any such moneys in such fund may, in the discretion of the commissioner of taxation and finance, be invested in obligations, the principal of and interest on which are guaranteed by the United States or by the state.

5. All payments from the stock transfer incentive fund shall be made on audit and warrant of the comptroller on vouchers approved by the commissioner of taxation and finance.
MEMORANDUM

Date: 2 May 1977

To: FILES

From: Marilyn F. Friedman

Re: Proposed Changes with Respect to the Stock Transfer Tax

The purpose of this memorandum is to set forth one proposal which has been advanced to alleviate the burden imposed by the Stock Transfer Tax without creating a default under the Corporation's General Bond Resolutions.

Under the proposal the Stock Transfer Tax will be fixed at pre-Section 270-a levels (with or without a surcharge). However, Section 270 will be amended to add a new subdivision, which will provide that a certain class or classes of payers of stock transfer tax (e.g., all nonresidents, all nonresident individuals, all block sellers, etc.) will be entitled to a rebate of stock transfer taxes paid during any quarter, to the extent monies are available therefore in the succeeding quarter in a Stock Transfer Incentive Fund to be established pursuant to Section 92-b of the State Finance Law (see next paragraph). The rebate can be a specified percentage of stock with respect to a specified transaction transfer tax theretofore paid/(along the lines of the nonresident reduction) and/or it can be that portion of stock transfer tax theretofore paid with respect to a specific transaction, which exceeds a specified amount (along the lines of the maximum tax).
The manner in which payers of stock transfer tax would apply for and receive rebates has not yet been worked out.

As set forth in the preceding paragraph, rebates will be funded out of the Stock Transfer Incentive Fund. Monies will flow into said Fund pursuant to subdivision 3 of Section 92-b of the State Finance Law, which will be amended to provide that at the end of each quarter, monies in the Stock Transfer Tax Fund, to the extent not required by the Corporation, flow into the Stock Transfer Incentive Fund. During the ensuing quarter, monies in the Stock Transfer Incentive Fund will be available for payment to persons who have paid stock transfer tax in the previous quarter.

Monies remaining in the Stock Transfer Incentive Fund at the end of each quarter will flow to the City of New York. In order to ensure that the City does not bear the full burden of the proposal, a "Requirement" will be established for the Stock Transfer Incentive Fund. Immediately prior to the end of each quarter, the State will deposit into the Stock Transfer Incentive Fund monies required, if any, to bring the level of the Stock Transfer Incentive Fund up to the Stock Transfer Incentive Fund Requirement. Under such a mechanism, the City will be assured of a minimum revenue flow equal to the "Requirement" at the end of each quarter, notwithstanding the amounts of stock transfer tax rebated to payers of the tax during such quarter.
Eugene Keilin  
Executive Director  
Municipal Assistance Corporation  
c/o ALAN THOMAS  
Pual, Weiss, Rifkind, Wharton & Garrison  
345 Park Avenue  
New York, N.Y. 10022

Dear Gene:

Attached is the preliminary analysis as discussed last Friday. We apologize for the brevity, but time was a serious constraint.

Regards,

[Signature]

H. Andrew Decker

HAD:hoj

Enclosure
CONFIDENTIAL

TO: Eugene Keilin
FROM: Andrew Decker & Dennis During
RE: Stock Transfer Tax Credits

The recent Supreme Court decision in the Boston Stock Exchange case requires that the State eliminate any discrimination between taxable sales made within the State of New York and those made outside the State. There are two principle ways to eliminate the substantive discrimination. First, the non-resident discount and the maximum tax could be extended to sales regardless of situs. Second, the non-resident discount, the maximum tax, or both could be eliminated and the remaining concession (if any) extended as above. At present, most parties agree that the future of the New York securities industry requires that the State pursue the first alternative.

The Supreme Court has placed the responsibility for correcting the unconstitutionality upon the New York State Court of Appeals. This Court may interpret the savings clauses enacted as part of the Section 2FG-a legislation as requiring the total elimination of these economically necessary incentives. Normally, it would be a relatively simple task to enact legislation to restore the non-resident discount and maximum tax, and extend them to those transactions whose taxation concerned the Supreme Court. However, legislative action to extend the incentives to conform with the Court's ruling could be construed as a reduction in rate and may be deemed an event of default for
MAC securities. Taken together, the Supreme Court decision, the MAC securities problem and various policy issues sharply limit our ability to modify the Stock Transfer Tax to achieve economic development goals.

The Municipal Assistance Corporation has requested that we analyze the problem and develop conceptual frameworks for various solutions. This paper summarizes our preliminary analysis and presents some alternatives which we either hope to be able to exclude from consideration and some which we feel deserve MAC's further attention. We have tried also to define the criteria by which a solution should be evaluated; describe key aspects of the tax as it is currently administered, and, specify three major design variables for any credit system: the nature of a funding mechanism, the nature of the credit mechanism and the extent of credit coverage.

System Design Criteria

The first constraint under which we must operate is the Supreme Court's decision that requires us to cease the discrimination against transactions made out-of-state. It is possible that the Court's concerns will be satisfied if the tax and the credit mechanism together effectively eliminate the discrimination against out-of-state sales. In this case, it will be necessary that the amount of the tax, the timing of the credit payment and the burden of compliance be the same for all transactions. This would imply that the Stock Transfer Tax could retain the current discrimination, while a separately enacted
credit against the tax would effectively eliminate any discrimination. The Supreme Court might be favorably disposed toward this approach which substantively rather than formally eliminates the discriminatory aspects of the tax.

The second constraint, the MAC bond resolution, may be less flexible. One requirement of the resolution is that bondholders' rights not be impaired by State action. Clearly, any tax and credit system cannot impair the security interest that the bondholders have in the Stock Transfer Tax. This constraint may be satisfied by providing a source of funds sufficient to guarantee that the bondholders would be protected by revenues of no lesser amount or security than the Stock Transfer Tax. Notwithstanding the above, the language of the bond resolution states clearly that a reduction in the rate of the Stock Transfer Tax shall be an event of default. This appears to require some artfulness in the design of a credit system that satisfactorily extends benefits to the transactions of concern to the Supreme Court.

A third constraint is the State constitutional prohibition of gifts and loans of credit or money by the State or the City to a private "person". It may not be possible for the State or City to pay some or all of the Stock Transfer Tax for any taxpayer. Since it also appears that a direct credit against the Stock Transfer Tax may be construed as a reduction in the rate of tax, we see another instance of the need for artfulness in designing a system to achieve the extension of the credit.

The fourth set of constraints includes all the less well defined policy objectives of the State, the City and MAC. These
include not hindering the flow of Stock Transfer Tax revenues to the City; keeping the cost of tax and credit administration and compliance low; and, restoring the ability of the State to modify the tax structure in the future in response to the changing economics of the securities industry.

The Current Transfer Tax Process

The Stock Transfer Tax is payable by one of four means: (1) through a registered clearing corporation; (2) directly to the Tax Commission; (3) by the use of stamps; and, (4) by the use of metered stamps.

The first method, payment through a registered clearing corporation, accounts for roughly ninety-five percent of annual revenues. The law requires that any tax liability generated by "any sale, delivery or transfer of stock ... executed or effected within the State of New York by a member of any securities exchange ... be paid to the affiliated clearing corporation." Brokers are required to settle with the clearing corporation on a daily basis which on the following day transmits the funds to the state's fiscal agent.

The second method, direct payment, accounts for approximately one percent of tax revenues. This method is designed for payment of taxes by registered dealers not required to clear through a registered clearing corporation. Dealers paying directly to the Tax Commission are required to file a weekly report detailing their total tax liability.

The third and fourth methods, stamps and metered stamps,
account for the remaining four percent of revenues. Both involve the prepayment of the tax and subsequent use of either stamps (in various denominations) or metered stamps as evidence of tax liability having been discharged. People using stamps or meters are required to purchase stamps from, or have their meters set by the state's fiscal agent or its subagents.

The tax requires no returns detailing the nature of the individual transactions that accrued the tax. Enforcement depends on audit of brokers' and dealers' records. The absence of individual returns detailing tax liability in each transaction is a significant limiting feature of the Stock Transfer Tax. There are, in addition, two other limiting features. First, in the case of stamps and meters, the actual payment of the tax (the point of sale of the stamps) and the accrual and discharge of a tax liability (the point of use of the stamps) are separated by some unpredictable amount of time. This will produce an outstanding inventory of tax stamps (and stored stamp tax value in meters) at any point in time. In general, the value of the outstanding inventory will be somewhat predictable. But monitoring the precise use of stamps and meters will be impossible.

The second limiting feature of the tax is the audit or enforcement problem. The law imposes liability for the tax upon the transferor, the transferee, their agents and, if a transfer on the books of a corporation is involved, the corporation and its agents (transfer agents). Since everyone is liable for the tax, regardless of arrangements made by any one party, a fair degree of scrutiny is applied to transactions to ensure that the proper tax is paid. In
general, however, it is the transfer agent (if one is involved) that bears major responsibility for monitoring the payment of the appropriate tax in each transaction. In certain transactions, particularly those involving the payment of taxes by stamps or meters, no transfer agent may be involved. This significantly reduces the State's ability to enforce the tax. It also eliminates one of the two points of access to information about the use of stamps and meters. The only remaining reliable information then comes from point of sale of tax stamps.

There also is currently in effect a 'market maker credit' that effectively exempts specialists and dealers from transfer taxes upon their trading as market makers. Under its provisions, a market maker is allowed a credit against other State taxes paid in the amount of transfer taxes paid. If the credit for transfer taxes paid exceeds the amount of other taxes paid, the market maker is eligible for a refund. The relationship of the state constitution's gift and loans provision to the credit is unclear.

Design Limitations of a Credit System

Any credit system has three important design parameters; (1) the nature of the funding mechanism; (2) the nature of the credit mechanism; and, (3) the scope of the coverage. Each of these is dealt with below.

As argued above, it is necessary to assure that the tax credit be received instantaneously. It is then necessary to have some mechanism to provide the funds for a credit without reducing the actual rate of tax. The credit thus becomes contingent upon
the presence and adequacy of funding. Without such a funding mechanism, a credit for stock transfer taxes paid would have to be either applied against other taxes or rebated with a delay or else risk being construed as a reduction in rate. The first two alternatives are undesirable and the third impossible in light of the MAC bond resolution.

A funding mechanism can be instituted to provide sufficient resources to permit credits against stock transfer taxes paid without impairing the security of MAC bondholders pursuant to Sec. 1202 of the Bond Resolution. The credit fund would receive money from one of three sources as is illustrated in Figure One. Either the State or the City might be able to appropriate money to the credit fund on an annual basis. The availability of the credit would then be subject to continuing appropriations by either the State or the City. Money could also come from Stock Transfer Tax revenues after their release from the Stock Transfer Tax Fund but before their transmission to the City's General Fund. The credit would then be contingent upon the availability of Stock Transfer Tax revenues after the potential debt service requirements of MAC. In any case, if no money was available in the credit fund, transfer taxes would be collected at the full rate without benefit of any credits until such time as the credit fund would be replenished.

Determining the precise level of funding for the credit fund would be difficult, given the lack of knowledge about the actual use of stamps and meters. It would, however, be possible to determine an appropriate level commensurate with the requirements
ALTERNATE FLOW OF FUNDS IN CREDIT

FUNDING MECHANISM
of the bondholders' potential debt coverage needs. This would have some adverse impact upon the cash flow to the City. The timing of the payments would also be complicated particularly during the start-up period.

In any credit system it will be necessary to have current information about the amount of credits taken to assure adequate funding in the credit fund. The design of the credit mechanism is then important for it will determine the availability and cost of gathering information.

Monitoring credits taken against taxes paid through a registered clearing corporation will require only slight modifications in the bookkeeping systems at both brokerage houses and the clearing corporations. These modifications will not be substantially different than those required at the institution of the market maker credit system. For those taxes paid directly to the Tax Commission, slight modifications will be required in the forms presently filed on a weekly basis.

Monitoring credits taken against taxes paid by stamps or meters is more difficult. A credit system would require two or more different types of stamps; one as evidence of taxes paid and the others as evidence of credits taken for either the non-resident discount or the maximum tax. There would also be accounting problems stemming from the inventory of outstanding stamps, and the misuse and over acquisition of discount stamps.

The nature of the credit system will be largely determined by the scope of the coverage. The larger the group of transaction classes affected by the credit system, the more simple and
direct the credit system must be. Coverage options can be divided into four categories; (1) a credit system covering all non-resident and maximum tax eligible transactions; (2) a credit system covering both non-resident and maximum tax transactions, and all market maker credits; (3) a credit system covering only the smaller group of transaction classes directly at issue in the Boston Stock Exchange case (that is, non-residents selling out-of-state with either a taxable transfer or delivery in New York); and, a credit system covering non-resident discounts, maximum tax, market maker credits, and any new discounts desired.

An alternative to the funding and credit mechanism discussed above would involve the creation of negotiable tax credits that would be earned upon payment of the full Stock Transfer Tax. These credits would be fully negotiable and honored as payment for certain taxes or other debts to the State of New York. Such a solution might still run the risk of violating the gift and loan provision of the State constitution. In addition, the credits would almost certainly be worth less to a taxpayer located outside New York (say Chicago) than to a resident taxpayer. On this basis, the Supreme Court might find that such a mechanism continues the effective discrimination against interstate commerce.

The design and necessary implementation work for any particular credit system depends upon the various policy choices made on the issues discussed above. Our analysis has led us, however, to propose that we exclude two design features from further consideration. First, no tax returns should be required
that mandate information about individual transactions. The tax currently employs few accounting returns, none of which require information about specific transactions. Although such returns would provide a great deal of information (including that information necessary in determining the amount of funding required to maintain the adequacy of the protection afforded bondholders under the above funding mechanisms) the additional compliance and administrative costs would be prohibitively great. Second, payment of the tax, receipt of a credit and settlement of the transaction by retail securities customers must continue to be simultaneous. Delayed receipt of the credit by customers would both weaken the desirable incentives created by the credit and dramatically increase the costs of complying with the tax. Delayed payment would also make compliance and enforcement more difficult.
MEMORANDUM RE: WHETHER, IF THE COURT OF APPEALS APPLIES THE MAXIMUM TAX AND NONRESIDENT RATE ESTABLISHED BY §270-a OF THE TAX LAW, IRRESPECTIVE OF WHETHER THE SALE IS MADE WITHIN OR WITHOUT THE STATE, AN "EVENT OF DEFAULT" WOULD OCCUR UNDER § 1202(f) OF THE MAC RESOLUTIONS

I

Preliminary Statement

The basic scheme of Article 12 of the Tax Law is to impose a tax (the "stock transfer tax") on "all sales, or agreements to sell, or memoranda of sales and all deliveries or transfers of shares or certificates of stock * * * in any domestic or foreign association, company or corporation." (§270 §1) Except in the case of taxable sales of stock, §270 §2 imposes such tax at the rate of 2 1/2 cents per share. The Federal Securities Amendments Act of 1975 prohibits the imposition of the tax where the sole event in New York State is the transfer or delivery of stock to or by a registered clearing agency or a registered transfer agent, as distinguished from a physical transfer or delivery in New York State by the transferor of so-called "old shares."

In the case of sales of stock, §270 §2 further provides for the imposition of the stock transfer tax at the following rates:

<table>
<thead>
<tr>
<th>Selling Price Per Share</th>
<th>Rate Per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $5</td>
<td>1 1/4¢</td>
</tr>
<tr>
<td>$5 or more but less than $10</td>
<td>2 1/2¢</td>
</tr>
<tr>
<td>$10 or more but less than $20</td>
<td>3 3/4¢</td>
</tr>
<tr>
<td>$20 or more</td>
<td>5¢</td>
</tr>
</tbody>
</table>
Under §270-a §1 of Article 12 which was enacted into law by §4 of Chapter 827 of the Laws of 1968, nonresident individuals making taxable sales of stock in New York State pay a reduced rate of tax (the "nonresident reduction") equal to 50 percent of the rate otherwise imposed by §270. By §270-a §2 the amount of tax elsewhere determined to be due on in-state sales of stock was limited, beginning on July 1, 1973, to §350 (the "maximum tax"). As later stated by the United States Supreme Court, §270-a was intended to maintain the level of in-state stock transactions and to encourage and attract new business from out-of-state and therefore to minimize the "supposed competitive disadvantage [to the New York Exchanges] resulting from §270."

In _Boston Stock Exchange v. State Tax Commission_, 50 L. Ed. 2d, 514, 527 (1977), the Supreme Court held that these so-called "compensating" effects of §270-a violated the Commerce Clause. The Court reasoned that §270-a discriminated against out-of-state sales by nonresidents:

"Both the maximum tax and the rate reduction provisions of §270-a discriminate against out-of-state sales by nonresidents. The fact that this discrimination is in favor of nonresident, in-state sales which may also be considered as interstate commerce, see _Freeman v. Hewit_, supra, at 258-259, does not save §270-a from the restrictions of the Commerce Clause. A State may no more use discriminatory taxes to assure that nonresidents direct their commerce to businesses within the State than to assure that residents trade only in intrastate commerce. As we stated at the outset, the fundamental purpose of the Clause is to assure that there be free trade among the several States. This free trade purpose is not confined to the
freedom to trade with only one State; it is a freedom to trade with any State, to engage in commerce across all States boundaries."

The Court accordingly remanded the case to the Court of Appeals for further proceedings consistent with its opinion.

Bonds issued by the Municipal Assistance Corporation For The City of New York (the "Corporation"), which are payable in part from stock transfer tax revenues, have been issued under two resolutions of the Corporation, § 1202(f) of each of which provides as follows:

"1202. Events of Default. Each of the following events is hereby declared an 'event of default,' that is to say; if

* * * *

"(f) the State shall for any reason fail or refuse to continue the imposition of either the Sales Tax imposed by Section 1107 of Article 28 of the Tax Law as the same may be from time to time amended or the Stock Transfer Tax imposed by Sections 270 and 270-a of Article 12 of such Law as the same may be from time to time amended or if the rates of such taxes shall be reduced to rates less than those in effect on the date of this Resolution [.]"

It is apparent that § 1202(f) imposes two tests for an "event of default." § 1202 (f) does not freeze the stock transfer tax so that any change in the statute imposing the tax would precipitate an "event of default."

On the contrary, § 1202 (f) by the clause "as the same may be from time to

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1 Section 1202 (f) of the Second General Bond Resolution ends: "* * * in effect on July 2, 1975," the date as of which the First General Bond Resolution was adopted.
time amended" confers broad discretion upon the Legislature by expressly contemplating amendment of the statute. Only if there is a failure or refusal "to continue the imposition of" the tax (e.g., by repeal) or if there is a reduction "to rates less than those in effect" on the date of the bond resolutions does an "event of default" occur. Since at the present time at least there is no question of continuing the imposition of the tax, the sole issue is whether action by the Court of Appeals construing the savings clause in the statute enacting § 270-a could result in an "event of default" under § 1202-f. The savings clause is contained in § 10 of Chapter 827 of the Laws of 1968 (which added § 270-a to the Tax Law), which provides:

"If any section of this act, or the repeal, amendment, or change made by any such section to any item, clause, sentence, subparagraph, paragraph, subdivision, section or other part of article twelve of the tax law, or the application thereof to any person or circumstances, shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this act or any other item, clause, sentence, subparagraph, paragraph, subdivision, section or other part of article twelve of the tax law repealed, amended or changed by this act, or the application of such section of this act or such section or part of a section of such article twelve of the tax law held invalid, to any other person or circumstances, but shall be confined in its operation to the section of this act or the item, clause, sentence, subparagraph, paragraph, subdivision, section or other part of article twelve of the tax law repealed, amended or changed by this act, directly involved in such holding, or to the person and circumstances therein involved."

The Supreme Court of the United States pointed out in _Boston Stock Exchange v. State Tax Commission_, supra, at p. 529, fn. 15, that:
"It is not clear from the savings provision whether the legislature intended that the distinction between residents and nonresidents should survive the invalidation of the discrimination between in-state and out-of-state sales. Compare New York laws of 1968, c. 827, § 10 with id., § 11. Construction of the savings clause is, of course, a question of state law appropriately decided by the state courts."

Section 11 provides:

"In the event that section four of this act or subdivision one or two of section two hundred seventy-a of the tax law as added thereto by such section four, shall be held to be invalid by reason of unconstitutionality, whether federal or state, then in either of such events, in the case of such subdivision one, the rates of tax provided by section two hundred seventy of the tax law, as amended by this act, shall be deemed to have applied and shall apply to resident individuals and non-resident individuals alike, and in the case of such subdivision two, the rates of tax provided for by section two hundred seventy of the tax law as amended by this act shall be deemed to have applied and shall apply to all transactions subject to the tax imposed by article twelve of the tax law, without any limitations as to the maximum amounts of tax due on any such transactions."

Following the remand of the case by the United States Supreme Court, motions for reargument have been made. The plaintiffs in their motion for reargument assert that § 270-a should be declared unconstitutional in its entirety, and the Attorney General of the State of New York takes the position that § 10 permits the application of the maximum tax and the non-resident rate to all sales whether made within or without the State. Since the remittitur entered by the Court of Appeals will resolve the issue and thereby possibly affect revenues raised by the tax, which is one of the sources of the payment of MAC bonds, MAC has moved for leave to appear as amicus curiae and file a brief in the Court.
The gist of the argument in MAC's brief is that § 11 does not apply and that under § 10 the Court should exscind the words "within this state" wherever they appear in § 270-a. By exscinding that phrase the Court of Appeals would eliminate the distinction between in-state and out-of-state sales which resulted in the United States Supreme Court's invalidating such discrimination under the Commerce Clause. As the Supreme Court pointed out in Boston Stock Exchange v. State Tax Commission, supra, at p. 521, fn. 8:

"The Exchanges do not challenge New York's authority to tax residents in a greater amount than nonresidents as long as the extent of the tax burden does not depend on an out-of-state sale."

II

Questions Presented

A. Whether extending the maximum tax to all transactions involving sales of stock without as well as within the State constitutes a reduction of rates of tax which would result in an "event of default" under § 1202(f) of the bond resolutions.

B. Whether exscinding the phrase "within this state" from § 270-a with the result that the reduced nonresident rates of tax apply to all nonresidents, regardless of the place of sale, would result in an "event of default" under § 1202 (f) of the bond resolutions.
III

Discussion

A. Extending the maximum tax to sales without the State does not constitute a reduction in rates of tax under § 1202 (f) of the bond resolutions.

The phrase "rate of tax" in § 1202 (f) should be interpreted in a manner consistent with its use in § 270-a, where it is used in contrast to the phrase "amount of tax."

For example, § 270-a § 1 refers to "the rates of tax set forth in paragraph (a) of this subdivision and the maximum amounts of tax set forth in subdivision two of this section." [emphasis supplied]

Similarly, in § 11 of Chapter 827 of the Laws of 1968, which added § 270-a to the Tax Law (quoted supra at page 5), reference is made to "the rates of tax provided by section two hundred seventy of the tax law" and later to "the maximum amounts of tax on any such transactions." [emphasis supplied] Only if "rate" connotes "amount" or "limitation" or, in the alternative, only if "amount of tax" in the context of § 270-a §2 itself imports or embraces the notion of rate, could it be argued that extension of the maximum tax is a reduction in rate of tax.
(1) Rate means "percentage", "proportion" or "degree" and does not connote "amount" or "limitation".

Courts give commonplace meanings to familiar terms. Principles of statutory construction support this proposition. See e.g. Anglo-American Provision Company v. Davis Provision Company, 169 N. Y. 506, 510 (1902), affirmed, 191 U.S. 373 (1903): "A statute is to be given that meaning which the ordinary reading of its language warrants * * *"; Glasser v. Price, 35 A. D. 2d 98, 100, 313 N. Y. S. 2d 1 (2d Dept. 1970): "Words in statutes should be given their ordinary meaning and not extended to accomplish untoward results * * *"; Cooper-Snell Co. v. State of New York, 230 N. Y. 249, 255 (1921): "One of the cardinal rules to be applied in construing statutes is that they are to be read according to the natural and obvious import of their language without resorting to a subtle or forced construction either limiting or extending their effect"; and Bush v. The Delaware, L. & W. R. R. Co., 166 N. Y. 210, 226 (1901): "When a statute is to be interpreted, the question is what the legislature intended, or what is the plain and natural meaning of the words employed." The same principles apply in the interpretation of contracts. See e.g. Heller & Henretig, Inc. v. 3620 - 168th St., Inc., 302 N. Y. 326, 330 (1951):

"Where, as in this case, the contracting parties have stated the terms of their agreement by language which makes clear their intention, our decision is governed by the rule that -- "The construction of a plain contract is for the court. The intention of the parties is found in the
language used to express such intention ""; Johnson v. Colter, 251 App. Div. 697, 699, 297 N.Y.S. 345 (4th Dept., 1937), appeal dismissed, 281 N.Y. 854 (1939): "If the contract is clear and unambiguous, the language used must be given its ordinary, usual and normal construction. The court, through a strained or unreasonable interpretation, is not permitted to make a new agreement for the parties." See also Cream of Wheat Co. v. Crist Co., 222 N.Y. 487 (1918); 1 Restatement of the Law of Contracts, §235(a) (1932).

The courts of this State have followed the general principles of construction in construing the term "rate", preferring ordinary connotations of the word to a strained meaning. E.g., Tannenbaum Co., S.C. v. Sixth Ave. 23rd St. Corp., 268 App. Div. 213, 48 N.Y.S. 2d 415 (1st Dept. 1944), affirmed, 294 N.Y. 835 (1945); Chase v. New York Central Railroad Company, 26 N.Y. 523 (1863).

In the Tannenbaum case, involving a disputed claim for liquidated damages which in part turned on the phrase 'at and after that rate,' the Appellate Division stated: "Use of the words 'at and after that rate,' would indicate an intention to require a ratable fixation of damages. The word 'rate', according to the Funk & Wagnalls New Standard Dictionary, where used as a noun, means 'The measure of a thing' or 'proportional or comparative amount or degree "". Id., 216.
Likewise, in Chase v. New York Central Railroad Company, supra, the Court of Appeals, in concluding that the defendant had collected a "greater rate of fare" than the permissible "rate" and was thereby subject to a statute declaring that "any railroad company which shall ask and receive a greater rate of fare than that allowed by law, shall forfeit fifty dollars **", accorded to the word rate "its primary meaning, 'proportion', or 'standard'". The Court continued:

"As the word fare includes the idea of price and passage, the word rate to avoid tautology, may be construed as meaning proportion or standard, and the clause read, a greater proportion or standard of the price of passage, or sum paid for carrying the passenger than that allowed by law, shall forfeit fifty dollars. The proportion of price to the mile, in the present case, was not to exceed two cents; the standard by which the value is fixed for carrying a passenger one mile, is the price or sum paid not to exceed two cents."

Id., 526, 527.

With respect to matters of state taxation, the clearest statement of the meaning of "rate" may be found in People v. Dolan, 36 N.Y. 59, 67 (1867):

"The 'rate' or 'ratio' is the percentage merely; the 'proportion', the 'degree'. (Webster; Worcester.) If the State imposes a tax of five mills upon the dollar on all the real and personal property of the State, five mills on the dollar is the 'rate', the degree, the proportion, and percentage of taxation."

It is our view that this judicial definition of rate is controlling. People v. Dolan was reversed in People v. Weaver, 100 U.S. 539 (1879), but irrespec-
tive of whatever else the United States Supreme Court's decision may stand for, the Weaver case does not in our opinion detract from the decision in People v. Dolan.

At issue in Dolan, was whether a taxpayer was entitled to deduct the amount of his personal indebtedness from the assessed valuation of national bank shares owned by him. Under the general laws of the state, only that portion of a taxpayer's personal property in excess of his "just debts" was subject to personal property taxation; however, by a special law enacted in 1866 with the evident purpose of satisfying requirements of federal law, the holder of state or national bank shares was, with minor adjustment, assessed and taxed on the full value of such shares, without allowance for personal indebtedness. The 1866 act provided in part:

"No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States; but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the

Section 5219 of the Revised Statutes of the United States, as then in effect, read: "Nothing herein shall prevent all the shares in any association from being included in the valuation of personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere." [emphasis supplied]

People v. Weaver, supra, 542.
valuation of the personal property of such stockholder in the assessment of taxes at the place, town, or ward where such bank or banking association is located, and not elsewhere, whether the said stockholder reside in said place, town or ward or not, but not at a greater rate than is assessed upon other moneyped capital in the hands of individuals in this State. [emphasis supplied]

People v. Weaver, supra, 540.

The taxpayer maintained that the 1866 act, directing that the assessment of bank shares be included in the valuation of a taxpayer's personal property, necessarily subjected his bank shares to the operation of the general law governing assessments which permitted the deduction of personal indebtedness and that any other interpretation would be contrary to the express language of the act since it would give rise to a "greater rate of taxation" than that which was assessed on other moneyped capital:

"It is said that the expression 'but not at a greater rate than is assessed upon other moneyped capital in the hands of individuals in this State,' aids the argument of the respondent. It is argued that an individual owing a bond and mortgage for $1,000, and being indebted $500, could, by the general law, claim to have the $500 deducted from the value of his bond and mortgage, and that his assessment and taxation should be upon the remaining $500 only; and that the refusal of a like deduction in favor of the shareholder of $1,000, would subject him to taxation upon twice as large an amount as was imposed upon the individual. This, it is said would be imposing a greater rate of taxation upon the shareholder."
Id., 67. However, the court, narrowly focusing on the meaning of "rate" and, to buttress its ultimate point, drawing a distinction between "rate" and "exemption," rejected the respondent's argument. It concluded, in effect, that the term "rate," for purposes of the act of 1866, had reference only to the percentage of levy (which was the same under general and special law), without regard to the processes of valuation and assessment:

"Rate and exemptions are in no way connected. In their nature, they have no necessary relation to each other. The one directs how much shall be raised upon certain valuations, while the other directs what property shall be subject to taxation, and what shall be exempt. The possession of United States securities by a State bank exempts so much of its capital, as is thus invested, from State taxation, but the possession by a National bank of the like securities, does not relieve its shareholders to the like amount. * * * * The fact, therefore, that the same percentage will not produce the same amount of tax when imposed upon a State bank, with a capital of $100,000, that it does when imposed upon National shareholders to that amount, does not affect the legality of the tax, and as a corollary, does not impose a different rate of taxation. If it imposed a different rate, the tax would be invalid. [emphasis supplied]

Id. 67-68.

People v. Dolan, supra, dealt with the construction of state laws.

The taxpayer had not asserted that the failure to allow a deduction for personal indebtedness under the 1866 act was in conflict with federal law, and the Court of Appeals did not squarely address the question.
When the question was finally raised in Williams v. Weaver, 75 N. Y. 30 (1878), the Court of Appeals upheld the validity of the 1866 act as previously interpreted by it, on the strength of its decision in People v. Dolan, supra:

"That the assessment of this species of property [national bank shares] is not subject to the allowance of debts of an individual, as a deduction from the valuation of his or her personal property, and that a refusal to allow such deduction, in the case of bank shares, does not violate the law of Congress, as to the rate of taxation, is decided in The People v. Dolan (36 N. Y. 59). 3

Id., 75 N. Y. at 36. And, in the later words of the Supreme Court, it was truly "the opinion in that [the Dolan] case" that had come before it. 100 U. S. at 542.

The essence of the United States Supreme Court's decision in People v. Weaver, supra, lay in the Court's construction of the clear prohibition of Revised Statutes §5219, viz.: "Taxation shall not be at a greater rate than is assessed upon the moneyed capital in the hands of individuals." The Supreme Court said that this provision had to do

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3 The suggestion that the federal question had already been raised and decided in Dolan, simply is not supported by the opinion reported at 36 N. Y. 539. Perhaps what the court had in mind was that, because of the substantial similarity between them, a construction of the 1866 act was tantamount to a construction of Section 5219 of the Revised Statutes. In any event, the Court of Appeals in Weaver, by its statement quoted above, made known its views and effectively extended the rationale of Dolan beyond the state level to questions of interpretation arising under applicable provisions of federal law.
with the actual incidence and practical burden of [taxation]." Amoskeag Savings Bank v. Purdy, 231 U.S. 373, 385 (1913). Rejecting the emphasis placed by the Court of Appeals on the word "rate", the Supreme Court reasoned that within the framework of the federal statute, valuation was an element of assessment and further, that valuation and assessment, in addition to rate, were collectively the measure of the "incidence and burden of taxation," saying:

"In what respect shall it be not greater than the rate assessed upon other capital? We see that Congress had in its mind an assessment, a rate of assessment, and a valuation; and, taking all these together, the taxation on these shares was not to be greater than on other moneyed capital." [original emphasis]

People v. Weaver, supra, 545.

It is submitted that all that the Supreme Court held was that the purpose of the prohibition in R. S. §5219 was to prevent any discrimination in the taxation of national bank shares, even indirectly by a concession in valuation, nothing more and nothing less. None of the delicate distinctions involved in reconciling state taxing powers with McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819) are present in interpreting the "events of default" provision of a State authority's bond resolution.

Nowhere in its opinion in People v. Weaver, supra, did the Supreme Court take exception to the manner in which the Court of Appeals defined "rate." On the contrary the vice found by the Supreme Court was that the Court of Appeals failed to take into account valuation and assessment -- which the Supreme Court considered indispensable in carrying out
the intention of Revised Statutes §5219. It is also noteworthy that the 1866 act as construed by the Court of Appeals in Dolan, supra, survived Weaver for all purposes of state law which did not conflict with federal constitutional law, as applied by the United States Supreme Court. In Supervisors v. Stanley, 105 U. S. 305 (1882), where it was argued that Weaver had rendered the 1866 act void, the Supreme Court responded:

"[I]t was here held [in People v. Weaver] that while we were bound to accept the decision of the highest court of the State in construction of its own statute the act of 1866 as thus construed was in that particular in conflict with the act of Congress, because it did tax shares of the national banks at a higher rate than other moneyed capital in the State. It is reported in 100 U. S. 539, and there are no words which declare the act of 1866 to be void, but the careful language of the decision is, that 'in refusing to plaintiff the same deduction for debts due by him from his shares of national bank stock that it allows to others who have moneyed capital otherwise invested, it is in conflict with the act of Congress. * * *"

"Accepting, therefore, as we must, the act of 1866, as construed by the Court of Appeals of New York, as not authorizing any deduction for debts by a shareholder of a national bank, is it for that reason absolutely void? This cannot be true in its full sense, for there is no reason why it should not remain the law as to banks or banking associations organized under the laws of the State, or as to private bankers, of which there no doubt exists a large number of both classes.

* * * *

"It is very difficult to conceive why the act of the legislature should be held void any further than when it affects some right conferred by the act of Congress. If no such right exists, the delicate duty of declaring by
this court that an act of State legislature is void is an assumption of authority uncalled for by the merits of the case, and unnecessary to the assertion of the rights of any party to the suit." [emphasis supplied] Id., 310-312.

Under § 1202 (f) of the Bond Resolution and §§ 270 and 270-a of the Tax Law the word "rate" appears in isolated context; none of the key references are saddled with complicating concepts of valuation, assessment or any other. Guided by standard rules of construction and the decisions of courts which in the past have had occasion to consider the connotation of the word, "rate" must be accorded its plain and obvious meaning, which is synonymous with "ratio", "percentage", "proportion" or "degree", none of which connotes "amount" or "limitation". Since we are not aware of any judicial decision equating "rate" with "amount", we have concluded that extending the maximum tax would not precipitate an "event of default" under § 1202 (f).

(2) "Amount of tax," in the context of § 270-a §2, does not itself import the meaning of rate.

With due regard to the language and framework of Article 12, the meaning of "amount of tax," in the context of § 270-a §2 cannot be understood to embrace "rate of tax." Not once does the word "rate" appear in § 270-a §2, the sole purpose and effect of which was to place a ceiling on the tax determined to be due by application of rates of tax set forth in § 270 and § 1 of § 270-a.
Neither is the language of § 270-a ¶2 susceptible to a broader interpretation than the same word "rate" found elsewhere in Article 12. Apart from the fact that it would distort the plain import of "amount of tax", such an interpretation would vitiate any independent meaning of § 270-a, ¶1 and ¶2. Cf. Manhattan Co. v. Kaldenberg, 165 N. Y. 1, 7 (1900): "In construing statutes the proper course is to start out and follow the true intent of the legislature, and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policies and objects of the legislature." See also People ex rel. Killeen v. Angle, 109 N. Y. 564, 575 (1888): "It is a primary rule of construction that statutes must be so interpreted as to give effect to every part thereof and leave each part some office to perform; and any construction which deprives any part of a statute of effect and meaning, when it is susceptible of another interpretation, is wholly without support from any authority" and Matter of Dwyer, 192 App. Div. 72, 79, 182 N. Y. S. 64 (4th Dept. 1920): "It is an elementary rule of construction that a construction is favored which gives effect to every clause and every part of the statute, thus producing a consistent and harmonious whole. A construction which would leave without any effect any part of the language used should be rejected if interpretation can be found which will give it effect."

In Naylor v. Board of Education, 216 Ky. 766, 288 S. W. 690 (1926), in which it was held that a notice of election to levy a school tax, the
terms of which referred only to a proposed tax "not exceeding 25 cents
* * * on each $100 of taxable property," had failed to comply with the
statutory requirement that the notice set forth both the amount of tax pro-
posed to be raised and the rate of taxation:

"It is the contention of appellants that the notice should have set forth clearly 'the amount of tax proposed to be raised,' as well as the object thereof and the rate of taxation which should be imposed, and that its failure so to do ren-
dered the election invalid. On the other hand, it is contended by appellees that the terms, 'amount of the tax proposed to be raised' and 'rate of taxation which shall be imposed,' are used in the act to refer to the same thing. In this reasoning, we cannot concur. Had the term 'rate of taxation which shall be imposed' been omitted from the act, it might be argued with some plausibility that the word 'amount' was used to refer to the rate which should be im-
posed. The words 'amount' and 'rate' have different significations. In Webster's New Inter-
national Dictionary, 'amount' is defined as 'The sum total of two or more sums or quantities; the aggregate; the whole quantity; a totality,' and 'rate' is defined as 'A fixed relation of quantity, amount or degree between two things; a ratio; proportion.'

* * * *

"The Legislature manifestly inserted [the reference to rate] for some purpose, and it was clearly the legislative intent that the words 'amount' and 'rate,' as used in the statute, should refer to different things, and that the notices should fully inform the voter of the nature and extent of the obligation proposed to be incurred. A voter might be in favor of the object of the tax and willing to vote for the rate proposed, if necessary to effectuate that object, and yet be op-
posed to a tax that would raise an amount of money that, in his judgment would be greater than needed to carry out the purpose intended * * *." [emphasis supplied]

Id., 288 S.W. 690, 692-693.
In sum, § 270-a §2 by its terms supports the conclusion that the "amount of tax" excludes any notion of rate and § 1202 (f) by omitting any reference to the maximum amount of tax and concentrating only on a reduction in rates confirms the view that extending the maximum amount of tax to all sales within or without the State does not constitute a reduction in rates and hence cannot be an "event of default" under § 1202 (f).

B. Exscinding the phrase "within this state" from § 270-a with the result that the reduced nonresident rates apply to all nonresidents regardless of the place of sale would not result in an "event of default" under § 1202 (f).

If the Court of Appeals construes §§ 10 and 11 in a manner consistent with MAC's amicus curiae brief and exscinds from § 270-a the words offensive to the Commerce Clause, the rates "in effect on July 2, 1975" are the rates prescribed by § 270-a absent the phrase "within this state."

The leading case on the effect of an unconstitutional statute is Norton v. Shelby County, 118 U.S. 426 (1885). In that case bonds issued by the Board of Commissioners of Shelby County were held invalid. Although the noted constitutional lawyer, Joseph H. Choate, argued that the bonds were valid as regards the holders of the bonds, as the acts of a de facto board and of de facto officers, Mr. Justice Field, speaking for a unanimous court, held to the contrary, saying (118 U.S. at 442):
"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

Later, in **Chicago, I. & L. Ry. v. Hackett**, 228 U.S. 559 (1913), the Supreme Court, again unanimously, held that the invalid Federal Employers' Liability Act could not operate to supersede any existing valid law. The Court differentiated **Northern Pacific Ry. v. Washington**, 222 U.S. 370 (1912), in which a valid Federal statute operated immediately to supersede state law although the Federal statute did not otherwise operate until two years after its enactment, and added "No such purpose could be manifested by a void statute, since it was not law for any purpose." 228 U.S. at 567.

And although some state courts sustain the acts of an incumbent of a position which has no other sanction than an unconstitutional statute, the authority of Mr. Justice Field's opinion in **Norton v. Shelby County** is unimpaired by any subsequent decision in the Supreme Court of the United States and was followed by the Court of Appeals in New York in a case invalidating discriminatory provisions of the stock transfer tax. **People ex rel. Farrington v. Mensching**, 137 N.Y. 8 (1907). Under the rationale of the latter case, if "within this state" is excised by the Court of Appeals, it was not "in effect" on July 2, 1975.

The MAC enabling legislation *requires that any agreement with bondholders contain a clause that any "agreements which relate to taxes imposed under Article 12 [the stock transfer tax] * * * shall be deemed executory

* L. 1975, c. 168, § 3012 56
only to the extent of the moneys available to the state ** *." Hence, the bond resolutions could not contain covenants not to repeal the tax or not to reduce the rates. Thus, § 1202 (f) was inserted as a condition which would protect the bondholders if the State did not continue the imposition of the tax without reducing the rates.

Clearly, § 1202 (f) was not designed to be a revenue test, failure to meet which would cause an "event of default." There is nothing in § 1202(f) from which the inference can be drawn that if transfer taxes fall below a fixed sum or a stated percentage of debt service an "event of default" occurs. Nevertheless, since the thrust of § 1202(f) is to safeguard MAC bondholders, the impact of any alteration of the rate of tax on revenues becomes a relevant consideration.

To conclude that an "event of default" occurs, notwithstanding that the Court of Appeals applies the severability clause in such a way that the underlying legislative purpose is achieved without in the long run adversely affecting revenues, would metamorphose a condition for bondholders' benefit into a bondholders' boobytrap. Such an unintended and untoward consequence calls for a construction of § 1202(f) consistent with a bottom-line black-ink balance. Limiting § 1202(f) to (1) the repeal or emasculation of the stock transfer tax and (2) a literal reduction of rates legally in effect on the specified date, if likely to reduce revenues over the life of the bonds, will achieve that financially desirable result.

April 5, 1977

H D & W
REPORT TO THE GOVERNOR ON LEGISLATION

TO: The Honorable Judah Gribetz, Counsel to the Governor

RE: Assembly Int. 681-A  Introduced by Mr. Passannante

TITLE: An act to amend the state finance law, in relation to the time of payment of monies in the stock transfer tax fund payable by the state of New York to the city of New York

EFFECTIVE DATE: July 1, 1977

RECOMMENDATION: None

DISCUSSION:

This bill amends subdivision 4 of Section 92-b of the State Finance Law to escalate the time of payment of monies in the stock transfer tax fund by the State to the City of New York. Under the present law balances remaining in such fund after deduction of certain costs of the State Tax Commission are distributed and paid, on a quarterly basis, into the special account established for the Municipal Assistance Corporation for the City of New York and to the extent such balances are not required by the Corporation they are then paid on the same quarterly basis into the treasury of the City to the credit of the general fund. The instant bill provides for such distribution and payment to both the corporate special account and/or the City treasury on a semi-monthly basis, on the fifteenth and last days of the month. Certifications by the Commissioner of Taxation and Finance of amounts deducted for administering, collecting and distributing stock transfer taxes shall continue to be made to the Comptroller quarterly.

It should be noted that considerable State interest earnings would no longer be available under the proposed distribution and payment schedule. For the year 1976, for example, such interest income totalled $1,960,000.
Additionally, it should be noted that, with the proposed acceleration of payments to the City of New York, monies held in the stock transfer tax fund may, for short periods, be inadequate to fully meet any possible increased requirements certified by the Municipal Assistance Corporation.

This Department makes no recommendation on the enactment of this bill.

ARThUR LEVITT
State Comptroller

By

Theodore Spatz
Counsel to the Comptroller
March 24, 1977

Honorable Judah Gribetz
Executive Chamber
State Capitol
Albany, New York 12224

Dear Judah:

Re: A. 681-A (Passannante)

The Department of Commerce has no objection to this bill.

The bill would change the time that the State would pay to the City of New York monies in the Stock Transfer Tax Fund.

Balances would be distributed and paid on the 15th and last day of each month, instead of the last day of September, December, March and June, as to those funds required to be deposited into a special account established for the Municipal Assistance Corporation for New York City.

Balances not required to be so deposited are to be paid into the New York City Treasury on the last day of September, December, March and June.

Sincerely,

[Signature]

Michael Curley
Deputy Commissioner & Counsel

STATE OF NEW YORK
DEPARTMENT OF COMMERCE
99 WASHINGTON AVENUE
ALBANY, N.Y. 12245
Division of the Budget recommendation on the above bill:

Approve: ________________ Veto: X ____________________ No Objection: ____________________ No Recommendation:__________________________

1. Subject and Purpose: Under present law, receipts from the stock transfer tax are deposited in the Stock Transfer Tax Fund created pursuant to section 92-b of the State Finance Law. The stock transfer tax is accumulated in this fund throughout a calendar quarter and transferred to the Municipal Assistance Tax Fund, if needed by the MAC, or to New York City, on March 31, June 30, September 30 and December 31.

This bill, which would take effect on July 1, 1977, would amend section 92-b(4) of the State Finance Law and would require that the proceeds of the stock transfer tax be transferred from the Stock Transfer Tax Fund to the Municipal Assistance Tax Fund and the City of New York on a semi-monthly basis.

3. Legislative history:

(a) Chapter 168, Laws of 1975, dedicated the proceeds of the stock transfer tax to the Municipal Assistance Corporation for the City of New York, if necessary for the Corporation to meet its debt service requirements. The Division of the Budget was not asked to comment on that measure.

(b) Numerous bills have been introduced over the last three years to require semi-monthly payments of stock transfer tax receipts to New York City. None of these have been acted upon by the Legislature.

4. Arguments in support: The City of New York argues that semi-monthly payment from the Stock Transfer Tax Fund would even out the flow of stock transfer tax collections to the City, thereby allowing the City to pare down its short term borrowing needs.

5. Possible objections:

(a) Enactment of this proposal would result in an unbudgeted State revenue loss of somewhat more than $2 million. Under present practice, the State Comptroller invests the moneys available in the Stock Transfer Tax Fund before the funds are transferred to New York City. The interest earned on these moneys is deposited to the General Fund and used to finance State operations. If the moneys in the Stock Transfer Tax Fund are transferred to the City on a semi-monthly basis, the interest earnings on such funds will decline drastically.
(b) This proposal will not achieve its intended objective because of the present wording of section 92-b(4) of the State Finance Law, relating to the dedication of the proceeds of the stock transfer tax to the Municipal Assistance Corporation for the City of New York. Section 92-b(4) provides that no money may be paid out of the Stock Transfer Tax Fund to anyone other than the MAC until the aggregate of all payments required to be made to the Corporation have been certified to the Comptroller and have been paid from the Municipal Assistance Tax Fund. Therefore, the moneys in the Stock Transfer Tax Fund could not be transferred to the City on a semi-monthly basis without violating this section of the statute.

6. Other State agencies interested: The Department of Taxation and Finance and the Department of Audit and Control would be interested in this bill.

7. Other interested groups: The City of New York supports this bill. The Municipal Assistance Corporation for the City of New York would also be interested in the bill.

8. Budget implications: The State presently receives somewhat more than $2 million annually in interest income from the investment of balances in the Stock Transfer Tax Fund. Most of this interest income would be lost to the State if this proposal were implemented.

9. Recommendation: The Division of the Budget recommends that this bill be vetoed because it would not achieve its intended objective.

Date: March 24, 1977 Examiner: Bruce A. Balle

Assistant Chief Budget Examiner (P.F.)
March 23, 1977

Honorable Judah Cribetz
Counsel to the Governor
State Capitol
Albany, New York

Re: Assembly 681-A

Dear Judah:

This bill amends subdivision 4 of section 92-b of the State Finance Law to require the distribution of the amounts payable to the municipal assistance corporation, of the stock transfer taxes received and held in a special fund by the State Tax Commission, twice monthly instead of quarterly; and to require the municipal assistance corporation to pay over to the City of New York on the last day of each month, instead of quarterly, the amounts of such monies not required by the corporation.

I recommend this bill be approved. The proceeds of the stock transfer taxes, less the administrative costs of the State Tax Commission, are appropriated for the use of municipal assistance corporation for its purposes and support, and to the extent same are not so required, to the support of local government to the City of New York. The bill permits a more rapid application of these funds for the purposes intended and improved cash flow for the corporation and the city. It will also act to provide additional monies for the purposes the state transfer taxes are appropriated by virtue of any interest that would accrue during the extra periods the funds will be in the control of the corporation and the city.

Sincerely,

[Signature]

Secretary of State
As you requested, I am enclosing the supporting memorandum for my bill, A681-A, which is now before the Governor.

I would also like to request a pen and certificate when the bill is signed into law.
AN ACT to amend the tax law, in relation to determining the credit for stock transfer tax against the taxes imposed by articles nine-a and twenty-three thereof, to providing for an increase in the rate of the stock transfer tax applicable to nonresidents, and to providing a rebate for stock transfer taxes paid, to amend the state finance law, in relation to the stock transfer tax fund and to creating a stock transfer incentive fund, to amend chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six relating to enabling any city having a population of one million or more to raise tax revenue by authorizing the imposition of taxes on general, financial, insurance and transportation corporations and on unincorporated businesses, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the general corporation tax and city unincorporated business income tax in the city of New York, to amend the administrative code of the city of New York, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the taxes imposed under titles R and S thereof and to amend chapter fifty of the laws of nineteen hundred seventy-seven, relating to making appropriations for the support of government, in relation to increasing the appropriation from the stock transfer tax fund and to providing an appropriation to the stock transfer incentive fund and to repeal certain provisions of the tax law relating thereto.

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

Section 1. Subdivision fourteen of section two hundred ten of the tax law is hereby amended by adding thereto a new paragraph, to be paragraph (d), to read as follows:

(d) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market

EXPLANATION—Matter in italics is new; matter in brackets [ ] is old law to be omitted.
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all relates
(provided for under the provisions of section two hundred eighty-a of article twelve of
this chapter) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.
§ 2. The section heading and subdivisions one and three of section two
hundred seventy-a of such law are hereby repealed.
§ 3. Subdivision two of section two hundred seventy-a of such law is hereby
repealed.
§ 4. Subdivision one of section two hundred seventy-d of such law, as
amended by chapter eight hundred forty-two of the laws of nineteen hundred
seventy-six, is hereby amended to read as follows:
1. In addition to the tax imposed by subdivision one of section two hundred
seventy of this article, there is hereby imposed and shall immediately accrue and
be collected a like additional tax on all sales, agreements to sell, memoranda of
sales and all deliveries or transfers of shares or certificates subject to tax under
such subdivision during the period commencing on August first, nineteen
hundred seventy-five and ending July thirty-first, nineteen hundred seventy-
eight. Such additional tax is at the rate of twenty-five per cent of the rates of tax
on sales or transfers under subdivision two of section two hundred seventy and
on sales under subdivision one of section two hundred seventy-a and [the
maximum amount of tax on a single taxable sale under subdivision two of
section two hundred seventy-al the maximum amount of tax on a single qualifying
sale under section two hundred seventy-e of this article. Provided, however, that
the tax so calculated shall not be carried out in its computation beyond four
decimal points, that is, it shall be computed to the nearest one-hundredth of
one cent.
§ 5. Such law is hereby amended by adding thereto a new section, to be
section two hundred seventy-e, to read as follows:
§ 270-e. Maximum amounts of tax. 1. Notwithstanding the provisions of section
two hundred seventy of this chapter, where any transaction subject to the tax imposed
by this article involves a sale which relates to shares or certificates of the same class
and issued by the same issuer, the amount of tax upon any such transaction which
involves such single qualifying sale shall not exceed the sum of three hundred fifty
dollars, provided, however, that such transactions involving sales by any member of a
securities exchange or by a registered dealer, who is permitted or required pursuant to
any rules and regulations promulgated by the tax commission pursuant to the
provisions of section two hundred eighty-one-a of this chapter to pay the taxes
imposed by this article without the use of the stamps prescribed by this article,
pursuant to one or more orders to sell such shares or certificates placed with the same
member of a securities exchange or the same registered dealer on one day, by the same
person, each relating to shares or certificates of the same class and issued by the same
issuer, all of which sales are executed on the same day (regardless of whether it be the
day of the placing of the orders to sell), shall, for the purposes of this subdivision one,
be considered to constitute a single qualifying sale.
2. All the provisions of this article shall apply with respect to the maximum
amounts of tax provided for by this section to the same extent and in the same manner
and with the same force and effect as if the language of such provisions had been
incorporated in full into this section and had expressly referred to the maximum
amounts of tax provided for under this section, except to the extent that any such
 provision is either inconsistent with a provision of this section or is not relevant to
this section. Provided, further, any reference in this article to the maximum amounts
of tax on a single taxable sale under subdivision two of section two hundred seventy-a of this article shall mean the maximum amounts of tax on a single qualifying sale provided for by this section. The term "tax" as used in this article shall include the maximum amounts of tax provided for by this section as well as the taxes imposed by subdivisions one of sections two hundred seventy and two hundred seventy-e of this article, and a reference to such tax, subdivision one of section two hundred seventy or subdivision two of section two hundred seventy-a shall include the maximum amounts of tax provided for by this section or this subdivision, as the case may be.

§ 6. Such law is hereby amended by adding thereto a new section, to be section two hundred eighty-a, to read as follows:

§ 280-a. Rebate for stock transfer tax paid; penalty for false claims. 1. Where a tax shall have been paid under this article a portion of the amount paid shall be allowed as a rebate and such portion shall be paid to the taxpayer but only to the extent that moneys are available for the payment of such rebates in the stock transfer incentive fund established pursuant to section ninety-two-i of the state finance law. The portion of the amount of tax paid which is to be allowed as a rebate shall be thirty percent of the tax incurred and paid on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty and sixty percent of the tax incurred and paid on such transactions occurring on and after October first, nineteen hundred eighty and on or before September thirtieth, nineteen hundred eighty-one and all of the amount of tax incurred and paid shall be allowed as a rebate on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred eighty-one.

2. Notwithstanding the provisions of subdivision one of this section with respect to the percents of tax allowable as rebates, the portion of the amount of stock transfer tax paid which is to be rebated to a nonresident shall be fifty percent of tax incurred and paid on transactions subject to stock transfer tax occurring on and after October first, nineteen hundred seventy-seven and on or before July thirty-first, nineteen hundred seventy-eight and thirty-seven and one-half percent with respect to such transactions occurring on and after August first, nineteen hundred seventy-eight and on or before September thirtieth, nineteen hundred eighty, and thereafter the portions set forth in subdivision one of this section shall be applicable.

3. Except as provided in subdivision six of this section, rebates may be paid only upon the filing of a claim for rebate with the state tax commission. All claims for rebate shall be presented in such form and contain such information as the state tax commission, by rule, regulation or instruction, shall prescribe and shall be presented within two years after the affixing and canceling of stock transfer tax stamps or payment of the tax otherwise than by the use of stamps.

4. Every such claim shall include a certificate by or on behalf of the party presenting the same to the effect that it is just, true and correct, that the amount of stock transfer tax stated thereon has been paid to the state and that the amount of rebate requested is actually due and owing. The state tax commission, if satisfied that the tax has actually been paid, shall rebate the same in accordance with the provisions of this section on the audit and warrant of the state comptroller on vouchers approved by the commissioner of taxation and finance.

5. The state tax commission shall grant or deny such claim in the manner provided in section two hundred eighty of this article and the remaining provisions of such section, relating to determination of tax, hearing, decision of the state tax commission, the exclusive manner of review of such decision, and the requirement of an undertaking, shall apply to the provisions of this section with the same force and effect as if the language of such section had been incorporated in full into this section and had expressly referred to the rebate under this section, except to the extent that any such provision is either inconsistent with or not relevant to this section. All of the
other provisions of this article relating to refunds shall apply to the rebate of tax
provided for by this section in the same manner and with the same force and effect as
if the language of such provisions had been incorporated in full into this section and
had expressly referred to the rebates of tax provided for under this section, except to
the extent that any such provision is either inconsistent with a provision of this
section or is not relevant to this section and except that the term "refund" as used in
such provisions shall be read as "rebate".

6. (a) Notwithstanding the provisions of section two hundred eighty-one-a of this
article, the tax imposed by this article may be paid, and rebates provided for in this
section shall be allowed, without the filing of the claim required by subdivision three of
this section, in the manner and upon the filing of the report referred to in paragraph
(b) of this subdivision in the case where payment of the tax imposed by this article is
made by any member of any securities exchange or any registered dealer who or
which is permitted or required pursuant to the provisions of such section two hundred
eighty-one-a of this article to pay such tax without the use of the stamps prescribed by
this article.

(b) On the written report required to be made to an exchange, affiliated clearing
corporation or authorized agency by each such member or dealer under such section
two hundred eighty-one-a of this article there shall also be shown the amount of the
rebate of tax shown to be due thereon, which would be allowable by this section if the
full tax were paid with such report. The net amount required to be paid for the
account of the tax commission to such exchange, affiliated clearing corporation or
authorized agency and remitted to the tax commission pursuant to such section shall
be the amount of tax shown to be due on such written report (determined without
regard to any rebate allowable under this section) less the amount of any such rebate,
subject to the provisions of subdivision eight of this section. Notwithstanding the
provisions of section two hundred eighty-one-a of this article, on the next-to-the-last
business day of the department of taxation and finance in each of the months of
September, December, March and June, each such member or dealer shall show on
such report the aggregate amount of rebates shown daily on such report for the period
of three full months ending on such next-to-the-last business day. On the last business
day of each of such months, an amount equal to such aggregate amount shall be
paid by such member or dealer for the account of the tax commission to such
exchange, affiliated clearing corporation or authorized agency and remitted by such
exchange, affiliated clearing corporation or authorized agency to the tax commission
by separate check or wire transfer. The amount so remitted shall constitute the total
amount of rebates provided in subdivisions one and two of this section payable in the
manner described in this subdivision, which amount shall be included in the amount
required to be paid from the stock transfer tax fund into the stock transfer incentive
fund on each such last day pursuant to sections ninety-two-b and ninety-two-i of the
state finance law; provided, however, that if such exchange, affiliated clearing
corporation or authorized agency shall determine that the payment by any member or
dealer of any tax imposed by this article will be jeopardized by delay, it shall
forthwith notify the tax commission of such condition, or if the tax commission
believes that the collection of any tax will be jeopardized by delay, it may determine
the amount of such tax and assess the same against any such member or dealer prior
to the filing of his report and prior to the date when his report is required to be made
to an exchange, affiliated clearing corporation or authorized agency. The amount so
determined shall become due and payable to the tax commission by the member or
dealer against whom such a jeopardy assessment is made, as soon as notice thereof is
given to him personally or by registered or certified mail. The provisions of section
two hundred seventy-nine-a of this chapter shall apply to any such determination,
except to the extent that they may be inconsistent with the provisions of this
subdivision. The tax commission may abate any jeopardy assessment if it finds that
jeopardy does not exist. The collection of any jeopardy assessment may be stayed by
filing with the tax commission a bond issued by a surety company authorized to
transact business in this state and approved by the superintendent of insurance as to
solvency and responsibility, conditioned upon payment of the amount assessed, or
any lesser amount to which such assessment may be reduced by the tax commission or
by a proceeding under article seventy-eight of the civil practice law and rules as
provided in section two hundred seventy-nine-a of this chapter, such payment to be
made when the assessment or any such reduction thereof shall have become final and
not subject to further review. If such a bond is filed and thereafter a proceeding under
article seventy-eight of the civil practice law and rules is commenced as provided in
section two hundred seventy-nine-a of this chapter, deposit of the taxes assessed shall
not be required as a condition precedent to the commencement of such proceeding.
Where a jeopardy assessment is made, any property seized for the collection of the tax
shall not be sold (i) until expiration of the time to apply for a hearing as provided in
such section, and (ii) if such application is timely filed, until the expiration of
ninety days after the tax commission mailed notice of its determination to the person
against whom the assessment is made; provided, however, such property may be sold
at any time if such person has failed to attend a hearing of which he has been duly
notified, or if he consents to the sale, or if the tax commission determines that the
expenses of conservation and maintenance will greatly reduce the net proceeds, or if
the property is perishable. The amount of any and all rebates of the tax imposed by
this article paid pursuant to this paragraph shall be credited or caused to be credited
by such exchange, affiliated clearing corporation, or authorized agency to or for the
benefit of the taxpayer incurring liability for such tax.
(c) If a rebate is paid in the manner provided in this subdivision, no further
rebate shall be allowable but any stock transfer tax paid to a member or dealer by a
taxpayer otherwise entitled to rebate under this section shall be paid by such member
or dealer to the taxpayer.
(d) The amounts of the rebates provided for under subdivisions one and two of this
section paid in the manner provided in this subdivision shall be shown separately on
all reports prescribed by the tax commission under such section and shall be
evidenced by such certification as the tax commission may prescribe.
(e) The tax commission may require any such member or registered dealer to file
with the department of taxation and finance a bond issued by a surety company
approved by the superintendent of insurance as to solvency and responsibility and
authorized to transact business in the state, in such amount as the tax commission
may fix, to secure the payment of any taxes due from such member or dealer
pursuant to section two hundred eighty-one-a of this chapter. The tax commission
may require that such a bond be filed before any tax due under this article from any
such member or dealer may be reported and paid under the provisions of this
subdivision, or at any time when in its judgment the same is necessary as a
protection to the revenues under this article. In lieu of such bond, such member or
dealer may deposit securities approved by the tax commission, in such amount as it
may prescribe, which securities shall be kept in the joint custody of the comptroller
and the commissioner of taxation and finance and may be sold by the tax commission
if it becomes necessary so to do in order to recover any sums due from such person
pursuant to this article; but no such sale shall be held until after such person shall
have had opportunity to litigate the validity of any tax if it elects so to do. Upon any
such sale, the surplus, if any, above the sums due under this article, shall be returned
to such member or dealer.
7. If the commissioner of taxation and finance makes the determination that
rebates payable exceed moneys available in the stock transfer incentive fund for
paying such rebates and if any member or dealer shall advance and pay the amount
of tax, imposed by this article without taking account of rebates, either for himself or
for which any other taxpayer is entitled to claim a rebate pursuant to the provisions
of subdivision six of this section, such member or dealer shall be entitled to a rebate
for the amount of such tax advanced and paid by him on behalf of such other taxpayer
in the amount of the rebate allowable to such taxpayer and in the amount of the rebate
allowable to himself whenever such commissioner determines that sufficient funds are
available in the stock transfer incentive fund for paying such rebate.

8. The amount of any erroneous or excessive rebate paid or allowed under this
section may be determined by the state tax commission and if paid may be recovered
from such claimant in the same manner as a tax imposed under this article.
provided, however, that any such determination shall be made within five years after
the date of such erroneous or excessive rebate.

9. Any taxpayer, broker or dealer who or which files or causes to be filed any
claim for or report of rebate permitted or required under this article which is willfully
false shall be guilty of a felony.

10. If any part of any claim for or report of rebate of stock transfer tax is false or
fraudulent, any person who files such claim or makes such report shall, in addition
to any other penalties provided by this article, be subject to a penalty of five hundred
dollars for each and every violation. The state tax commission may determine the
amount of any such penalty to be due from any such person in the same manner as
the tax imposed by this article, provided, however, that any such determination shall
be made at any time.

11. The state tax commission shall make rules and regulations and issue
instructions to effectuate the purposes of this section and to provide for payments to
and from and administration of the stock transfer tax fund and the stock transfer
incentive fund and shall have all the rights and powers as set forth in section two
hundred seventy-six of this article to examine transactions and require receipts to be
kept and declarations and certifications to be made and kept as may be required for
such purposes. If any member or dealer described in subdivision six of this section
shall violate any provision of this section or any reasonable rule, regulation or
instruction made or issued pursuant thereto, such member or dealer may upon notice
thereof thereafter be denied rebates by the state tax commission in accordance with
rules and regulations promulgated by such commission. Provided, that nothing
herein shall limit the right to file a claim for rebate under this section.

12. For the purposes of this section the following terms shall have the following
meanings:

(a) A “nonresident” shall mean an individual or group of individuals jointly
owning securities (but including partnerships only if organized and operating solely
for the purpose of investing in securities) selling or trading or delivering or
transferring on his or their own account, who is not, or no one of whom is, a resident.

(b) A “resident” means an individual who on the day upon which the tax imposed
by section two hundred seventy of this chapter accrues,

(1) regardless of where he resides or is domiciled, (i) is a member of a securities
exchange within this state which is registered with the securities and exchange
commission of the United States; (ii) is a dealer in securities required to be registered
with the attorney general of the state of New York; (iii) acts as a dealer in securities
or as a broker or agent in transactions concerned with the sale, purchase, delivery or
transfer of securities; or (iv) is a member of or a person employed in a managerial
capacity by a firm, company, association or organization, or an officer or director of
or a person employed in a managerial capacity by a corporation, which is a member
organization of a securities exchange, a dealer in securities, or a dealer, broker or
agent, described in clauses (i), (ii) or (iii) of this subparagraph, or

(2) is domiciled in this state, unless on such day he maintained no permanent
place of abode in this state, maintained a permanent place of abode elsewhere and
during the one year period ending on such day spent in the aggregate, not more than
thirty days of such period in this state, or
(3) is not domiciled in this state, but on such day maintained in this state, a
permanent place of abode unless such abode is due solely to such individual's being
in the armed forces of the United States, or
(4) regardless of where he resides, maintains a permanent place of business
within this state or is employed within this state.
(c) No transaction shall be deemed to be by a nonresident and entitled to the rebate
payable or allowable in subdivision two unless (1) the papers or documents upon or
to which are required to be placed or affixed the stamps required by subdivision four
of section two hundred seventy of this chapter, to denote the payment of the tax
imposed by such section, have also affixed thereto or placed thereon a declaration in
the form prescribed by the tax commission signed by the person making the sale or
transfer, setting forth facts to show that the transaction is made by a nonresident; or
(2) in the case of transactions executed or effected within this state (or transactions,
executed or effected outside this state but subject to the tax imposed by this article) by
any member or member organization of any securities exchange within this state
which is registered with the securities and exchange commission of the United States
(hereinafter in this section referred to as a "member of a securities exchange") or by
any person, firm, corporation, company or association required to be registered with
the attorney general of the state of New York as a dealer in securities other than upon
any such exchange (hereinafter in this section referred to as a "registered dealer"),
who is permitted or required pursuant to any rules and regulations promulgated by
the tax commission pursuant to the provisions of section two hundred eighty-one-a of
this chapter, to pay the tax imposed by this article without the use of the stamps
prescribed by this article, the transaction is certified, in such form as the tax
commission may prescribe, in the report required to be made to such exchange, or its
affiliated clearing corporation or any authorized agency by rules and regulations
promulgated by the tax commission pursuant to section two hundred eighty-one-a of
this chapter, as being a transaction by a nonresident. The certification in such report
may be made by such member of a securities exchange or registered dealer if he either
(i) has obtained from such resident a declaration in the form prescribed by the tax
commission, or (ii) has met requirements set forth in rules and regulations
promulgated by the tax commission establishing that the transaction is made by a
nonresident and (iii) has not, on or after the date of obtaining such declaration or its
delivery and filing, received from such nonresident either a notice of cancellation, in
the form prescribed in clause three of subparagraph two of paragraph (d) of this
subdivision, or has no knowledge or reasonable grounds to believe that the status of
such nonresident as a nonresident has changed.
(d) (1) Any person who shall knowingly make any false statement in a
declaration provided for by paragraph (c) of this subdivision shall be guilty of a
misdemeanor and upon conviction thereof shall be liable to a fine of not less than five
hundred nor more than one thousand dollars, or be imprisoned for not more than one
year, or be subject to both such fine and imprisonment, in the discretion of the court.
(2) Any person who—
(i) having executed, filed with and delivered to a member of a securities exchange
or a registered dealer a declaration provided for by paragraph (c) of this subdivision;
(ii) thereafter ceases knowingly to be a nonresident;
(iii) fails to execute, file and deliver a notice of cancellation of such declaration,
with and to such member or dealer; and
(iv) after ceasing to be such a nonresident and prior to the execution, filing and
delivery of such notice of cancellation, with intent to cause a rebate to be made from
the stock transfer incentive fund in excess of the rebate allowable to residents under
subdivision one of this section, places and allows to be executed an order with such
member or dealer where the sale, agreement to sell, memorandum of sale, delivery or transfer of any shares or certificates described in section two hundred seventy of this chapter is subject to the taxes imposed by this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than one year, or be subject to both such fine and imprisonment, in the discretion of the court.

13. The state tax commission may provide that where a declaration has been executed, filed and delivered to a member of a securities exchange or a registered dealer under subdivision one of section two hundred seventy-a of this article and kept by such member or dealer pursuant to rules, regulations and instructions of the state tax commission, such declaration shall constitute the declaration of the nonresident under subdivision twelve of this section.

§ 7. Subsection (e) of section seven hundred one of such law is hereby amended by adding thereto a new paragraph, to be paragraph four, to read as follows:

(4) Provided, however, that the credit provided under this subsection shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subsection (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of this chapter) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subsection with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

§ 8. Subdivisions three and four of section ninety-two-b of the state finance law, as amended by chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, are hereby amended to read as follows:

3. The moneys received from such tax and other sources in such fund, after deducting the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering, collecting and distributing such tax, commencing with the fiscal year ending March thirty-first, nineteen hundred seventy-seven, shall be appropriated to (i) the municipal assistance corporation for the city of New York created pursuant to title three of article ten of the public authorities law in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund and (ii) to the extent such moneys are not required by such corporation as provided in subdivision seven of section ninety-two-c of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five of this chapter and, after deducting the amount such commissioner shall determine to be necessary for reasonable costs of the state tax commission in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law, from the stock transfer incentive fund, to the stock transfer incentive fund created pursuant to section ninety-two-i of this chapter to enable rebates to be made from such fund under the provisions of section two hundred eighty-a of the tax law and (iii) to the extent such moneys are not required by such fund, as certified by the commissioner of taxation and finance, the balance shall be appropriated to the city of New York, for the support of local government.

4. After the deduction of such costs of the state tax commission in administering, collecting and distributing such tax, the balances in such the stock transfer tax fund so appropriated shall be distributed and paid on the last day of September, December, March and June into the special account established for the municipal assistance corporation for the city of New York in
the municipal assistance tax fund established pursuant to subdivision one of
section ninety-two-d of [the state finance law as added by a chapter of the laws
of nineteen hundred seventy-five] this chapter, unless and to the extent the
balances in such fund on each such last day are not required by such corporation
as provided in said subdivision seven of said section ninety-two-d [of the state
finance law] in which case the balance not so required, if any, shall be distributed and paid to
the chief fiscal officer of the city of New York to be paid into the treasury of the
city to the credit of the general fund, and on each such day, the commissioner of
taxation and finance shall certify to the comptroller the amount deducted for
administering, collecting and distributing such tax during such quarterly period
and shall pay such amount into the general fund of the state treasury to the
credit of the state purposes fund therein. In no event shall any amount (other
than the amount to be deducted for administering, collecting and distributing
such tax) be distributed or paid from the stock transfer tax fund to any person
other than the municipal assistance corporation for the city of New York unless
and until the aggregate of all payments certified to the comptroller as required
by such corporation in order to comply with its agreements with the holders of
its notes and bonds and to carry out its corporate purposes, including the
maintenance of the capital reserve fund, which remain unappropriated or
unpaid to such corporation shall have been appropriated to such corporation
and shall have been paid in full provided, however, that no person, including
such corporation or the holders of its notes or bonds shall have any lien on such
tax and such agreements shall be executory only to the extent of the balances
available to the state in such fund. If the balances in such fund are not required by
such corporation pursuant to the provisions of this subdivision, on each such last day
of September, December, March and June, the commissioner of taxation and finance
shall certify to the comptroller the amount deducted for administering and making
distributions in accordance with the provisions of section two hundred eighty-a of the
tax law from the stock transfer incentive fund during such quarterly period and he
shall pay such amount into the general fund of the state treasury to the credit of the
state purposes fund therein. To the extent such moneys are not required by such
corporation, as provided in subdivision seven of section ninety-two-d of this chapter,
no amount thereof (other than such amount to be deducted for administering,
collecting and distributing such tax and such costs in administering and making
distributions in accordance with the provisions of section two hundred eighty-a of the
tax law from the stock transfer incentive fund) shall be distributed or paid from the
stock transfer tax fund other than to such stock transfer incentive fund in the custody
of the commissioner of taxation and finance unless and until the aggregate of all
payments certified to the comptroller by such commissioner pursuant to the
provisions of such incentive fund as necessary to provide payments on account of
rebates authorized pursuant to section two hundred eighty-a of the tax law which
remain unappropriated or unpaid to such fund shall have been appropriated to such
fund and shall have been paid in full provided, however, that no person, including
any taxpayer under article twelve of the tax law or any member or dealer referred to
in subdivision six of section two hundred eighty-a of such law, shall have any lien on
this fund or the stock transfer incentive fund.
§ 9. Subdivision seven of section ninety-two-d of such law, as added by chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

7. In the event that the amount of revenues in the special account established for the municipal [assistant] assistance corporation for the city of New York in the municipal assistance tax fund which have been appropriated to such corporation shall at any time be less than the amount which the chairman of such corporation has certified to the comptroller as required in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, then and in such event the comptroller shall forthwith certify to the commissioner of taxation and finance the amount of the difference between the revenues in such special account and the amount so certified as required by such corporation and upon receipt of such certificate the commissioner of taxation and finance shall approve a voucher for payment of the amount of such difference into such special account in the municipal assistance tax fund from the stock transfer tax fund established pursuant to subdivision one of section ninety-two-b of [the state finance law] this chapter at the next date for payment from such fund as provided in subdivision four of such section, anything in said section to the contrary notwithstanding. In the case of every fiscal year commencing after June thirtieth, nineteen hundred seventy-seven, the comptroller shall, before the last day of September, December, March and June of each such fiscal year, certify to the commissioner of taxation and finance the amount from the stock transfer tax fund, if any, determined by the comptroller to be required during the next following three months in order to provide the amounts certified by the chairman of the municipal assistance corporation for the city of New York, or if no such amount is necessary, a statement to that effect. The amount so determined shall be based on estimated stock transfer tax revenues which shall be certified to the comptroller by the commissioner of taxation and finance who shall not be held liable for any inaccuracy in such certification. The foregoing certificate or statement, as the case may be, shall be made regardless of the amount of revenues in the special account established for the municipal assistance tax fund which have been appropriated to such corporation:

§ 10. Such law is hereby amended by adding thereto a new section, to be section ninety-two-i, to read as follows:

§ 92-i. Stock transfer incentive fund. 1. There is hereby established in the sole custody of the commissioner of taxation and finance a special fund to be known as the stock transfer incentive fund.

2. Such fund shall consist of moneys paid thereto from the stock transfer tax fund as provided in subdivision four of section ninety-two-b of this chapter and all other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law.

3. On the last day of each of the months of September, December, March and June of each year commencing December thirty-first, nineteen hundred seventy-seven, the commissioner of taxation and finance shall determine the sum of (i) the amounts allowable as rebates of the tax that is imposed by article twelve of the tax law and is paid on transactions executed or effected during the three calendar months ending on the next-to-the-last business day of each such month pursuant to subdivision one of section two hundred eighty-a of the tax law and (ii) such amounts allowable as rebates pursuant to subdivision two of such section.

4. On the last day of each such month the commissioner of taxation and finance shall certify to the director of the budget, the state comptroller and the chief fiscal officer of the city of New York each of the amounts finally determined under clauses (i) and (ii) of subdivision three of this section.

5. The amounts so certified on such last day under subdivision four of this section
shall constitute the amount required to be paid into the stock transfer incentive fund
from the stock transfer tax fund for purposes of section ninety-two-h of this chapter.

6. (a) (1) Commencing September thirtieth, nineteen hundred seventy-eight, in
the last day of each of the months of September, December, March and June, the
commissioner of taxation and finance shall certify to the comptroller the amount of
the tax imposed by this article collected during the three month period ending on each
such last day, except that on September thirtieth nineteen hundred seventy-eight, the
commissioner shall certify only the amount of such tax collected on and after August
first, nineteen hundred seventy-eight. The state comptroller shall pay forthwith an
amount equal to one-half of twenty-five percent of the amount so certified from the
general fund of the state of New York to the extent that moneys have been
appropriated and made available therefor; provided, however, that in no event shall
the amount so paid exceed sixteen million dollars in the state fiscal year beginning
April first, nineteen hundred seventy-eight, or exceed twenty-four million dollars in
any subsequent state fiscal year.

(8) Upon receipt of each certification of the commissioner of taxation and finance
provided for in subdivision four of this section, on and after December thirty-first,
nineteen hundred seventy-nine and on or before September thirtieth, nineteen
hundred eighty, the state comptroller shall pay from the amounts certified by such commissioner as rebates allowable under the
provisions of clause (i) of subdivision three of this section from the general fund of
the state of New York to the fund created pursuant to this section, to the extent that
moneys have been appropriated and made available therefor. Upon receipt of the
certification of the commissioner of taxation and finance provided for in subdivision
four of this section, on and after October first, nineteen hundred eighty, the state
comptroller shall pay from the amounts certified by such commissioner as rebates allowable under the provisions of clauses (i) and (ii)
of subdivision three of this section from the general fund of the state of New York, to
the fund created pursuant to this section, to the extent that moneys have been
appropriated and made available therefor.

(b) Provided, however, that the amounts paid from the general fund of the state of
New York under paragraph (a) of this subdivision in the state fiscal year beginning
April first, nineteen hundred seventy-nine shall not exceed forty million dollars; and
in the state fiscal year beginning April first, nineteen hundred eighty such amounts
shall not exceed ninety million dollars and in the state fiscal year beginning April
first, nineteen hundred eighty-one and in every state fiscal year thereafter such
amounts shall not exceed one hundred twenty million dollars.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, the state
comptroller shall, in addition to the payments to be made under paragraph (a) of this
subdivision, also pay to the credit of the fund created pursuant to this section an
amount equal to one-half of the costs deducted by such commissioner for the costs of
the state tax commission in administering and making distributions in accordance
with the provisions of subdivision four of section ninety-two-h of this chapter.

7. If on the day the commissioner of taxation and finance makes the
determinations required under subdivision three of this section, he determines that, as
a result of the payments made into the stock transfer incentive fund pursuant to
subdivision five and six of this section, the amounts in such fund exceed the amounts
determined pursuant to clauses (i) and (ii) of subdivision three of this section for the
three calendar months ending on the next-to-the-last business day preceding the day
on which such determination is made, the amount of such excess shall be paid
forthwith to the chief fiscal officer of the city of New York for support of local
government.

8. Notwithstanding any provision of general or special law to the contrary, all
moneys of such fund shall be deposited by the commissioner of taxation and finance
in any responsible bank, banking house or trust company as may be approved by the
comptroller. All amounts so deposited shall be kept separate and apart and shall not
be commingled with any other moneys in the custody of the commissioner of taxation
and finance. All deposits of moneys of such fund shall be secured by obligations of
the United States or of the state having a market value equal at all times to the amount
of the deposit and all banks and trust companies are authorized to give security for
such deposits. Any such moneys deposited in such fund may, in the discretion of the
commissioner of taxation and finance, be invested in obligations of the United States
or of the state or in other obligations, the principal of and interest on which are
guaranteed by the United States or by the state.

9. Out of such moneys deposited in the fund created by this section, the
commissioner of taxation and finance shall, except for rebates payable in the manner
described in subdivision six of section two hundred eighty-a of the tax law, make the
payments required to be paid on claims for rebates made pursuant to section two
hundred eighty-a of the tax law, but in no event shall such rebates be paid prior to the
last day of each of the years of September, December, March and June with respect
to taxes paid during the period of three calendar months ending on each such last
day. Out of moneys deposited in the fund created by this section, the commissioner of
taxation and finance shall pay to each exchange, affiliated clearing corporation or
authorized agency which shall have remitted amounts to the tax commission, in the
manner set forth in subdivision six of section two hundred eighty-a of the tax law, the
rebate payable pursuant to subdivisions one and two of such section, the rebates
payable in the manner described in subdivision six of section two hundred eighty-a of
the tax law not later than the day after the day the tax equal to the amount of such
rebates is remitted to the tax commission under such subdivision and paid to the fund
created by this section from the stock transfer tax fund pursuant to section ninety-
two-a of this chapter. Upon such payment the liability of the state therefor shall be
fully discharged.

10. In the event that moneys deposited in the fund created by this section are
insufficient to pay such rebates, the city of New York shall pay any such deficiency
to such fund in accordance with local law.

11. The commissioner of taxation and finance shall not be held liable for any
inaccuracy in any certification under this section.

§ 11. Subsection four-a of part two of section one of chapter seventy-two of
the laws of nineteen hundred sixty-six relating to enabling any
city having a population of one million or more to raise tax revenue by
authorizing the imposition of taxes on general, financial, insurance and
transportation corporations and on unincorporated businesses, is hereby
amended by adding thereto a new subdivision, to be subdivision four, to read as
follows:

(4) Provided, however, that the credit provided under this subsection shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subsection (determined without
regard to the provisions of this subdivision) exceeds fifty percent of all rebates
(provided for under the provisions of section two hundred eighty-a of article twelve of
the tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is allowed. No credit shall be allowed under this
subsection with respect to any tax incurred in market making transactions occurring
on or after October first, nineteen hundred eighty-one.

§ 12. Subdivision (c) of subsection one hundred one contained in section two
of such chapter is hereby amended by adding thereto a new paragraph, to be
paragraph four, to read as follows:

(4) Provided, however, that the credit provided under this subdivision shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
(provided under the provisions of section two hundred eighty-a of article twelve of
the tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.

§ 13. Subdivision eleven of section R46-4.0 of the administrative code of the
city of New York is hereby amended by adding thereto a new paragraph, to be
paragraph (d), to read as follows:

(d) Provided, however, that the credit provided under this subdivision shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
(provided under the provisions of section two hundred eighty-a of article twelve of
the tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.

§ 14. Subdivision (c) of section S46-3.0 of such code is hereby amended by
adding thereto a new paragraph, to be paragraph four, to read as follows:

(4) Provided, however, that the credit provided under this subdivision shall be
allowed only to the extent that the amount of credit allowable with respect to market
making transactions under the provisions of this subdivision (determined without
regard to the provisions of this paragraph) exceeds fifty percent of all rebates
(provided under the provisions of section two hundred eighty-a of article twelve of
the tax law) allowed for such taxes incurred in the same market making transactions
with respect to which the credit is determined. No credit shall be allowed under this
subdivision with respect to any tax incurred in market making transactions
occurring on or after October first, nineteen hundred eighty-one.

§ 15. Section one of chapter fifty of the laws of nineteen hundred seventy-
seven is hereby amended to read as follows:

Stock Transfer Tax Fund

For payment to the municipal assistance tax fund for payment
to the municipal assistance corporation for the city of New
York, to the extent required to comply with the agreements
between such corporation and the holders of its notes and
bonds, and for the corporate purposes of such corporation
and to the extent not required by such corporation for such
purposes, for payment to the stock transfer incentive fund in the
to the extent required to comply with the certification of the com-
missoner of taxation and finance provided under section
ninety-two-i of the state finance law and to the extent not
required by such certification of the commissioner of taxation
and finance, for payment to the city of New York for support
of local government, provided, however, that the maximum
amount to be paid shall not exceed the collections from the
stock transfer tax pursuant to article 12 of the tax law, less
administrative costs as certified by the commissioner of tax-
ation and finance for deposit to the credit of the general
fund—state [purpose] purposes fund........ [250,000,000] 270,000,000

§ 16. The sum of three hundred thousand dollars ($300,000), or so much
thereof as may be necessary, is hereby appropriated during the fiscal year com-
mencing April first, nineteen hundred seventy-seven to the stock transfer incentive fund created pursuant to section ninety-two-i of the state finance law for the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law out of any moneys available in the state treasury in the general fund for purposes of providing rebates pursuant to subdivision two of section two hundred eighty-a of the tax law.

§ 17. This act shall take effect immediately, except that the provisions of section two of this act shall take effect October first, nineteen hundred seventy-seven.

Note.—Subdivision two of section two hundred seventy-a of the tax law, proposed to be repealed by section three of this act, relates to maximum amounts of tax under the stock transfer tax imposed by article twelve of the tax law, which are continued under section two hundred seventy-e of such law as added by section six of this act.

Subdivisions one and three of section two hundred seventy-a of the tax law, proposed to be repealed on October first, nineteen hundred seventy-seven by this act, relate to the reduced rates of stock transfer tax provided for nonresidents. These reduced rates will be accounted for through the rebate mechanism provided by this act.
The attached legislation has passed the Assembly and Senate, and will be before the Governor for executive action. The Governor requests your analysis, comments and recommendations. In order to expedite receipt and consideration of your views, please identify your memorandum by the bill's introductory number, address it to my attention, and use the enclosed envelope.

In order to be considered, your comments and recommendations must be received by

MAR 23 1977

Thank you for your cooperation.
AN ACT to amend the state finance law, in relation to the time of payment of monies in the stock transfer tax fund payable by the state of New York to the city of New York

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

Section 1. Subdivision four of section ninety-two-b of the state finance law, as amended by chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

4. After the deduction of such costs of the state tax commission in administering, collecting and distributing such tax, the balances in such fund so appropriated shall be distributed and paid on the fifteenth and last day of September, December, March and June days of each month into the special account established for the municipal assistance corporation for the city of New York in the municipal assistance tax fund established pursuant to subdivision one of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five, unless and to the extent the balances in such fund on each such fifteenth and last day days of each month are not required by such corporation as provided in said subdivision seven of said section ninety-two-d of the state finance law in which case the balance not so required, if any, shall be distributed and paid to the chief fiscal officer of the city of New York to be paid into the treasury of the city to the credit of the general fund, and on [each such] the last day of September, December, March and June the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering, collecting and distributing such tax during such quarterly period and shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. In no event shall any amount (other than the amount to be deducted for administering, collecting

EXPLANATION—Matter in italics is new; matter in brackets [ ] is old law to be omitted.
and distributing such tax) be distributed or paid from the stock transfer fund to any person other than the municipal assistance corporation for the city of New York unless and until the aggregate of all payments certified to the comptroller as required by such corporation in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, which remain unappropriated or unpaid to such corporation shall have been appropriated to such corporation and shall have been paid in full provided, however, that no person, including such corporation or the holders of its notes or bonds shall have any lien on such tax and such agreements shall be executory only to the extent of the balances available to the state in such fund.

§ 2. This act shall take effect on the first day of July next succeeding the date on which it shall have become a law.
March 22, 1977

A.681-A – by Mr. Passannante

AN ACT to amend the state finance law in relation to the time of payment of monies in the stock transfer tax fund payable by the state of New York to the city of New York

APPROVAL RECOMMENDED

Honorable Hugh L. Carey
Governor of the State of New York
Albany, New York

Dear Governor Carey:

The above bill is before you for executive action.

This bill would amend Section 92-b of the State Finance Law to provide that stock transfer tax fund balances, which are payable by the State of New York into the Municipal Assistance Tax Fund or, if not required by the Municipal Assistance Corporation, directly to the City of New York shall be paid over to the Municipal Assistance Tax Fund or to the City twice each month instead of quarterly as the law now provides.

This bill would even out the flow of monies received by the City of New York over the year from the stock transfer tax fund. This would minimize the need for borrowing by the City and to promote its objective of matching, so far as possible, revenues with expenditures.
Honorable Hugh L. Carey
March 22, 1977
Page two

Under the present procedure, the quarterly payments result in an irregular cash flow which compels the City to borrow funds at high interest rates on a short-term basis to meet its needs in periods when cash reserves are low. If payments are received from the State on a regular semi-monthly basis, short-term borrowings and their concomitant charges and administrative costs can be substantially reduced.

This bill does not propose any changes in the amounts payable by the State, nor does it involve additional State aid. The only change to be effected is in the time of payment of funds already required to be paid under existing State law.

Accordingly, I urge your approval of this bill which is part of the City's 1977 Legislative Program.

Very truly yours,

ABRAHAM D. BEAME, Mayor

By [Signature]
Legislative Representative
March 21, 1977

Hon. Judah Gribetz
Counsel to the Governor
Executive Chambers
State Capitol
Albany, New York 12224

Re: 1977 Assembly 681-A

Dear Mr. Gribetz:

You requested the views of this Association with respect to the above ten-day bill pending before the Governor.

We offer no objection to this change in the timing and frequency of payments of the proceeds of the stock transfer tax by the state or the City of New York.

Sincerely,

[Signature]

Kent H. Brown
Legislative Counsel

KHB/cw
MEMORANDUM

TO: Judah Gribetz
FROM: Alan Madian
SUBJECT: 681-A

DATE: March 21, 1977

Economic Impact Assessment

681-A

AN ACT to amend the state finance law, in relation to the time of payment of monies in the stock transfer tax fund payable by the state of New York to the city of New York

This bill appears to have no economic impact, although it may have some fiscal impact.
BIL MEMORANDUM

BILL NUMBER:
A. 681

SPONSOR:
Mr. Passannante

SUMMARY OF BILL:
To hasten the distribution of Stock Transfer Tax collections to the NYC Municipal Assistance Corporation and the City of New York. This bill provides for a semi-monthly distribution of collections. Stock Transfer Tax collections are presently distributed on a quarterly basis.

RECOMMENDATION:
Approve

JUSTIFICATION:
Enactment of this legislation would, to a significant degree, reduce NYC's intra-year borrowing requirements. Furthermore, to the degree that NYC's borrowing costs exceed the return on investments of the Stock Transfer Tax Fund and any additional administrative costs resulting from increasing the number of distribution dates, a net savings to NYC will result.

FISCAL IMPLICATIONS:
None to the State. An annual budgetary savings estimated at $500,000 to NYC.

AC/dp
TO COUNSEL TO THE GOVERNOR

MAR 21 1977

Ré: SENATE
ASSEMBLY 6 & 7

Inasmuch as this bill does not appear to involve a legal problem nor to relate to the functions of the Department of Law, I am not commenting thereon. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

Dated: March 18, 1977

LOUIS J. LEFKOWITZ
Attorney General
The Honorable Judah Gribetz
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York

Dear Mr. Gribetz:

Pursuant to your request, we enclose memorandum on the following bill:

1977 Assembly Bill No. 681-A, entitled:

AN ACT to amend the state finance law, in relation to the time of payment of monies in the stock transfer tax fund payable by the state of New York to the city of New York.

Very truly yours,

[Signature]

Enclosure
MEMORANDUM

By the Executive Director
of the Law Revision Commission

(Not Submitted to or Passed Upon by the Commission)

relating to

Assembly Bill 681-A

This bill amends subdivision 4 of section 92-b, State Finance Law, by increasing the times of payment from the stock transfer tax fund to the Municipal Assistance Corporation from the last days of September, December, March and June, to the fifteenth and last days of every month of the year. Certification by the Commissioner of Taxation and Finance to the Comptroller of amounts deducted for administering the tax account, and payment of that amount into the General fund, need only be made, as before, on the last days of the aforementioned quarterly months.

The bill appears to be adequately drafted to effect its apparent purpose of stepping up payments to the Municipal Assistance Corporation; EXCEPT that there seems to be a printer's error on line 12 of the bill where the words "fifteenth and", being new language, should be in italics.
10 February 1977

Mr. Hyman C. Grossman, Vice President
STANDARD & POOR'S CORPORATION
Municipal Bond Department
345 Hudson Street
New York, New York 10014

Dear Mr. Grossman:

I enclose a copy of the United States Supreme Court's decision in Boston Stock Exchange v. State Tax Commission. As you know, this case, which concerns the New York State Stock Transfer Tax law, holds that differences in tax treatment which depend on whether a sale of stock takes place within or without the state are unconstitutional. At present, an in-state sale can result in a lower tax than an identical out-of-state sale.

The stock transfer tax is a secondary source of payment on the Corporation's bonds issued under the First General Bond Resolution and one of three sources of payment on bonds issued under the Second General Bond Resolution. The primary sources of payment on First Resolution Bonds are certain State sales and compensating use taxes and the primary source of payment on Second Resolution Bonds is certain Per Capita State Aid.

Both the First and Second General Bond Resolutions of the Corporation provide that an event of default under such Resolutions shall occur if "the State shall for any reason fail or refuse to continue the imposition of either [the Sales Tax or the Stock Transfer Tax] as the same may be from time to time amended or if the rates of such taxes shall be reduced to rates less than those in effect on [July 2, 1975]." In such event the Trustee is authorized (but not required) to proceed with certain remedies set forth in such Resolutions. All of the State agencies who are working on the legal and economic aspects of the stock transfer tax are aware of the provisions of our Bond Resolutions, and any action in this matter will be taken in the light of these provisions.
10 February 1977
Hyman C. Grossman
Page Two...

For the reasons discussed below, we do not believe the Supreme Court's decision will result in any significant short-range or long-range detrimental effect upon the Corporation:

1. The decision will not be implemented until a final order is entered by the New York Court of Appeals pursuant to the remand ordered at the end of the Supreme Court's decision. Because the Court of Appeals may request a hearing on the form of order or may send the matter to the New York Supreme Court for hearings, it may be some time before a final order is entered by the Court of Appeals. In the meantime, as previously announced by the State Tax Commission, taxes are collectible and are being collected at the existing rates.

2. The Corporation will work with the State Attorney General and the State Tax Commission in making any presentation to the Court of Appeals (or the New York Supreme Court) for consideration by the Court in formulating its order.

3. We believe that there are a number of changes in the stock transfer tax law that can be made by the courts and/or the legislature to bring the tax lax into compliance with the Supreme Court's decision, without any material adverse affect on the Corporation's revenue stream.

First, the higher tax rates could be applied to all transactions; that is the "non-resident reduction" and "maximum tax" could be eliminated. Such action would probably result in an immediate increase in stock-transfer tax revenue. However, such an increase in the tax on sales made in New York might encourage certain sellers to do business outside of the state to avoid the tax altogether.

Second, the current maximum tax and non-resident reduction provisions could be extended to cover all sales wherever they occur, rather than only sales in New York State. This tax change would (a) preserve the present rate reduction treatment for non-resident individuals who make sales in New York, (b) extend such treatment to all non-resident individuals wherever the transaction takes place and (c) extend the maximum tax treatment to all transactions by residents and non-residents wherever the sale takes place. These tax changes could avoid a loss of economic activity which may result from the first alternative.

It appears that the impact of this second alternative on tax revenue would be negligible. This is so because the beneficiaries of extending the current maximum tax and non-resident reduction provisions appear to be very limited. In particular, such an extension appears to benefit only sales made outside of New York where physical delivery of the security takes place in New York and only then if the delivery is not made through a registered
10 February 1977
Hyman C. Grossman
Page Three...

clearing agency or registered transfer agent. The data we
have considered so far indicate this class of transactions
accounts for a very small percentage of the transactions on
which tax is collected.

The Corporation's staff, lawyers and consultants are working
with the State Tax Commission and representatives of the
Governor's office to determine the legal and economic con-
sequences of these and other possible changes in the tax.

We will keep you informed of any developments in this matter.
If you have any further questions, please call me.

Sincerely,

MUNICIPAL ASSISTANCE CORPORATION

Eugene Keilin
Executive Director

Enclosure

EJK/lsd
AN ACT to amend the tax law, in relation to determining the credit for stock transfer tax against the taxes imposed by articles nine-a and twenty-three thereof, to providing for an increase in the rate of the stock transfer tax applicable to nonresidents, and to providing a rebate for stock transfer taxes paid, to amend the state finance law, in relation to the stock transfer tax fund and to creating a stock transfer incentive fund, to amend chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six relating to enabling any city having a population of one million or more to raise tax revenue by authorizing the imposition of taxes on general, financial, insurance and transportation corporations and on unincorporated businesses, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the general corporation tax and city unincorporated business income tax in the city of New York, to amend the administrative code of the city of New York, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the taxes imposed under titles R and S thereof and to amend chapter fifty of the laws of nineteen hundred seventy-seven relating to making appropriations for the support of government, in relation to increasing the appropriation from the stock transfer tax fund and to providing an appropriation to the stock transfer incentive fund and to repeal certain provisions of the tax law relating thereto.
Purpose: In order to eliminate the adverse economic impact of the stock transfer tax on the securities industry in New York, this bill would gradually reduce the economic effect of the imposition of the stock transfer tax during the four-year period ending in 1981 by means of increasingly greater statutory rebates of such tax. Under the bill, the tax would not be repealed, but would continue to be imposed, and therefore would remain available to the Municipal Assistance Corporation for the City of New York for its debt service requirements in accordance with its bond resolutions and applicable law. The first stage of the relief would be the elimination of the 25% surcharge on the tax on July 31, 1978, as presently scheduled. Thereafter, rebates would be provided for 30% of stock transfer taxes paid on or after October 1, 1979 (the first year of the rebate mechanism), 60% on or after October 1, 1980 (the second year), and 100% beginning on October 1, 1981.

Summary of provisions: The bill, which would take effect immediately, except as noted below, would:

(a) Amend the Tax Law as follows:

(1) Sections one and seven would add a new paragraph (d) to section 210(14) and a new paragraph (4) to section 701(e), respectively, to limit the amount of credit available to a market-maker during the phase-in of the rebate mechanism provided by this bill to the excess of stock transfer taxes paid on market-making activity over rebates allowed on such market-making activity.

(2) Section three repeals section 270-a(2), which now prescribes the maximum tax applicable to a large-block transaction. Section five adds a new section 270-e, providing for the maximum tax applicable to a large-block transaction, and continuing such maximum amount at $350 per transaction. Under section 270-e, this tax limit would apply to any single qualifying transaction, regardless of where the sale occurs.

(3) Section four would amend section 270-d to ensure the continued application of the 25 percent surcharge to the maximum tax on large-block transactions as provided under new section 270-e.

(4) Section six adds a new section 280-a to provide rebates for stock transfer taxes paid, provided that sufficient funds are available in the Stock Transfer Incentive Fund (described in (b), below) to pay such rebates. Section 280-a establishes two rebate schedules, one applicable to residents and the other applicable to nonresidents:

<table>
<thead>
<tr>
<th>Period of Rebate</th>
<th>Nonresident Rebate</th>
<th>Resident Rebate</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 1977 - July 31, 1978</td>
<td>50%</td>
<td>-0%</td>
</tr>
<tr>
<td>July 1, 1978 - September 30, 1979</td>
<td>37-1/2%</td>
<td>-0%</td>
</tr>
<tr>
<td>October 1, 1979 - September 30, 1980</td>
<td>37-1/2%</td>
<td>30%</td>
</tr>
<tr>
<td>October 1, 1980 - September 30, 1981</td>
<td>60%</td>
<td>60%</td>
</tr>
<tr>
<td>October 1, 1981 and thereafter</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
This distinction between the resident and non-resident rebate schedules ceases on October 1, 1980, when the nonresident rebate percentage equals the resident rebate percentage.

Under section 280-a, rebates would be payable upon the filing of a claim with the State Tax Commission. The claim provision applies basically to those taxpayers using stamps to pay the stock transfer tax.

A separate mechanism not requiring such claim would be provided to facilitate rebate of tax for members and dealers using an exchange, affiliated clearing corporation or authorized agency to remit the tax payable to the State Tax Commission, which would be authorized to pay the rebatable portion of the stock transfer tax collected on the next-to-the-last day of the calendar quarter. On such day, the member or dealer would remit the rebatable portion of stock transfer taxes to an exchange, affiliated clearing corporation or authorized agency that would remit the rebatable portion to the Stock Transfer Tax Fund to the credit of the State Tax Commission. The rebatable portion would pass through the Stock Transfer Tax Fund so as to be available to the Municipal Assistance Corporation for the City of New York pursuant to its certifications; moneys not required by such corporation would be available for payment of rebates to the exchange, affiliated clearing corporation or authorized agency. This method permits instantaneous rebates to taxpayers, because brokers presumably would not collect the rebatable portion from their customers.

The Tax Commission would be authorized to require a broker or dealer to place a bond for the rebatable portion of the tax. The Tax Commission would be authorized to issue jeopardy assessments in the event that a broker or dealer is in danger of becoming insolvent.

(5) Section two would repeal the section heading and subdivisions one and three of section 270-a (relating to nonresident stock transfer tax relief and the definition of nonresident), effective October 1, 1977. Nonresidents would begin to receive a 50 percent rebate starting on such date.

(b) Amend the State Finance Law as follows:

(1) Section eight would amend section 92-b which establishes the Stock Transfer Tax Fund, to provide that the gross revenues derived from the stock transfer tax (before rebates but net of State costs of administering the stock transfer tax) shall first be paid to the Municipal Assistance Corporation for the City of New York (MAC), if needed, and then, to the extent not required by such corporation, to a new fund established for the payment of the rebates (the Stock Transfer Incentive Fund), and then, to the extent not so required, to the City of New York. This effectively gives the Stock Transfer Incentive Fund (STIF) a second claim on Stock Transfer Tax Fund moneys.
The costs to the State Tax Commission of administering STIF would be payable from the Stock Transfer Tax Fund to the extent that stock transfer tax revenues are not required by MAC.

(2) Section ten would add a new section 92-i establishing a new Fund, the Stock Transfer Incentive Fund (STIF). This fund would consist of the rebatable portion of the stock transfer tax and any moneys received from the State or other sources. On the last day of each calendar quarter, the Commissioner of Taxation and Finance would determine the amount of rebates payable for the preceding quarter and certify to the State Comptroller the amount of such rebates to be paid out of STIF. The Comptroller would then pay the certified amount from the Stock Transfer Tax Fund to STIF, to the extent available.

The Comptroller would also pay from the General Fund to STIF one-half of the rebatable amount as certified by the Commissioner of Taxation and Finance and one-half of the amount attributable to the 25% stock transfer tax surcharge if such surcharge were in effect. The maximum payment to STIF from the State General Fund could not exceed $50 million in State fiscal year 1979-80, $90 million in State fiscal year 1980-81, and $120 million in State fiscal year 1981-82 and thereafter.

The Comptroller would also be required to pay to STIF one-half of the costs of the State Tax Commission in administering the STIF.

Any excess in STIF after payment of the rebates would be paid to New York City.

(3) Section nine would amend section 92-d(7) to provide that on the last day of each calendar quarter, the State Comptroller must certify whether MAC will require stock transfer tax revenues then in such fund for the next succeeding quarter and the amount of such requirement.

(c) Amend Chapter 772, Laws of 1966 (New York City enabling legislation), and the Administrative Code of the City of New York, as follows:

Sections eleven, twelve, thirteen and fourteen would amend section 1(4-a) and 101(c), and R46-4.0(1) and S46-3.0, of such chapter and such code, respectively, to limit the amount of credit available to a market-maker to the excess of stock transfer taxes paid on market-making activity over rebates allowed on such market-making activity.

(d) Amend the appropriation from the Stock Transfer Tax Fund in Chapter 50, Laws of 1977, to provide for the payment of stock transfer tax revenues to STIF and to increase the 1977-78 appropriation from $250 million to $270 million.

(e) Appropriate $300,000 from the State's General Fund to STIF to finance the State share of the cost of administering STIF during State fiscal year 1977-78.
Statement in support: The stock transfer tax has become a major obstacle to securities trading in New York and now places the securities industry in New York State at a competitive disadvantage with regional exchanges and the over-the-counter (OTC) market in that it imposes an additional cost on execution of transactions in New York State. Brokers and dealers operating in New York have found that the stock transfer tax actually provides an incentive for nonresidents to conduct their trading activity on the regional exchanges and in the OTC market to avoid paying the stock transfer tax in New York. The concern of the State and New York City was first evidenced in 1968 when legislation was enacted that provided tax relief to nonresidents by reducing the tax rates applicable to nonresidents to one-half of the rates applicable to residents. A maximum tax was also provided for large-block transactions.

The concern of the State and the City was again evidenced in 1976 when market-makers were provided with a 100 percent credit for stock transfer taxes incurred and paid in market-making transactions. This credit is applied in equal portions against the firms' State and City corporate or unincorporated business taxes and the entire amount of stock transfer tax paid is returned to the market-maker.

Structural and technical changes occurring in the securities industry will make it easier for brokers and dealers to place transactions elsewhere, thereby eliminating the need to use the two major exchanges in New York:

1. The Securities and Exchange Commission (SEC) has proposed the elimination of New York Stock Exchange (NYSE) Rule 390, which prohibits members of the Exchange from executing principal trades off the floor of the exchange. The SEC has proposed that this rule be eliminated on January 1, 1978. The elimination of this rule will permit brokers and dealers to match orders in their offices, thereby avoiding the floor of the NYSE or the American Stock Exchange (AMEX). Brokers and dealers could match their orders in offices outside New York to avoid the stock transfer tax, thereby reducing the cost of the transaction.

2. Proposals are being advanced and explored to provide for a nationwide market system with an intermarket exchange system, where all prices of a security would be listed at one time throughout the country and the seller of the security would be able to find the best price for his security. The stock transfer tax places the New York exchanges, brokers and dealers, and specialists at a competitive disadvantage in a nationwide market system because the tax increases the cost of a sale of a security and reduces (or increases) the gain (or loss) on the sale.

This bill will remove the disincentive to securities trading in New York in an effective and responsible manner: a gradual but timely transition to full rebate of the stock transfer tax. The four-step transition to full rebate would permit the State and the City to accommodate the resulting revenue loss on an orderly and fiscally prudent basis. The effectuation of the tax relief through the rebate mechanism will ensure that existing requirements of the Municipal Assistance Corporation for the City of New York provided under present law are honored. And the provision for full rebate of any stock transfer tax paid beginning October 1, 1981, in eradicating the existing disincentive to securities trading in New York, should provide a positive inducement to expanded New York activity in an industry vital to the State and City economies.
Budget implications: It is anticipated that, when implemented, this legislation could result in the following costs to the State:

<table>
<thead>
<tr>
<th>State fiscal year</th>
<th>Amount (millions of dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978-79</td>
<td>16</td>
</tr>
<tr>
<td>1979-80</td>
<td>38</td>
</tr>
<tr>
<td>1980-81</td>
<td>70</td>
</tr>
<tr>
<td>1981-82</td>
<td>112</td>
</tr>
<tr>
<td>1982-83 and thereafter</td>
<td>120 (maximum)</td>
</tr>
</tbody>
</table>
ALBANY OFFICE
SUITE 203—111 WASHINGTON AVENUE, ALBANY, N.Y. 12210
Telephone: Area Code 518-462-5611

RICHARD L. RUBIN, Legislative Representative

MEMORANDUM IN SUPPORT

LEGISLATIVE REFERENCE
A. 661 by Mr. Passannante
(Assembly Calendar No. 31)

TITLE
AN ACT to amend the state finance law in relation to the time of payment of monies in the stock transfer tax fund payable by the state of New York into the municipal assistance tax fund or to the city of New York

SUMMARY OF PROVISIONS
This bill would amend Section 92-b of the State Finance Law to provide that stock transfer tax fund balances, which are payable by the State of New York into the Municipal Assistance Tax Fund or, if not required by the Municipal Assistance Corporation, directly to the City of New York shall be paid over to the Municipal Assistance Tax Fund or to the City twice each month instead of quarterly as the law now provides.

REASONS FOR SUPPORT
This bill would even out the flow of monies received by the City of New York over the year from the stock transfer tax fund so as to minimize borrowing by the City and to promote its ultimate purpose of matching, so far as possible, revenues with expenditures.

Under the present procedure, the quarterly payments result in an irregular cash flow which compels the City to borrow funds at high interest rates on a short-term basis to meet its needs in periods when cash funds are low. If payments are received from the State on a regular semi-monthly basis, short-term borrowings and their concomitant charges and administrative costs can be substantially reduced.

This bill does not propose any changes in the amounts payable by the State, nor does it involve additional State aid. The only change to be effected is in the time of payment of funds already required to be paid under existing State law.

Accordingly, the Mayor urges upon the Legislature the earliest possible favorable consideration of this proposal.

Respectfully submitted,

Richard L. Rubin
Legislative Representative
BILL NO.  A. 681
S.

INTRODUCED BY:  Mr. Passannante

AN ACT

to amend the state finance law, in relation to the time of payment of monies in the stock transfer tax fund payable by the state of New York to the city of New York

SUMMARY OF PROVISIONS - Amends the State Finance Law §92(b)(4) to require that payments of stock-transfer-tax-fund balances from the State to the special account established for the municipal assistance corporation for New York City be made semi-monthly instead of quarterly.

RATIONALE - Intended to even out the flow of monies received by New York City over the year from the stock transfer fund so as to minimize borrowing by the City and to promote its ultimate purpose of matching, so far as possible, revenues with expenditures.

LEGISLATIVE HISTORY - 1976 - A.1068 died in Ways and Means Committee

PERTINENT CONSIDERATIONS - It is estimated that this bill may reduce New York City's interest costs between $500,000.00 and $1.5 million a year. The present law's quarterly payments produce an irregular cash flow to New York City which necessitates short-term borrowing to meet expenses during low cash-fund periods.
AN ACT to amend the tax law, in relation to determining the credit for stock transfer tax against the taxes imposed by articles nine-a and twenty-three thereof, to providing for an increase in the rate of the stock transfer tax applicable to nonresidents, and to providing a rebate for stock transfer taxes paid, to amend the state finance law, in relation to the stock transfer tax fund and to creating a stock transfer incentive fund, to amend chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six entitled, "AN ACT to enable any city having a population of one million or more to raise tax revenue by authorizing the imposition of taxes on general, financial, insurance and transportation corporations and on unincorporated businesses to provide for the administration and review of such new taxes, to provide for the suspension of any tax on gross income of conduit companies imposed by such city and for the suspension and repeal of any general business and financial tax imposed by any such city, to amend the tax law in relation to authorizing an increase in the rates of tax which such city may impose on utilities and vendors of utility services, and to repeal article two-B of the general city law, authorizing the imposition of a general business and financial tax by such city", in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the general corporation tax and city unincorporated business income tax in the city of New York, to amend the administrative code of the city of New York, in relation to determining the credit for the taxes imposed under article twelve of the tax law with respect to the taxes imposed under titles R and S thereof, to amend chapter fifty of the laws of nineteen hundred seventy-seven entitled, "AN ACT making appropriations for the support of government", in relation to increasing the appropriation from the stock transfer tax fund and to providing an appropriation to the stock transfer incentive fund and to providing an appropriation to the stock transfer incentive fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:
Section 1. Subdivision fourteen of section two hundred ten of the tax law is hereby amended by adding thereto a new paragraph, to be paragraph (d), to read as follows:

(d) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of this chapter) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

§ 2. The section heading and subdivisions one and three of section two hundred seventy-a of such law are hereby REPEALED.

§ 3. Subdivision two of section two hundred seventy-a of such law is hereby REPEALED.

§ 4. Subdivision one of section two hundred seventy-d of such law, as amended by chapter eight hundred forty-two of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

1. In addition to the tax imposed by subdivision one of section two hundred seventy of this article, there is hereby imposed and shall immediately accrue and be collected a like additional tax on all sales, agreements to sell, memoranda of sales and all deliveries or transfers of shares or certificates subject to tax under such subdivision during the period commencing on August first, nineteen hundred seventy-five and ending July thirty-first, nineteen hundred seventy-eight. Such additional tax is at the rate of twenty-five per cent of the rates of tax on sales or transfers under subdivision two of section two hundred seventy and on sales under subdivision one of section two hundred seventy-a and [the maximum amount of tax on a single taxable sale under subdivision two of section two hundred seventy-a] the maximum amount of tax on a single qualifying sale under section two hundred seventy-a of this
article, Provided, however, that the tax so calculated shall not be carried out in its computation beyond four decimal points, that is, it shall be computed to the nearest one one-hundredth of one cent.

§ 5. Such law is hereby amended by adding thereto a new section, to be section two hundred seventy-e, to read as follows:

§ 270-e. Maximum amounts of tax. 1. Notwithstanding the provisions of section two hundred seventy of this chapter, where any transaction subject to the tax imposed by this article involves a sale which relates to shares or certificates of the same class and issued by the same issuer, the amount of tax upon any such transaction which involves such single qualifying sale shall not exceed the sum of three hundred fifty dollars, provided, however, that such transactions involving sales by any member of a securities exchange or by a registered dealer, who is permitted or required pursuant to any rules and regulations promulgated by the tax commission pursuant to the provisions of section two hundred eighty-one-e of this chapter to pay the taxes imposed by this article without the use of the stamps prescribed by this article, pursuant to one or more orders to sell such shares or certificates placed with the same member of a securities exchange or the same registered dealer on one day, by the same person, each relating to shares or certificates of the same class and issued by the same issuer, all of which sales are executed on the same day (regardless of whether it be the day of the placing of the orders to sell), shall, for the purposes of this subdivision one, be considered to constitute a single qualifying sale.

2. All the provisions of this article shall apply with respect to the maximum amounts of tax provided for by this section to the same extent and in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this section and had expressly referred to the maximum amounts of tax provided for under this section, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant to this section.

Provided, further, any reference in this article to the maximum amounts of tax on a single taxable sale under subdivision two of
Section two hundred seventy-a of this article shall mean the maximum amounts of tax on a single qualifying sale provided for by this section. The term "tax" as used in this article shall include the maximum amounts of tax provided for by this section as well as the taxes imposed by subdivisions one of sections two hundred seventy and two hundred seventy-d of this article, and a reference to such tax, subdivision one of section two hundred seventy or subdivision two of section two hundred seventy-a shall include the maximum amounts of tax provided for by this section or this subdivision, as the case may be.

§ 6. Such law is hereby amended by adding thereto a new section, to be section two hundred eighty-a, to read as follows:

§ 280-a. Rebate for stock transfer tax paid; penalty for false claims. 1. Where a tax shall have been paid under this article a portion of the amount paid shall be allowed as a rebate and shall be paid to the taxpayer but only to the extent that moneys are available for the payment of such rebates in the stock transfer incentive fund established pursuant to section ninety-two-h of the state finance law. The portion of the amount paid which is to be a rebate shall be thirty percent of the tax incurred and paid on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty and sixty percent of the tax incurred and paid on such transactions occurring on and after October first, nineteen hundred eighty and on or before September thirtieth, nineteen hundred eighty-one and all of the amount of tax incurred and paid shall be a rebate on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred eighty-one.

2. Notwithstanding the provisions of subdivision one with respect to the percents of tax allowable as rebates of this section, the portion of the amount of stock transfer tax paid which is to be rebated to a nonresident shall be fifty percent of tax incurred and paid on transactions subject to stock transfer tax occurring on and after October first, nineteen hundred seventy-seven and on or before July thirty-first, nineteen
hundred seventy-eight and thirty-seven and one-half percent with
respect to such transactions occurring on and after August first,
nineteen hundred seventy-eight and on or before September thirtieth,
nineteen hundred eighty, and thereafter the portions set forth in
subdivision one of this section shall be applicable.

3. Except as provided in subdivision six of this section,
rebates may be paid only upon the filing of a claim for rebate with
the state tax commission. All claims for rebate shall be presented
in such form and contain such information as the state tax commission,
by rule, regulation or instruction, shall prescribe and shall be
presented within two years after the affixing and canceling of
stock transfer tax stamps or payment of the tax otherwise than by
the use of stamps.

4. Every such claim shall include a certificate by or
on behalf of the party presenting the same to the effect that it
is just, true and correct, that the amount of stock transfer tax
stated thereon has been paid to the state and that the amount of
rebate requested is actually due and owing. The state tax commission,
if satisfied that the tax has actually been paid, shall rebate
the same in accordance with the provisions of this section on the
audit and warrant of the state comptroller on vouchers approved by
the commissioner of taxation and finance.

5. The state tax commission shall grant or deny such
claim in the manner provided in section two hundred eighty of this
article and the remaining provisions of such section, relating
to determination of tax, hearing, decision of the state tax commission,
the exclusive manner of review of such decision, and the requirement
of an undertaking, shall apply to the provisions of this section
with the same force and effect as if the language of such section
had been incorporated in full into this section and had expressly
referred to the rebate under this section, except to the extent
that any such provision is either inconsistent with or not relevant
to this section. All of the other provisions of this article
relating to refunds shall apply to the rebate of tax provided for
by this section in the same manner and with the same force and
effect as if the language of such provisions had been incorporated
in full into this section and had expressly referred to the rebates of tax provided for under this section, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant to this section and except that the term "refund" as used in such provisions shall be read as "rebate".

6. (a) Notwithstanding the provisions of section two hundred eighty-one-a of this article, rebates provided for in this section shall be allowed without the filing of the claim required by subdivision three of this section, in the manner and upon the filing of the report referred to in paragraph (b) of this subdivision in the case where payment of the tax imposed by this article is made by any member of any securities exchange or any registered dealer who or which is permitted or required pursuant to the provisions of such section two hundred eighty-one-a to pay such tax without the use of the stamps prescribed by this article.

(b) On the written report required to be made to an exchange, affiliated clearing corporation or authorized agency by each such member or dealer under such section two hundred eighty-one-a, there shall also be shown the amount of the rebate of tax shown to be due thereon, which would be allowable by this section if the full tax were paid with such report.

The net amount required to be paid for the account of the tax commission to such exchange, affiliated clearing corporation or authorized agency and remitted to the tax commission pursuant to such section shall be the amount of tax shown to be due on such written report (determined without regard to any rebate allowable under this section) less the amount of any such rebate, subject to the provisions of subdivision eight of this section. Notwithstanding the provisions of section two hundred eighty-one-a of this article, on the next-to-the-last business day of the department of taxation and finance in each of the months of September, December, March and June, each such member or dealer shall show on such report the aggregate amount of rebates shown daily on such report for the period of three full months ending on such next-to-the-last business day. On the last business day of each of such months, an amount equal to such aggregate amount shall be paid by such member or dealer for the account of the tax.
commission to such exchange, affiliated clearing corporation or authorized agency and remitted by such exchange, affiliated clearing corporation or authorized agency to the tax commission by separate check or wire transfer. The amount so remitted shall constitute the total amount of rebates provided in subdivisions one and two of this section payable in the manner described in this subdivision, which amount shall be included in the amount required to be paid from the stock transfer tax fund into the stock transfer incentive fund on each such last day pursuant to sections ninety-two-b and ninety-two-h of the state finance law; provided, however, that if such exchange, affiliated clearing corporation or authorized agency shall determine that the payment by any member or dealer of any tax imposed by this article will be jeopardized by delay, it shall forthwith notify the tax commission of such condition, or if the tax commission believes that the collection of any tax will be jeopardized by delay, it may determine the amount of such tax and assess the same against any such member or dealer prior to the filing of his report and prior to the date when his report is required to be made to an exchange, affiliated clearing corporation or authorized agency. The amount so determined shall become due and payable to the tax commission by the member or dealer against whom such a jeopardy assessment is made, as soon as notice thereof is given to him personally or by registered or certified mail. The provisions of section two hundred seventy-nine-a shall apply to any such determination except to the extent that they may be inconsistent with the provisions of this subdivision. The tax commission may abate any jeopardy assessment if it finds that jeopardy does not exist. The collection of any jeopardy assessment may be stayed by filing with the tax commission a bond issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance as to solvency and responsibility, conditioned upon payment of the amount assessed, or any lesser amount to which such assessment may be reduced by the tax commission or by a proceeding under article seventy-eight of the civil practice laws and rules as provided in section two hundred seventy-nine-a of this law, such payment to be made when the assessment or any
such reduction thereof shall have become final and not subject to further review. If such a bond is filed and thereafter a proceeding under article seventy-eight is commenced as provided in section two hundred seventy-nine-a, deposit of the taxes assessed shall not be required as a condition precedent to the commencement of such proceeding. Where a jeopardy assessment is made, any property seized for the collection of the tax shall not be sold (i) until expiration of the time to apply for a hearing as provided in such section, and (ii) if such application is timely filed, until the expiration of ninety days after the tax commission mailed notice of its determination to the person against whom the assessment is made; provided, however, such property may be sold at any time if such person has failed to attend a hearing of which he has been duly notified, or if he consents to the sale, or if the tax commission determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

The amount of any and all rebates of the tax imposed by this article paid pursuant to this paragraph shall be credited or caused to be credited by such exchange, affiliated clearing corporation, or authorized agency to or for the benefit of the taxpayer incurring liability for such tax.

(c) If a rebate is paid in the manner provided in this subdivision, no further rebate shall be allowable but any stock transfer tax paid to a member or dealer by a taxpayer otherwise entitled to rebate under this section shall be paid by such member or dealer to the taxpayer.

(d) The amounts of the rebates provided for under subdivisions one and two of this section paid in the manner provided in this subdivision shall be shown separately on all reports prescribed by the tax commission under such section and shall be evidenced by such certification as the tax commission may prescribe.

(e) The tax commission may require any such member or registered dealer to file with the department of taxation and finance a bond issued by a surety company approved by the superintendent of insurance as to solvency and responsibility and
authorized to transact business in the state, in such amount as the tax commission may fix, to secure the payment of any taxes due from such member or dealer pursuant to section two hundred eighty-one-a. The tax commission may require that such a bond be filed before any tax due under this article from any such member or dealer may be reported and paid under the provisions of this subdivision, or at any time when in its judgment the same is necessary as a protection to the revenues under this article.

In lieu of such bond, such member or dealer may deposit securities approved by the tax commission, in such amount as it may prescribe, which securities shall be kept in the joint custody of the comptroller and the commissioner of taxation and finance and may be sold by the tax commission if it becomes necessary so to do in order to recover any sums due from such person pursuant to this article; but no such sale shall be held until after such person shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article, shall be returned to such member or dealer.

7. If the commissioner of taxation and finance makes the determination that rebates payable exceed moneys available in the stock transfer incentive fund for paying such rebates and if any member or dealer shall advance and pay the amount of tax, imposed by this article without taking account of rebates, either for himself or for which any other taxpayer is entitled to claim a rebate pursuant to the provisions of subdivision six of this section, such member or dealer shall be entitled to a rebate for the amount of such tax advanced and paid by him on behalf of such other taxpayer in the amount of the rebate allowable to such taxpayer and in the amount of the rebate allowable to himself whenever such commissioner determines that sufficient funds are available in the stock transfer incentive fund for paying such rebate.

8. The amount of any erroneous or excessive rebate paid or allowed under this section may be determined by the state
Tax commission and may be recovered from such claimant in the same manner as a tax imposed under this article, provided, however, that any such determination shall be made within five years after the date of such erroneous or excessive rebate.

9. Any taxpayer, broker or dealer who or which files or causes to be filed any claim for or report of rebate permitted or required under this article which is willfully false shall be guilty of a felony.

10. If any part of any claim for or report of rebate of stock transfer tax is false or fraudulent, any person who files such claim or makes such report shall, in addition to any other penalties provided by this article, be subject to a penalty of five hundred dollars for each and every violation. The state tax commission may determine the amount of any such penalty to be due from any such person in the same manner as the tax imposed by this article, provided, however, that any such determination shall be made at any time.

11. The state tax commission shall make rules and regulations and issue instructions to effectuate the purposes of this section and to provide for payments to and from and administration of the stock transfer tax fund and the stock transfer incentive fund and shall have all the rights and powers as set forth in section two hundred seventy-six of this article to examine transactions
and require records to be kept and declarations and certifications to be made and kept as may be required for such purposes. If any member or dealer described in subdivision six of this section shall violate any provision of this section or any reasonable rule, regulation or instruction made or issued pursuant thereto, such member or dealer may upon notice thereof thereafter be denied rebates by the state tax commission in accordance with rules and regulations promulgated by such commission. Provided, that nothing herein shall limit the right to file a claim for rebate under this section.

12. For the purposes of this section the following terms shall have the following meanings:

(a) A "nonresident" shall mean an individual or group of individuals jointly owning securities (but including partnerships only if organized and operating solely for the purpose of investing in securities) selling or trading or delivering or transferring on his or their own account, who is not, or no one of whom is, a resident.

(b) A "resident" means an individual who on the day upon which the tax imposed by section two hundred seventy of this chapter accrues,

(i) regardless of where he resides or is domiciled,

(ii) is a member of a securities exchange within this state which is registered with the securities and exchange commission of the United States; (ii) is a dealer in securities required to be registered with the attorney general of the state of New York; (iii) acts as a broker or agent in transactions concerned with the sale, purchase, delivery or transfer of securities; or

(iv) is a member of or a person employed in a managerial capacity by a firm, company, association or organization, or an officer or director of or a
person employed in a managerial capacity by a corporation, which is a member organization of a securities exchange, a dealer in securities, or a dealer, broker or agent, described in clauses (i), (ii) or (iii) of this subparagraph, or

(2) is domiciled in this state, unless on such day he maintained no permanent place of abode in this state, maintained a permanent place of abode elsewhere and during the one year period ending on such day spent in the aggregate, not more than thirty days of such period in this state, or

(3) is not domiciled in this state, but on such day maintained in this state, a permanent place of abode unless such abode is due solely to such individual's being in the armed forces of the United States, or

(4) regardless of where he resides, maintains a permanent place of business within this state or is employed within this state.

(c) No transaction shall be deemed to be by a nonresident and entitled to the rebate payable or allowable in subdivision two unless (1) the papers or documents upon or to which are required to be placed or affixed the stamps required by subdivision four of section two hundred seventy of this chapter, to denote the payment of the tax imposed by such section, have also affixed thereto or placed thereon a declaration in the form prescribed by the tax commission signed by the person making the sale or transfer, setting forth facts to show that the transaction is made by a nonresident; or (2) in the case of transactions executed or effected within this state (or transactions executed or effected outside this state but subject to the tax imposed by this article) by any member or member organization of any securities exchange within this state which is registered with the securities and exchange commission of the United States (hereinafter in this section referred to as a "member of a securities exchange") or by any person, firm,
corporation, company or association required to be registered with
the attorney general of the state of New York as a dealer in
securities other than upon any such exchange (hereinafter in this
section referred to as a "registered dealer"), who is permitted
or required pursuant to any rules and regulations promulgated by
the tax commission pursuant to the provisions of section two hun-
dred eighty-one-a of this chapter, to pay the tax imposed by this
article without the use of the stamps prescribed by this article,
the transaction is certified, in such form as the tax commission
may prescribe, in the report required to be made to such exchange,
or its affiliated clearing corporation or any authorized agency by
rules and regulations promulgated by the tax commission pursuant to
section two hundred eighty-one-a of this chapter, as being a trans-
action by a nonresident. The certification in such report may be
made by such member of a securities exchange or registered dealer
if he either (i) has obtained from such resident a declaration in the
form prescribed by the tax commission, or (ii) has met requirements
set forth in rules and regulations promulgated by the tax commission
establishing that the transaction is made by a nonresident and (iii)
has not, on or after the date of obtaining such declaration or its
delivery and filing, received from such nonresident either a notice of
cancellation, in the form prescribed in clause three of subparagraph two of
paragraph (d) of this subdivision, or has no knowledge or reasonable
grounds to believe that the status of such nonresident as a non-
resident has changed.

(d) (1) Any person who shall knowingly make any false
statement in a declaration provided for by paragraph (c) of this
subdivision shall be guilty of a misdemeanor and upon conviction
thereof shall be liable to a fine of not less than five hundred nor
more than one thousand dollars, or be imprisoned for not more than
one year, or be subject to both such fine and imprisonment, in the
discretion of the court.

(2) Any person who --

(i) having executed, filed with and delivered to a
member of a securities exchange or a registered
dealer a declaration provided for by paragraph
(c) of this subdivision;
(ii) thereafter ceases knowingly to be a non-
resident;
(iii) fails to execute, file and deliver a notice
of cancellation of such declaration, with and to
such member or dealer; and
(iv) after ceasing to be such a nonresident and
prior to the execution, filing and delivery of such
notice of cancellation, with intent to cause a re-
bate to be made from the stock transfer incentive
fund in excess of the rebate allowable to residents
under subdivision one of this section, places and
allows to be executed an order with such member
or dealer where the sale, agreement to sell,
memorandum of sale, delivery or transfer of any
shares or certificates described in section two
hundred seventy of this chapter is subject to the
taxes imposed by this chapter; shall be guilty of
a misdemeanor and upon conviction thereof shall be
liable to a fine of not less than five hundred nor
more than one thousand dollars, or be imprisoned
for not more than one year, or be subject to both
such fine and imprisonment, in the discretion of
the court.

13. The state tax commission may provide that where
a declaration has been executed, filed and delivered to a member of
a securities exchange or a registered dealer under subdivision one
of section two hundred seventy-a of this article and kept by such
member or dealer pursuant to rules, regulations and instructions
of the state tax commission, such declaration shall constitute the
declaration of the nonresident under subdivision twelve of this
section.
$7. Subsection (e) of section seven hundred one of such law is hereby amended by adding thereto a new paragraph, to be paragraph four, to read as follows:

Provided, however, that the credit provided under this subsection shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subsection (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of this chapter) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subsection with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

$8. Subdivisions three and four of section ninety-two-b of the state finance law, as amended by chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, are hereby amended to read as follows:

3. The moneys received from such tax and other sources in such fund, after deducting the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering, collecting and distributing such tax, commencing with the fiscal year ending March thirty-first, nineteen hundred seventy-seven, shall be appropriated to (i) the municipal assistance corporation for the city of New York created pursuant to title three of article ten of the public authorities law in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund and (ii) to the extent such moneys are not required by such corporation as provided in subdivision seven of section ninety-two-d of [the state finance law as added by a chapter of the laws of nineteen hundred seventy-five] this chapter and, after deducting the amount such commissioner shall determine to be necessary for reasonable costs
of the state tax commission in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund, to the stock transfer incentive fund created pursuant to section ninety-two-h of this chapter to enable rebates to be made from such fund under the provisions of section two hundred eighty-a of the tax law and (iii) to the extent such moneys are not required by such fund, as certified by the commissioner of taxation and finance, the balance shall be appropriated to the city of New York, for the support of local government.

4. After the deduction of such costs of the state tax commission in administering, collecting and distributing such tax, the balances in [such] the stock transfer tax fund so appropriated shall be distributed and paid on the last day of September, December, March and June into the special account established for the municipal assistance corporation for the city of New York in the municipal assistance tax fund established pursuant to subdivision one of section ninety-two-d of [the state finance law as added by a chapter of the laws of nineteen hundred seventy-five] this chapter, unless and to the extent the balances in such fund on each such last day are not required by such corporation as provided in said subdivision seven of said section ninety-two-d [of the state finance law] in which case the balance not so required, if any, after the deduction of such costs of the state tax commission in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund shall be distributed and paid to the stock transfer incentive fund in the custody of the commissioner of taxation and finance established pursuant to section ninety-two-h of this chapter and unless and to the extent that the balances in the stock transfer tax fund on each such last day are not required by the stock transfer incentive fund as provided in such section ninety-two-h of this chapter in which case the balance
not so required, if any, shall be distributed and paid to the chief fiscal officer of the city of New York to be paid into the treasury of the city to the credit of the general fund, and on each such day, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering, collecting and distributing such tax during such quarterly period and shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. In no event shall any amount (other than the amount to be deducted for administering, collecting and distributing such tax) be distributed or paid from the stock transfer tax or paid from the stock transfer tax fund to any person other than the municipal assistance corporation for the city of New York unless and until the aggregate of all payments certified to the comptroller as required by such corporation in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, which remain unappropriated or unpaid to such corporation shall have been appropriated to such corporation and shall have been paid in full provided, however, that no person including such corporation or the holders of its notes or bonds shall have any lien on such tax and such agreements shall be executory only to the extent of the balances available to the state in such fund. If the balances in such fund are not required by such corporation pursuant to the provisions of this subdivision, on each such last day of September, December, March and June, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund during such quarterly period and he shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. To the extent such moneys are not required by such corporation, as provided in subdivision seven of section
ninety-two-d of this chapter, no amount thereof (other than such amount to be deducted for administering, collecting and distributing the tax and such costs in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund) shall be distributed or paid from the stock transfer tax fund other than to such stock transfer incentive fund in the custody of the commissioner of taxation and finance unless and until the aggregate of all payments certified to the comptroller by such commissioner pursuant to the provisions of such incentive fund as necessary to provide payments on account of rebates authorized pursuant to section two hundred eighty-a of the tax law which remain unappropriated or unpaid to such fund shall have been appropriated to such fund and shall have been paid in full provided, however, that no person, including any taxpayer under article twelve of the tax law or any member or dealer referred to in subdivision six of section two hundred eighty-a of such law, shall have any lien on this fund or the stock transfer incentive fund.

§9. Subdivision seven of section ninety-two-d of such law, as added by chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

7. In the event that the amount of revenues in the special account established for the municipal [assistant] assistance corporation for the city of New York in the municipal assistance tax fund which have appropriated to such corporation shall at any time be less than the amount which the chairman of such corporation has certified to the comptroller as required in order to comply with its [agreements] agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, then and in such event the comptroller shall forthwith certify to the commissioner of taxation and finance the amount of the difference
between the revenues in such special account and the amount so certified as required by such corporation and upon receipt of such certificate the commissioner of taxation and finance shall approve a voucher for payment of the amount of such difference into such special account in the municipal assistance tax fund from the stock transfer tax fund established pursuant to subdivision one of section ninety-two-b of [the state finance law] this chapter at the next date for payment from such fund as provided in subdivision four of such section, anything in said section to the contrary notwithstanding. In the case of every fiscal year commencing after June thirtieth, nineteen hundred seventy-seven, the comptroller shall, before the last day of September, December, March and June of each such fiscal year, certify to the commissioner of taxation and finance the amount from the stock transfer tax fund, if any, determined by the comptroller to be required during the next following three months in order to provide the amounts certified by the chairman of the municipal assistance corporation for the city of New York, or if no such amount is necessary, a statement to that effect. The amount so determined shall be based on estimated revenues which shall be certified to the comptroller by the commissioner of taxation and finance who shall not be held liable for any inaccuracy in such certification. The foregoing certificate or statement, as the case may be, shall be made regardless of the amount of revenues in the special account established for the municipal assistance tax fund which have been appropriated to such corporation.

§10. Such law is hereby amended by adding thereto a new section, to be section ninety-two-h, to read as follows:

§92-h. Stock transfer incentive fund. 1. There is hereby established in the sole custody of the commissioner of taxation and finance a special fund to be known as the stock transfer incentive fund. 2. Such fund shall consist of moneys paid thereto from the stock transfer tax fund as provided in subdivision four of section ninety-two-b of this chapter and all other moneys
appropriaed, credited or transferred thereto from any other fund
I or source pursuant to law.

3. On the last day of each of the months of
September, December, March and June of each year commencing
December thirty-first, nineteen hundred seventy-seven, the commis-
sioner of taxation and finance shall determine the sum of (i)
the amounts allowable as rebates of the tax that is imposed by
A article twelve of the tax law and is paid on transactions executed
or effected during the three calendar months ending on the next-
to-the-last business day of each such month pursuant to subdivision
one of section two hundred eighty-a of the tax law and (ii) such
L amounts allowable as rebates pursuant to subdivision two of such
section.

4. On the last day of each such month the commissioner
of taxation and finance shall certify to the director of the budget,
I the state comptroller and the chief fiscal officer of the city of
New York each of the amount finally determined under clauses (i)
and (ii) of subdivision three of this section.

5. The amount so certified on such last day under
subdivision four of this section shall constitute the amount required
to be paid into the stock transfer incentive fund from the stock
of
S transfer tax fund for purposes /section ninety-two-b of this chapter.

6. (a) (1) Commencing September thirtieth,
nineteen hundred seventy-eight, on the last day of each of the
months of September, December, March and June, the commissioner
of taxation and finance shall certify to the comptroller the amount
of the tax imposed by this article collected during the three
month period ending on each such last day, except that on September
thirtieth nineteen hundred seventy-eight, the commissioner shall
certify only the amount of such tax collected on and after August
first, nineteen hundred seventy-eight. The state comptroller shall
pay forthwith an amount equal to one-half of twenty-five percent
of the amount so certified from the general fund of the state of
New York to the extent that moneys have been appropriated and made
available therefor; provided, however, that in no event shall the amount so paid exceed sixteen million dollars in the state fiscal year beginning April first, nineteen hundred seventy-eight, or exceed twenty-four million dollars in any subsequent state fiscal year.

(2) Upon receipt of each certification of the commissioner of taxation and finance provided for in subdivision four of this section, on and after December thirty-first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty, the state comptroller shall forthwith pay an amount equal to one-half of the amount certified by such commissioner as rebates allowable under the provisions of clause (i) of subdivision three of this section from the general fund of the state of New York to the fund created pursuant to this section, to the extent that moneys have been appropriated and made available therefor. Upon receipt of the certification of the commissioner of taxation and finance provided for in subdivision four of this section, on and after October first, nineteen hundred eighty, the state comptroller shall forthwith pay an amount equal to one-half of the amounts certified by such commissioner as rebates allowable under the provisions of clauses (i) and (ii) of subdivision three of this section from the general fund of the state of New York, to the fund created pursuant to this section to the extent that moneys have been appropriated and made available therefor.

(b) Provided, however, that the amounts paid from the general fund of the state of New York under paragraph (a) of this subdivision in the state fiscal year beginning April first, nineteen hundred seventy-nine shall not exceed fifty million dollars; and in the state fiscal year beginning April first, nineteen hundred eighty such amounts shall not exceed ninety million dollars and in the state fiscal year beginning April first, nineteen hundred eighty-one and in every state fiscal year thereafter such amounts shall not exceed one hundred twenty million dollars.
(c) Notwithstanding the provisions of subdivision I (h) of this section, the state comptroller shall, in addition to the payments to be made under paragraph (a) of this subdivision, also pay to the credit of the fund created pursuant to this section an amount equal to one-half of the costs deducted by such commissioner for the costs of the state tax commission in administering and making distributions in accordance with the provisions of subdivision four of section ninety-two-b of this chapter.

7. If on the day the commissioner of taxation and finance makes the determinations required under subdivision three of this section, he determines that, as a result of the payments made into the stock transfer incentive fund pursuant to subdivision five and six of this section, the amounts in such fund exceed the amounts determined pursuant to clauses (i) and (ii) of subdivision three of this section for the three calendar months ending on the next-to-the-last business day preceding the day on which such determination is made, the amount of such excess shall be paid forthwith to the chief fiscal officer of the city of New York for support of local government.

8. Notwithstanding any provision of general or special law to the contrary, all moneys of such fund shall be deposited by the commissioner of taxation and finance in any responsible bank, banking house or trust company as may be approved by the comptroller. All amounts so deposited shall be kept separate and apart and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance. All deposits of moneys of such fund shall be secured by obligations of the United States or of the state having a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give security for such deposits. Any such moneys deposited in such fund may, in the discretion of the commissioner of taxation and finance, be invested in obligations of the United States or of the state or in other obligations, the principal of and interest on which are guaranteed by the United States or by the state.
9. Out of such moneys deposited in the fund created by this section, the commissioner of taxation and finance shall, except for rebates payable in the manner described in subdivision six of section two hundred eighty-a of the tax law, make the payments required to be paid on claims for rebates made pursuant to section two hundred eighty-a of the tax law, but in no event shall such rebates be paid prior to the last day of each of the months of September, December, March and June with respect to taxes paid during the period of three calendar months ending on each such last day. Out of moneys deposited in the fund created by this section, the commissioner of taxation and finance shall pay to each exchange, affiliated clearing corporation or authorized agency which shall have remitted amounts so the tax commission, in the manner set forth in subdivision six of section two hundred eighty-a of the tax law, the rebate payable pursuant to subdivisions one and two of such section, the rebates payable in the manner described in subdivision six of section two hundred eighty-a of the tax law not later than the day after the day the tax equal to the amount of such rebates is remitted to the tax commission under such subdivision and paid to the fund created by this section from the stock transfer tax fund pursuant to section ninety-two-b of this chapter. Upon such payment the liability of the state therefor shall be fully discharged.

10. In the event that moneys deposited in the fund created by this section are insufficient to pay such rebates, the city of New York shall pay any such deficiency to such fund in accordance with local law.

11. The commissioner of taxation and finance shall not be held liable for any inaccuracy in any certification under this section.
§ 11. Subsection four-a of part two of section one of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six entitled, "AN ACT to enable any city having a population of one million or more to raise tax revenue by authorizing the imposition of taxes on general, financial, insurance and transportation corporations and on unincorporated businesses to provide for the administration and review of such new taxes, to provide for the suspension and repeal of any general business and financial tax imposed by any such city, to amend the tax law in relation to authorizing an increase in the rates of tax which such city may impose on utilities and vendors of utility services, and to repeal article two-b of the general city law, authorizing the imposition of a general business and financial tax by such city", is hereby amended by adding thereto a new subdivision, to be subdivision four, to read as follows:

(4) Provided, however, that the credit provided under this subsection shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subsection (determined without regard to the provisions of this subdivision) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is allowed. No credit shall be allowed under this subsection with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

§ 12. Subdivision (c) of subsection one hundred one contained in section two of such chapter is hereby amended by adding thereto a new paragraph, to be paragraph four, to read as follows:
(d) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

§ 13. Subdivision eleven of section R46-4.0 of the administrative code of the city of New York is hereby amended by adding thereto a new paragraph, to be paragraph (d), to read as follows:

(d) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.
§ 14. Subdivision (c) of section §46-3.0 of such code is hereby amended by adding thereto a new paragraph, to be paragraph four, to read as follows:

(4) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.
§ 15. Section one of chapter fifty of the law of nineteen hundred seventy-seven is hereby amended to read as follows:

Stock Transfer Tax Fund

For payment to the municipal assistance tax fund for payment to the municipal assistance corporation for the city of New York, to the extent required to comply with the agreements between such corporation and the holders of its notes and bonds, and for the corporate purposes of such corporation and to the extent not required by such corporation for such purposes, for payment to the stock transfer incentive fund to the extent required to comply with the certification of the commissioner of taxation and finance provided under section ninety-two-b of the state finance law and to the extent not required by such certification of the commissioner of taxation and finance, for payment to the city of New York for support of local government, provided, however, that the maximum amount to be paid shall not exceed the collections from the stock transfer tax pursuant to article 12 of the tax law, less administrative costs as certified by the commissioner of taxation and finance for deposit to the credit of the general fund --

state purposes fund..................[250,000,000] 270,000,000
8 February 1977

Mr. Hyman C. Grossman, Vice President
Municipal Bond Department
STANDARD & POOR'S CORPORATION
345 Hudson Street
New York, New York 10014

Dear Mr. Grossman:

I enclose a copy of the United States Supreme Court's decision in Boston Stock Exchange v. State Tax Commission. As you know, this case invalidates certain provisions of the New York State Stock Transfer Tax law. In particular, the opinion holds that differences in tax treatment which depend on whether the sale of stock takes place within or without the state are unconstitutional; at present, an in-state sale results in lower tax than an identical out-of-state transaction.

The stock transfer tax is a secondary source of payment on the Corporation's bonds issued under the First General Bond Resolution and one of three sources of payment on bonds issued under the Second General Bond Resolution. The primary sources of payment on First Resolution Bonds are certain State sales and compensating use taxes and the primary source of payment on Second Resolution Bonds are certain amounts that otherwise would have been payable to the City of New York as Per Capita State Aid pursuant to Section 54 of the State Finance Law.

Each General Bond Resolution of the Corporation provides that a failure by the State of New York to continue the imposition of either the Sales Tax or the stock transfer tax, as either may be amended from time to time, or any reduction in the rates of such taxes, would constitute a default under such Resolution authorizing (but not requiring) the Trustee to proceed with certain remedies set forth in the Bond Resolution.
8 February 1977
Mr. Hyman C. Grossman
Page Two

Please be assured that, for the reasons discussed below, we do not believe the Supreme Court decision will result in any significant short-range or long-range detrimental affect upon the Corporation:

1. The decision will not be implemented until an order is entered by the New York Court of Appeals pursuant to the remand ordered at the end of the Supreme Court’s decision. In the meantime, as previously announced by the State Tax Commission, taxes are collectible and are being collected at the existing rates.

2. The Corporation will work with the State Attorney General and the State Tax Commission in making any presentation to the Court of Appeals for consideration by the Court in formulating its order. We believe that any order that the Court of Appeals is likely to enter in this case will be in accord with the Corporation’s General Bond Resolutions.

The existing tax provisions which give preferential treatment to in-state sales were added to the statute by Chapter 827 of the laws of 1968. Section 11 of that Act provides that if the new sections providing reduced taxes were declared unconstitutional, the previous, higher taxes would apply to all transactions. The operation of Section 11 would pose no problem for the Corporation under its bond resolutions and probably would result in an immediate increase in stock-transfer tax revenue.

3. While an increase in the tax on sales in New York might increase the revenue from the tax, it also might encourage certain sellers to do business outside of the state to avoid the tax altogether. To prevent this loss of economic activity, the taxing authorities are considering other alternatives which would comply with the Supreme Court decision without the same economic consequences. One alternative would be to extend the current maximum tax and non-resident discount provisions to all sales wherever they occur, rather than only sales in New York. In effect, this would preserve the present tax treatment for non-residents who do business in this state, by extending the same treatment to all non-residents wherever the transaction takes place.

Incidentally, this result might be achieved by court order as well as by new legislation. While the application of Section 11 mentioned above seems the most likely result upon remand from the Supreme Court, the state courts also have the option of simply removing the distinction between sales within and without the state.
8 February 1977  
Mr. Hyman C. Grossman  
Page Three

The Corporation's staff, lawyers and consultants are working with the State Tax Commission and representatives of the Governor's office to determine the legal and economic consequences of this and other possible changes in the tax. Our preliminary view is that the change just mentioned--preserving the present tax treatment of in-state transactions by extending it to out-of-state sales--would have a negligible impact on tax revenue. This is so because the beneficiaries of such an extension appear to be very limited. In particular, such an extension appears to benefit only sales made outside of New York where delivery of the security takes place in New York; this would generally mean a New York resident making a purchase on an out-of-state stock exchange with physical delivery of the security made to him in New York. The data we have considered so far indicates this class of transactions accounts for less than 1% of the transactions on which tax is collected.

We will keep you informed of any developments in this matter. If you have any further questions, please call me.

Sincerely,

MUNICIPAL ASSISTANCE CORPORATION

[signature]

Eugene Kelbin  
Executive Director

EJK:ba
Eugene Keilin  
Executive Director  
Municipal Assistance Corp.  
Two World Trade Center  
New York, N.Y. 10047  

Dear Gene,  

Enclosed is the report on the revenue impacts of the various policy options of conforming with the Boston Stock Exchange case. We anticipate arriving in New York somewhat before the meeting on Thursday morning and can discuss any questions you may have at that time.  

Sincerely yours,  

Andrew Decker
TO: Eugene Keilin
FROM: Andrew Decker and Dennis During

Revenue Impact

The revenue impacts of the various policy options available for conforming with the Supreme Court's decision are as follows:

OPTION 1

Eliminate the non-resident discount and eliminate the maximum tax.

Revenue increase from repeal of 270-a $ 55 million
Revenue decrease due to shift of trading volume (8) "

Net Revenue Impact $ 47 million

OPTION 2

Extend both the non-resident discount and the maximum tax to include out-of-state sales.

Net Revenue Impact Negligible

OPTION 3

Eliminate the non-resident discount, but extend the maximum tax to include out-of-state sales.

Revenue increase from eliminating the non-resident discount $ 35 million
Revenue decrease due to extension of maximum tax negligible
Revenue decrease due to shift of trading volume (5) million

Net Revenue Impact $ 30 million
OPTION 4

Eliminate the maximum tax, but extend the non-resident discount to out-of-state sales.

Revenue increase from eliminating the maximum tax $ 20 million
Revenue decrease due to extension of non-resident discount negligible
Revenue decrease due to shift of trading volume $(3) million
Net Revenue Impact $ 17 million

Transaction Classes Affected by Each Policy Option

The various classes of transactions involving combinations of transferor/transferee and taxable/non-taxable actions are affected by the policy options as follows:

OPTION 1

Eliminate the non-resident discount and eliminate the maximum tax.

Individual residents selling in-state Tax liability equal to or greater than present.
Individual non-residents selling in-state Tax liability greater than present.
Non-individual selling in-state Tax liability equal to or greater than present.
Estimation of Revenue Impacts

Page 3

OPTION 2

Extend both the non-resident discount and the maximum tax to include out-of-state sales.

Individual residents selling out-of-state with delivery in-state

Tax liability equal to or less than present

Individual non-residents selling out-of-state with delivery in-state

Tax liability equal to or less than present

Non-individuals selling out-of-state with delivery in-state

Tax liability equal to or less than present

OPTION 3

Eliminate the non-resident discount, but extend the maximum tax to include out-of-state sales.

Individual non-residents selling in-state

Tax liability greater than present

Individual residents selling out-of-state with delivery in-state

Tax liability equal to or less than present

Individual non-residents selling out-of-state with delivery in-state

Tax liability equal to or less than present

Non-individuals selling out-of-state with delivery in-state

Tax liability equal to or less than present
Estimation of Revenue Impacts

Page 4

OPTION 4

Eliminate the maximum tax, but extend the non-resident discount to out-of-state sales.

<table>
<thead>
<tr>
<th>Category</th>
<th>Tax Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual residents selling in-state</td>
<td>Tax liability equal to or greater than present</td>
</tr>
<tr>
<td>Individual non-residents selling in-state</td>
<td>Tax liability equal to or greater than present</td>
</tr>
<tr>
<td>Non-individuals selling in-state</td>
<td>Tax liability equal to or greater than present</td>
</tr>
<tr>
<td>Individual non-residents selling out-of-state with delivery in-state</td>
<td>Tax liability less than present</td>
</tr>
</tbody>
</table>

Revenue Estimation Procedure

Estimating the revenue impacts of the various policy options involved three components: 1) determining the general relationship between trading volume and levels of taxation; 2) estimating the revenue associated with the non-resident discount; and, 3) estimating the revenue associated with the maximum tax.

The possible revenue loss associated with the extension of Sec. 270-a to out-of-state sales was judged to be negligible based upon the relative ease (and apparent frequency) of legal avoidance techniques.
1. The General Relationship of Trading Volume to Taxation

To understand the relationship of trading volume to taxation and to estimate the loss of revenue due to Sec. 270-a's provisions, it is necessary to estimate the theoretical tax per share and the effective tax per share. By relating tax receipts from the Stock Clearing Corp. and the American Stock Clearing Corp. to trading volume on the New York Stock Exchange for each month from January 1966 to September 1976, it is possible to estimate that the average theoretical full tax per share in 1974-75 was approximately 4.13¢. During that same period, the average effective tax per share was estimated to be approximately 3.38¢. The difference of .81¢ (or 24% of actual tax per share) represents the effects of the reduction of taxes by Sec. 270-a.

A multivariate regression model was established to estimate the sensitivity of the NYSE's market share of trading in NYSE listed securities to stock transfer taxation. The model—which relates the market share to stock transfer taxes, brokerage commissions, trading activity other than NYSE, and the general value of securities over time—suggests that for each one cent that the effective tax per share rises, the NYSE market share declines at least two per cent, and probably closer to four.

When combined with the loss trading volume on the American Stock Exchange and in the New York over-the-counter market, it is conservative to estimate that total transfer tax revenues will decline by three to six per cent for each one cent the actual tax per share rises.
Estimation of Revenue Impacts

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2. Estimating the Revenue Associated with Non-Resident Discounts

To estimate the revenue associated with the non-resident discount it is necessary to find a proxy that closely approximates public volume broken down into resident and non-resident. No such data are available for years after 1966. Using the 1966 data and the distribution of shareowners in 1974, it is possible to calculate that in 1975 about thirty-six per cent of total public volume on the NYSE was done by non-resident individuals. When scaled to account for members' trading activity on the NYSE, non-resident individuals accounted for approximately twenty-eight per cent of total volume. Multiplying this by 50% (the non-resident discount rate) yields the share of total theoretical tax revenue loss (that is, tax revenue without discounts or maximum taxes) due to non-resident individual trading. This share is approximately fourteen per cent.

Based upon 1975 theoretical tax revenue of $250 million, elimination of the non-resident discount will produce $35 million in transfer tax revenue, neglecting the unfavorable economic effects on the volume of non-resident trading.

3. Estimating the Revenue Associated With the Maximum Tax

Estimating the revenue loss associated with the maximum tax requires calculating the lost tax revenue on shares traded in excess of the ceiling. In 1975 the NYSE had 34,420 transactions of blocks of stock in excess of 10,000. The average
Estimation of Revenue Impacts

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block size was 22,619. By subtracting an adjusted number of shares to reflect the maximum tax, it is possible to estimate that approximately 480 million shares of stock were traded untaxed due to the maximum tax. This amounts to about $20 million in lost transfer tax revenues, again neglecting the favorable impact of the maximum tax on the volume of trading.

Certain Economic Impacts

The economic effects of the various policy options require a more comprehensive evaluation than is presently possible. Certain important tendencies should, however, be noted at this time.

First, those transaction classes most effected by the current decision are very sensitive to local stock transfer taxation. Indeed, it was this reasoning that lead to the passage of the targetted tax reductions in Sec. 270-a. Consequently, our estimates, based on the economic effect of non-selective tax changes, provide a floor to the expected unfavorable economic effect of the tax. For this reason, any action to increase the tax burden on either block trading or non-resident trading is certain to trigger institutional changes that will amplify the projected decline in market share. For example, if the maximum tax were eliminated, block trading in New York might decline precipitously. While the elimination of the non-resident discount would tend to reduce the volume of non-resident individuals
trading in New York, the decline would be slower and less pronounced. In both cases, however, the decline will tend to compound upon itself as other markets develop better liquidity as a result of the volume diverted from New York markets.

Second, the transfer tax may now be the single most significant incentive for brokerage operations and other institutions to relocate outside New York. Various NYSE rules restricting the mobility of member's business have fallen. Negotiated commissions have further eroded the value of NYSE membership. Many firms may come to find it in their interest to seek other markets.

Third, the new national market system is becoming much more of a reality. It is expected that the consolidated limit order "book" concept will be approved by the Securities and Exchange Commission some time this spring. Industry sources suggest that such a system can be operational approximately two years following approval. Such a system would facilitate the easy and efficient flow of orders out of New York to avoid the transfer tax by making the liquidity of the New York market available for orders placed elsewhere.

Fourth, we have not yet estimated the impact of elimination of Sec. 270-a on State and City revenues other than the transfer tax.
H. Andrew Decker  
60 Hammond Pond Parkway  
Chestnut Hill, MA. 02167

Eugene Keilin  
Executive Director  
Municipal Assistance Corporation  
Two World Trade Center  
New York, N.Y. 10047

Dear Gene,

Enclosed is the preliminary report on the transaction classes as they are affected by the policy options. Included in this preliminary report is a section detailing the effects of the Securities Act Amendments of 1976. A more detailed analysis of the impact of the Amendments is forthcoming in the report on revenue effects.

We intend to be in New York City on Wednesday, February 2. We will require a letter of introduction confirming our relationship to MAC, addressed to Mr. Steven Goldenberg, Vice President for Operations at Goldman Sachs.

Looking forward to seeing you.

Sincerely yours,

[Signature]

Andrew Decker

[Signature]

Dennis During

[Stamp: RECEIVED FOR ACTION  
FEB 1 '77]
Transaction Class by Policy Option

The four policy options available to bring the state into conformity with the U.S. Supreme Court's decision in the Boston Stock Exchange case are as follows:

1) eliminate both the non-resident discount and the maximum tax
2) extend the non-resident discount and the maximum tax to out-of-state sales
3) eliminate the non-resident discount but extend the maximum tax to out-of-state sales
4) eliminate the maximum tax but extend the non-resident discount to out-of-state sales

As a first step in analyzing the effects of these four options, we have prepared an exhaustive listing of the various types of securities transactions categorized by various tax-relevant characteristics. We detailed the taxable status of each transaction class under both the conditions prior to and subsequent to the Securities Act Amendments of 1976 and under each conformity option. A summary of the policy relevant transaction classes is as follows:

Individual residents selling in-state are liable for stock transfer tax and benefit from the maximum tax provision.

Individual non-residents selling in-state are liable for stock transfer tax and benefit from both the maximum tax and the non-resident discount.

Non-individuals selling in-state are liable for stock transfer tax and benefit from the maximum tax provision.

Individual residents selling out-of-state with delivery in-state are liable for the stock transfer tax in full.
Individual non-residents selling out-of-state with delivery in-state are liable for stock transfer tax in full.

Non-individuals selling out-of-state with delivery in-state are liable for stock transfer tax in full.

Formerly certain additional transaction classes were subject to stock transfer taxation. The Securities Act Amendments of 1976 however, exempted those transactions that had been subject to stock transfer taxation only by virtue of the transfer agent being located in-state. The Amendments had the effect of exempting the following transaction classes*

Individual residents selling out-of-state with delivery out-of-state but transfer in-state.

Individual non-residents selling out-of-state with delivery out-of-state but transfer in-state.

Non-individuals selling out-of-state with delivery out-of-state but transfer in-state.

All transactions involving agreements to sell, memoranda of sale, or other means such as gifts or bequests were not affected by the non-resident discount or the maximum tax. Section 270-a clearly makes a distinction only between in-state and out-of-state

---

* One question for counsel concerns the situs of a delivery to a resident if the delivery is done out-of-state. Is there still tax liability due from the resident. If so, this seems a probable area of enforcement trouble. Another question concerns the situs of an out-of-state sale by a resident. What are the relevant interpretations of contract law that govern the determination of situs concerning residents involved in a sale? In other words, is it a legal possibility to have a resident selling out-of-state?
sales. These 'other' forms of 'exchanging' securities are therefore not at issue in the Boston Stock Exchange case. The Securities Act Amendments also changed the tax status of transactions in which some 'other' means of 'exchanging' securities is done out-of-state and only a transfer occurs in New York. Since these other means are neither covered by Section 270-a or involved in the Boston Stock Exchange case, they have been excluded from consideration. The law also makes no distinction between resident and non-resident non-individuals. They are also treated as one group.

Each policy option will effect a discrete group of transaction classes. The first step in costing out each proposal is then the grouping of transaction classes by policy option as follows:

OPTION 1 (eliminating both the non-resident discount and the maximum tax ceiling) will effect the following transaction classes only:

Individual residents selling in-state
Individual non-residents selling in-state
Non-individuals selling in-state
OPTION 2 (extend with the non-resident discount and the maximum tax ceiling regardless of situs of sale) will effect the following transaction classes only:

Individual residents selling out-of-state with delivery in-state

Individual non-resident selling out-of-state with delivery in-state

Non-individuals selling out-of-state with delivery in-state

OPTION 3 (eliminate the non-resident discount but extend the maximum tax ceiling regardless of situs of sale) will effect the following transaction classes only:

Individual non-residents selling in-state

Individual residents selling out-of-state with delivery in-state

Individual non-residents selling out-of-state with delivery in-state

Non-individuals selling out-of-state with delivery in-state

OPTION 4 (eliminate the maximum tax but extend the non-resident discount regardless of situs of sale) will effect the following transaction classes only:

Individual residents selling in-state

Individual non-residents selling in-state

Non-individuals selling in-state

Individual non-residents selling out-of-state with delivery in-state
TO: Gene Keilen

FROM: Andrew Decker and Dennis During

RE: Work Plan

Enclosed is the Work Plan. We have already begun but can adjust our thinking to reflect any changes you might have.
WORK PLAN

Research into the policy questions surrounding compliance with the United States Supreme Court decision in the Boston Stock Exchange Case can be divided into five discrete task areas:

1) Definition and identification of transactions classes and the effects of various policy options.
2) Estimation of Revenue impact of the various policy options.
3) Identification of the economic impacts of the various policy options.
4) Tax credit alternatives.
5) Miscellaneous considerations.

These general areas are broken down into more detail below.

1. Identification of Transaction Classes

Specific Tasks:

a) exhaustive listing of relevant characteristics of securities transactions
b) generation of exhaustive table of transactions by characteristics
c) determination of significant and trivial cases
d) tax status by transaction class including any changes as a result of the Securities Act Amendments of 1976 (i.e., exemption where transfer is the unique taxable incident)
An analysis of the effects of various tax options must begin from a clearly defined universe of facts. The product of various securities transferor/transferee combinations and taxable/non-taxable actions is a bewildering array of transactions classes. It will be necessary to identify all relevant classes of transactions and determine the significance and taxable status of each under each policy option.

**Anticipated Completion Date** January 31, 1977

2. **Revenue Impacts**

Specific Tasks:

a) identification of enforcement problems associated with certain transaction classes

b) feasibility of detailed revenue estimate by transaction class

c) alternate estimates

d) qualitative economic impacts by policy option

Estimating revenue by specific transaction class may be beyond the scope of the available data base. It should be possible to group certain classes together and collect information that will permit a rough estimate of the expected change in revenue under each policy option.

**Anticipated Completion Date** February 16, 1977
3. Economic Impacts

Specific Tasks:

a) identification and collection of data to update and run econometric model

b) identify any necessary refinement to separate effects of the maximum tax ceiling and the non-resident discount

c) discuss each policy option in terms of its short run and long run economic effects, including the future legislative and regulatory environment

Although no less important than the revenue estimates, the long run economic impacts are harder to identify and take longer to document. Despite the obvious need for speed, it is deemed important to complete a comprehensive study in this area, requiring a longer time frame than the revenue estimates. It may also be necessary to hire part time research talent for parts (a) and (b) of this section.

Anticipated Completion Date March 2, 1977

4. Tax Credit Alternatives

Specific Tasks:

a) identify through selective interviews in the industry, the methods and systems used for enforcement of the transfer tax

b) design a tax credit system

c) legal analysis (by counsel) to assure constitutionality
d) estimation of revenue and economic effects of such a system

Research into the question of enforcement requires extensive on-site interviewing. It is anticipated that such interviews will be conducted in early March leading to a report in mid to late March.

6. Miscellaneous Considerations

Specific Tasks:

a) impact of the Securities Act Amendments of 1976 on the stock transfer tax

b) constitutionality of the market maker exemption

There are in addition several procedural questions arising from this work.

1) There must be a degree of coordination between MAC's work and the State Department of Taxation and Finance.

2) Additional information may be necessary for various stages of the work, probably from the SEC or the NYSE.

3) There is of course the need for a truly comprehensive study of the entire relationship of the transfer tax to the City's revenue stream and to the MAC bonds. Such a study would obviously require more time and resources than is available presently.
TO: Eugene Keilin
FROM: Andrew Decker and Dennis During

Revenue Impact

The revenue impacts of the various policy options available for conforming with the Supreme Court's decision are as follows:

OPTION 1

Eliminate the non-resident discount and eliminate the maximum tax.

Revenue increase from repeal of 270-a $ 55 million
Revenue decrease due to shift of trading volume (8) "

Net Revenue Impact

$ 47 million

OPTION 2

Extend both the non-resident discount and the maximum tax to include out-of-state sales.

Net Revenue Impact Negligible

OPTION 3

Eliminate the non-resident discount, but extend the maximum tax to include out-of-state sales.

Revenue increase from eliminating the non-resident discount $ 35 million
Revenue decrease due to extension of maximum tax negligible
Revenue decrease due to shift of trading volume (5) million

Net Revenue Impact

$ 30 million
Estimation of Revenue Impacts

Page 2

OPTION 4

Eliminate the maximum tax, but extend the non-resident discount to out-of-state sales.

Revenue increase from eliminating the
maximum tax $ 20 million
Revenue decrease due to extension of
non-resident discount
Revenue decrease due to shift of trading
volume

(3) million

Net Revenue Impact

$ 17 million

Transaction Classes Affected by Each Policy Option

The various classes of transactions involving combinations
of transferor/transferee and taxable/non-taxable actions are
affected by the policy options as follows:

OPTION 1

Eliminate the non-resident discount and eliminate
the maximum tax.

Individual residents selling
in-state

Tax liability equal
to or greater than
present.

Individual non-residents selling
in-state

Tax liability greater
than present.

Non-individual selling in-state

Tax liability equal
to or greater than present.
Estimation of Revenue Impacts

Page 3

OPTION 2

Extend both the non-resident discount and the maximum tax to include out-of-state sales.

Individual residents selling out-of-state with delivery in-state

Tax liability equal to or less than present

Individual non-residents selling out-of-state with delivery in-state

Tax liability equal to or less than present

Non-individuals selling out-of-state with delivery in-state

Tax liability equal to or less than present

OPTION 3

Eliminate the non-resident discount, but extend the maximum tax to include out-of-state sales.

Individual non-residents selling in-state

Tax liability greater than present

Individual residents selling out-of-state with delivery in-state

Tax liability equal to or less than present

Individual non-residents selling out-of-state with delivery in-state

Tax liability equal to or less than present

Non-individuals selling out-of-state with delivery in-state

Tax liability equal to or less than present
OPTION 4

Eliminate the maximum tax, but extend the non-resident discount to out-of-state sales.

<table>
<thead>
<tr>
<th>Category</th>
<th>Tax Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual residents selling in-state</td>
<td>Tax liability equal to or greater than present</td>
</tr>
<tr>
<td>Individual non-residents selling in-state</td>
<td>Tax liability equal to or greater than present</td>
</tr>
<tr>
<td>Non-individuals selling in-state</td>
<td>Tax liability equal to or greater than present</td>
</tr>
<tr>
<td>Individual non-residents selling out-of-state with delivery in-state</td>
<td>Tax liability less than present</td>
</tr>
</tbody>
</table>

Revenue Estimation Procedure

Estimating the revenue impacts of the various policy options involved three components: 1) determining the general relationship between trading volume and levels of taxation; 2) estimating the revenue associated with the non-resident discount; and, 3) estimating the revenue associated with the maximum tax.

The possible revenue loss associated with the extension of Sec. 270-a to out-of-state sales was judged to be negligible based upon the relative ease (and apparent frequency) of legal avoidance techniques.
1. The General Relationship of Trading Volume to Taxation

To understand the relationship of trading volume to taxation and to estimate the loss of revenue due to Sec. 270-a's provisions, it is necessary to estimate the theoretical tax per share and the effective tax per share. By relating tax receipts from the Stock Clearing Corp. and the American Stock Clearing Corp. to trading volume on the New York Stock Exchange for each month from January 1966 to September 1976, it is possible to estimate that the average theoretical full tax per share in 1974-75 was approximately 4.18¢. During that same period, the average effective tax per share was estimated to be approximately 3.38¢. The difference of .81¢ (or 24% of actual tax per share) represents the effects of the reduction of taxes by Sec. 270-a.

A multivariate regression model was established to estimate the sensitivity of the NYSE's market share of trading in NYSE listed securities to stock transfer taxation. The model—which relates the market share to stock transfer taxes, brokerage commissions, trading activity other than NYSE, and the general value of securities over time—suggests that for each one cent that the effective tax per share rises, the NYSE market share declines at least two per cent, and probably closer to four. When combined with the loss trading volume on the American Stock Exchange and in the New York over-the-counter market, it is conservative to estimate that total transfer tax revenues will decline by three to six per cent for each one cent the actual tax per share rises.
2. Estimating the Revenue Associated with Non-Resident Discounts

To estimate the revenue associated with the non-resident discount it is necessary to find a proxy that closely approximates public volume broken down into resident and non-resident. No such data are available for years after 1966. Using the 1966 data and the distribution of shareowners in 1974, it is possible to calculate that in 1975 about thirty-six per cent of total public volume on the NYSE was done by non-resident individuals. When scaled to account for members' trading activity on the NYSE, non-resident individuals accounted for approximately twenty-eight per cent of total volume. Multiplying this by 50% (the non-resident discount rate) yields the share of total theoretical tax revenue loss (that is, tax revenue without discounts or maximum taxes) due to non-resident individual trading. This share is approximately fourteen per cent.

Based upon 1975 theoretical tax revenue of $250 million, elimination of the non-resident discount will produce $35 million in transfer tax revenue, neglecting the unfavorable economic effects on the volume of non-resident trading.

3. Estimating the Revenue Associated With the Maximum Tax

Estimating the revenue loss associated with the maximum tax requires calculating the lost tax revenue on shares traded in excess of the ceiling. In 1975 the NYSE had 34,420 transactions of blocks of stock in excess of 10,000. The average
block size was 22,619. By subtracting an adjusted number of shares to reflect the maximum tax, it is possible to estimate that approximately 480 million shares of stock were traded untaxed due to the maximum tax. This amounts to about $20 million in lost transfer tax revenues, again neglecting the favorable impact of the maximum tax on the volume of trading.

Certain Economic Impacts

The economic effects of the various policy options require a more comprehensive evaluation than is presently possible. Certain important tendencies should, however, be noted at this time.

First, those transaction classes most affected by the current decision are very sensitive to local stock transfer taxation. Indeed, it was this reasoning that lead to the passage of the targeted tax reductions in Sec. 270-a. Consequently, our estimates, based on the economic effect of non-selective tax changes, provide a floor to the expected unfavorable economic effect of the tax. For this reason, any action to increase the tax burden on either block trading or non-resident trading is certain to trigger institutional changes that will amplify the projected decline in market share. For example, if the maximum tax were eliminated, block trading in New York might decline precipitously. While the elimination of the non-resident discount would tend to reduce the volume of non-resident individuals
trading in New York, the decline would be slower and less pronounced. In both cases, however, the decline will tend to compound upon itself as other markets develop better liquidity as a result of the volume diverted from New York markets.

Second, the transfer tax may now be the single most significant incentive for brokerage operations and other institutions to relocate outside New York. Various NYSE rules restricting the mobility of member's business have fallen. Negotiated commissions have further eroded the value of NYSE membership. Many firms may come to find it in their interest to seek other markets.

Third, the new national market system is becoming much more of a reality. It is expected that the consolidated limit order "book" concept will be approved by the Securities and Exchange Commission some time this spring. Industry sources suggest that such a system can be operational approximately two years following approval. Such a system would facilitate the easy and efficient flow of orders out of New York to avoid the transfer tax by making the liquidity of the New York market available for orders placed elsewhere.

Fourth, we have not yet estimated the impact of elimination of Sec. 270-a on State and City revenues other than the transfer tax.
MEMORANDUM IN SUPPORT

LEGISLATIVE REFERENCE
S#1029 – by Mr. Goodman – Finance Com.
A#1068 – by Mr. Pasannante – Ways & Means Com.

TITLE
AN ACT To amend the state finance law, in relation to the time of payment of monies in the stock transfer tax fund payable by the state of New York to the city of New York.

SUMMARY OF PROVISIONS
This bill would amend Section 92-b of the State Finance Law so as to require payments of stock transfer tax fund balances to be made semi-monthly instead of quarterly by the State to the City of New York.

REASONS FOR SUPPORT
This bill would even out the flow of monies received by the City of New York over the year from the stock transfer tax fund so as to minimize borrowing by the City and to promote its ultimate purpose of matching, so far as possible, revenues with expenditures. It is estimated that the City’s interest cost can be reduced by $1.5 million a year by the enactment of this bill.

Under the present procedure, the quarterly payments result in an irregular cash flow which compels the City to borrow funds on a short-term basis to meet its needs in periods when cash funds are low. Current borrowing costs are high, as interest rates increase. If payments are received from the State on a regular semi-monthly basis, short-term borrowings and their concomitant charges and administrative costs can be greatly minimized.

This bill does not propose any changes in amounts payable to the City of New York by the State, nor does it involve additional State aid. The only change to be effected is in the time of payment of funds already required to be paid under existing State law.

Accordingly, the Mayor urges upon the Legislature the earliest possible favorable consideration of this proposal.

Respectfully submitted,

Leonard E. Yoswein
Legislative Representative
DIVISION OF THE LOTTERY

Administration of the State Lottery

NONPERSONAL SERVICE

Contractual services (for liabilities incurred prior to April 1, 1977) .................................................. 1,162,150

Special contractual services (for liabilities incurred prior to April 1, 1977) ............................................. 289,075

GENERAL STATE CHARGES

DEPARTMENT OF CIVIL SERVICE

General State Charges

Employee fringe benefits (for liabilities incurred prior to April 1, 1977) .................................................. 25,000

§ 3. Section one of chapter fifty of the laws of nineteen hundred seventy-six, as amended by section one of chapter four hundred sixty of the laws of nineteen hundred seventy-six, is hereby amended by repealing the items hereinbelow set forth in brackets and by adding to such section the other items set forth in italics in this section.

OTHER FUNDS

STOCK TRANSFER TAX FUND

For payment to the municipal assistance tax fund for payment to the municipal assistance corporation for the city of New York [in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund], to the extent required to comply with the agreements between such corporation and the holders of its notes and bonds, and for the corporate purposes of such corporation and to the extent not required by such corporation for such purposes, for payment to the city of New York for support of local government, provided, however, that the maximum amount to be paid shall not exceed the collections from the stock transfer tax pursuant to article 12 of the tax law, less administrative costs as certified by the commissioner of taxation and finance for deposit to the credit of the general fund—state purposes fund [225,000,000] .................................. 260,000,000
MUNICIPAL ASSISTANCE TAX FUND
SPECIAL ACCOUNT FOR THE MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK

For payment, pursuant to the provisions of section ninety-two of the state finance law, to the municipal assistance corporation for the city of New York, to the extent required to comply with the agreements between such corporation and the holders of its notes and bonds, and for the corporate purposes of such corporation, and, to the extent not required by such corporation for such purposes, for payment to the city of New York for support of local government, provided, however, that the maximum amount to be paid pursuant to this appropriation shall not exceed the total of the revenues derived from municipal assistance sales and compensating use taxes imposed by section eleven hundred seven of the tax law, less administrative costs as certified by the commissioner of taxation and finance, and the amount transferred from the stock transfer tax fund established pursuant to section ninety-two-b of the state finance law [1,100,000,000] ............................... 1,125,000,000

§ 4. Section one of chapter fifty of the laws of nineteen hundred seventy-six, as amended by section one of chapter four hundred sixty of the laws of nineteen hundred seventy-six, is hereby amended by repealing the items hereinbelow set forth in brackets and by adding to such section the other items set forth in italics in this section.

GENERAL FUND—STATE PURPOSES FUND
EDUCATION DEPARTMENT
GRANTS, AIDS AND SUBSIDIES

Schedule

Aid to private colleges. Notwithstanding subdivision three of section 6401 of the education law or any other law to the contrary, the commissioner of education is hereby authorized to apportion for each annual period commencing July first, nineteen hundred seventy-six and to pay to any private institution of higher education within this state which meets the requirements set forth in subdivision two of section 6401 of the education law, upon application by such institution, annual apportionments based on the number and types of
Purpose: The stock transfer tax has been a major obstacle to securities trading in New York and has placed the securities industry in New York State at a competitive disadvantage with regional exchanges and the over-the-counter (OTC) market in that it imposes an additional cost on completion of transactions. Brokers and dealers operating in New York have found that the stock transfer tax actually provides an incentive for nonresidents to conduct their trading activity on the regional exchanges and in the OTC market to avoid paying the stock transfer tax in New York. The concern of the State and New York City was first evidenced in 1968 when legislation was enacted that provided tax relief to nonresidents by reducing the tax rates applicable to nonresidents to one-half of the rates applicable to residents. A maximum tax was also provided to large-block traders.

The concern of the State and the City was again evidenced in 1976 when market-makers were provided with a 100 percent credit for stock transfer taxes incurred and paid in market-making transactions. This credit is applied in equal portions against the business' State and city corporate or unincorporated business taxes and the entire amount of stock transfer tax paid is returned to the broker-dealer.

Several planned changes in the securities industry will make it easier for brokers and dealers to place transactions elsewhere thereby eliminating the need to use the two major exchanges in New York:

1. The Securities and Exchange Commission (SEC) has proposed the elimination of NYSE Rule 390, which prohibits members of the Exchange from completing securities transactions off the floor of the exchange, if the security is listed on the exchange. The SEC has proposed that this rule be eliminated on January 1, 1978. The elimination of this rule will permit brokers and dealers to match orders in their offices, thereby avoiding the floor of the NYSE or the American Stock
Exchange (NYSE). Brokers and dealers would submit their orders in offices outside New York to avoid the stock transfer tax, thereby reducing the cost of the transaction.

2. Proposals are being advanced and explored to provide for a nationwide market system with an intermarket exchange system, where all prices of a security would be listed at one time throughout the country and the seller of the security would be able to find the best price for his security. The stock transfer tax places the New York exchanges, brokers and dealers and specialists at a competitive disadvantage in a nationwide market system because the tax increases the cost of a sale of a security and reduces (or increases) the gain (or loss) on the sale.

In order to eliminate the adverse economic impact of the stock transfer tax on the securities industry in New York, the proposal would reduce gradually the economic effect of the imposition of the stock transfer tax during the four year period ending in 1982 by means of gradually increasing statutory rebates. Under the proposal the tax would not be repealed, but would continue to be imposed, and therefore would remain available to the Municipal Assistance Corporation for the City of New York for its debt service requirements in accordance with its bond resolutions and applicable law.

Rebates of stock transfer taxes paid or incurred. The first stage of the relief would be the elimination of the 28% surcharge on its scheduled elimination date of July 31, 1978. Thereafter, rebates of stock transfer taxes paid would be provided for 30% of such taxes paid on or after October 1, 1979, the first year of the rebate mechanism, 60% in the second year and 100% in the final year of stock transfer tax relief.
Summary of provisions: The bill, which would take effect immediately, except as noted below, would:

(4) Amend the Tax Law as follows:

(1) Sections one and seven would add paragraph (d) of section 210(14) and paragraph (4) to section 701(c), respectively, to limit the amount of credit available to a market maker to the excess of stock transfer taxes paid on market-making activity over rebates allowed on such market making activity.

(2) Section three repeals the maximum tax applicable to large-block transactions now contained in section 270-a(2). Section five reenacts the provisions of the maximum tax applicable to large-block transactions as section 270-e. The maximum amount of tax applicable to a large-block transaction would be $350.

(3) Section four would amend section 270-d to apply the 25 percent surcharge to the new maximum tax on large-block transactions.

(4) Section six adds a new section 280-a to provide rebates for stock transfer taxes paid provided that sufficient funds are available in the stock transfer incentive fund to pay rebates. This section establishes two rebate schedules, one applicable to residents and the other applicable to nonresidents:

<table>
<thead>
<tr>
<th>Period of Rebate</th>
<th>Nonresident Rebate</th>
<th>Resident Rebate</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 1977 - July 31, 1978</td>
<td>50%</td>
<td>-0-</td>
</tr>
<tr>
<td>July 1, 1978 - September 30, 1979</td>
<td>37 1/2%</td>
<td>-0-</td>
</tr>
<tr>
<td>October 1, 1979 - September 30, 1980</td>
<td>37 1/2%</td>
<td>0%</td>
</tr>
<tr>
<td>October 1, 1980 - September 30, 1981</td>
<td>60%</td>
<td>60%</td>
</tr>
<tr>
<td>October 1, 1981 and thereafter</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
The nonresident rebate schedule is effectively eliminated on and after October 1, 1980, when the nonresident rebate percentage equals the resident rebate percentage.

Rebates would be paid upon the filing of a claim with the State Tax Commission, except that a separate mechanism would be established for members and dealers using an exchange, affiliated clearing corporation or authorized agency to remit to the tax payable to the State Tax Commission. The claim provisions apply basically to those taxpayers using stamps to pay the stock transfer tax.

Members and dealers remitting the stock transfer tax to the State through an exchange, affiliated clearing corporation or registered agency would be authorized to pay the rebatable portion of the stock transfer tax collected on the next-to-the-last day of the calendar quarter.

On the last such day of each calendar quarter the member or dealer would remit the rebatable portion of stock transfer taxes to an exchange, an affiliated clearing corporation or authorized agency who would remit the rebatable portion to the Stock Transfer Tax Fund to the credit of the State Tax Commission. The rebatable portion would pass through the Stock Transfer Tax Fund, the Municipal Assistance Corporation and its certification process, and the Tax Commissioner would return the rebatable portion to the exchange, affiliated clearing corporation or authorized agency. This method would, in effect, permit instantaneous rebates to customers, because brokers would presumably not collect the rebatable portion from its customers.
Brokers and dealers would be required to place a bond with the State Tax Commission for the rebatable portion of the tax. The Tax Commission would be authorized to issue jeopardy assessments in the event that a broker or dealer is in danger of becoming insolvent.

(5) Section two would repeal subdivisions one and three of section 270-a (relating to the nonresident rate relief and the definition of nonresident) effective October 1, 1977. Nonresidents would begin to receive a 50 percent rebate starting on, such date.

(b) Amend the State Finance Law:

(1) Sections eight and nine would amend section 92-b, which establishes the Stock Transfer Tax Fund, to provide that the gross revenues derived from the stock transfer tax (before rebates but net of administrative costs) shall first be paid to the Municipal Assistance Corporation, if needed, and then to a new fund established for the payment of rebates (the "Stock Transfer Incentive Fund") if needed, and then to the City of New York. This effectively gives the Stock Transfer Incentive Fund (STIF) second lien on the Stock Transfer Tax Fund.

The costs of the State Tax Commission in administering the STIF would be deducted from the Stock Transfer Tax Fund after the stock transfer tax passed the MAC.

(2) Section ten would add a new section 92-h establishing a new fund, called the Stock Transfer Incentive Fund (STIF). This fund would consist of the rebatable portion of the stock transfer tax.
any moneys received from the State or other sources.

On the last business day of each calendar quarter, the Commissioner of Taxation and Finance would determine the amount of the rebates payable for the preceding quarter and certify the amount of such rebates to be paid out of the STIF to the State Comptroller. The Comptroller would then pay the certified amount from the Stock Transfer Tax Fund to the STIF.

At the same time, the Comptroller would also pay from the General Fund to the STIF fund one-half of the rebatable amount as certified by the Commissioner of Taxation and Finance and one-half of the amount attributable to the 25% stock transfer tax surcharge, if such surcharge were in effect. The maximum payment to the STIF from the State General Fund could not exceed $50 million in State fiscal year 1979-80, $90 million in State fiscal year 1980-81 and $120 million in State fiscal year 1981-82 and thereafter.

The Comptroller would also be required to pay to the STIF one-half of the costs of the State Tax Commission in administering the STIF fund.

Any excess in the STIF after payment of the rebates would be paid to New York City.

(3) Section nine would amend section 92-d(7) to provide that the State Comptroller must certify, on the last day of each calendar quarter, whether MAC would require stock transfer tax revenues for the next succeeding quarter.

(c) Amend Chapter 772, Laws of 1966 (New York City enabling legislation) and the Administrative Code of the City of New York, as follows:
Sections eleven, twelve, thirteen and fourteen would add a new subdivision (4) to sections 1(4-a) and 101(e), and R46-4.0(11) and R46-3.0(c), to such chapter and code, respectively, to limit the amount of credit available to a market maker to the excess of stock transfer taxes paid on market-making activity over rebates allowed on such market-making activity.

(d) Amend the appropriation from the Stock Transfer Tax Fund, to provide for the payment of stock transfer tax revenues to the STIF and to increase the appropriation from such fund.

(e) Appropriate $300,000 from the State's General Fund to the STIF to pay the State's share of the cost of administering the Fund.
TO: Options for Imposition of

FROM: Paul, Weiss, Rifkind, the Stock Transfer Tax

Wharton & Garrison

and

after the Boston Stock

Exchange Decision

Introduction

In Boston Stock Exchange v. State Tax Commision, Hawkins, Delafield & Wood

decided on January 12, 1977, the United States Supreme Court

held that certain provisions of the New York Tax Law (the

"Tax Law"), providing for the imposition of the Stock Transfer

Tax, violated the Commerce Clause of the United States Con-

stitution to the extent that the amount of tax payable under

the Tax Law depended upon whether a sale was made in or out

of New York State. (Copies of the Court's opinion and the

relevant portions of the Tax Law are attached to this memo-

randum.)

The revenues derived from the Stock Transfer Tax

are pledged to the payment of debt service on bonds issued

by the Municipal Assistance Corporation For the City of

New York (the "Corporation"). Therefore, any proposal to

alter the Tax Law to comply with the Court's holding must

take account of the restrictions imposed by the First and

Second Bond Resolutions (the "Resolutions") of the Corporation.
We have been informed by the New York State Department of Taxation and Finance that that Department is in the process of gathering data with respect to the incidence of taxable sales in and out of New York State. The purpose of this memorandum is to explore, while the process of gathering such factual data is proceeding, the various options available with respect to changes in the Stock Transfer Tax which will comply with the holding of the Supreme Court and to test each such option to determine if its adoption would result in an Event of Default under the Resolutions.

The Stock Transfer Tax and the Reasoning of the Boston Stock Exchange Decision

The relevant provisions of the Tax Law currently in effect are summarized by the Court in its opinion:

I

New York Tax Law § 270.1 provides that “all sales, or agreements to sell, or memoranda of sales and all deliveries or transfers of shares or certificates of stock” in any foreign or domestic corporation are subject to the transfer tax.\footnote{After the decision by the New York Court of Appeals in this case, §21 (2)(d) of the federal Securities Acts Amendments of 1975 became effective. This amendment provides that no State may tax a change in beneficial or record ownership of securities if the change is effected through the facilities of a registered clearing house or registered transfer agent unless the change would otherwise be taxable if the facilities were not physically located in the taxing State. Act of June 4, 1975, Pub. L. No. 94-29, § 21 (2)(d), 89 Stat., 97 (1975), amending Securities Exchange Act of 1934, § 28 (to be codified in 15 U. S. C. § 78bb (d)). A transfer agent is defined in § 3 (6) of the 1975 Amendments. Id., § 3 (6), amending Securities Exchange Act of 1934, § 3 (a) (to be codified in 15 U. S. C. § 78 (e) (251). Although the Senate Committee was unclear as to whether the New York transfer tax reached such changes in ownership, the Senate Report on the 1975 Amendments indicates that §21 (2)(d) was directed to New York’s transfer tax in particular, and in general to similar taxes being considered by other States. S. Rep. No. 94-75, 94th Cong., 1st Sess., 60 (1975). See N. Y. Tax Law § 270.5 (i)-(l). On December 1, 1975, counsel for the New York State Department of Taxation and Finance issued an opinion that the 1975 Amendments limited the types of taxable events covered by § 270:}
Administrative regulations promulgated with respect to the transfer tax provide that the tax applies if any one of the five taxable events occurs within New York, regardless of where the rest of the transaction takes place, and that if more than one taxable event occurs in the State, only one tax is payable on the entire transaction. 20 N.Y.C.R.R. 440.2. For transactions involving sales, the rate of tax depends on the selling price per share and the total tax liability is determined by the number of shares sold. N.Y. Tax Law § 270.2. Thus, under the unamended version of § 270, a transaction involving a sale and a transfer of shares in New York was taxed the same as a transaction involving an in-state transfer but an out-of-state sale. In both instances, the occasion for the tax was the occurrence of at least one taxable event in the State, the rate of tax was based solely on the price of the securities, and the total tax was determined by the number of shares sold. The Exchanges do not challenge the constitutionality of § 270.a

"[W]here the sole event in New York State is the delivery or transfer to or by a ‘registered clearing agency’ or a ‘registered transfer agent,’ as those terms are defined under the Securities Exchange Act of 1934, there is no stock transfer tax due and owing on and after December 1, 1975. However, where a sale, agreement to sell, memorandum of sale or any other delivery or transfer takes place in New York State, the stock transfer tax due and owing thereon must be paid." 2 N.Y. Tax Rep. (C.C.H.) *57–101,605.

Although the new federal law may eliminate many transactions as taxable events under § 270, the constitutional questions raised by the Exchanges on this appeal still apply to the transactions that are taxable under § 270 after the 1975 Amendments.

a The rates provided for in § 270.2 range from 1.25 cents per share when the sale price of the security is less than $5 to the highest rate of 5 cents per share when the price is $30 or more. When no sale is involved, e.g., a gift, the rate is a constant 2.5 cents per share. In recent years, a 25% surcharge has been added to all transfer taxes. N.Y. Tax Law § 270–d (McKinney Supp. 1976). 1976 New York Laws, c. 842, § 8.

6. [omitted]
None of the States in which the appellant exchanges are located taxes the sale or transfer of securities. During the 1960's the New York Stock Exchange became concerned that the New York transfer tax created a competitive disadvantage for New York trading and was thus responsible for the growth of out-of-state exchanges. In response to this concern and fearful that the New York Exchange would relocate outside New York, the legislature in 1968 enacted § 270-a to amend the transfer tax by providing for two deviations from the uniform application of § 270 when one of the taxable events, a sale, takes place in New York. First, transactions by nonresidents of New York are afforded a 50% reduction ("non-resident reduction") in the rate of tax when the transaction involves an in-state sale. Taxable transactions by residents (regardless of where the sale is made) and by nonresidents selling outside the State do not benefit from the rate decrease. Second, § 270-a limits the total tax liability of any taxpayer (resident or nonresident) to $350 ("maximum tax") for a single transaction when it involves a New York sale. If a sale is made out-of-State, the § 270 tax rate applies to an in-state transfer (or other taxable event) without limitation.

7. [omitted]

8 The Exchanges do not challenge New York's authority to tax residents in a greater amount than nonresidents as long as the extent of the tax burden does not depend on an out-of-state sale.

9. [omitted]

The Court held that each of the two deviations from the application of Section 270 to sales -- the non-resident reduction and the maximum tax -- violate the Commerce Clause insofar as the availability of each was dependent upon a sale taking place in New York State.
The Court reasoned that, prior to the 1968 amendment, the Tax Law was neutral as to in-state and out-of-state sales. Its reasoning was as follows:

Section 270-a upset this equilibrium. After the amendment took effect, a nonresident contemplating the sale of securities that would be delivered or transferred in New York faced two possible tax burdens. If he elected to sell on an out-of-state exchange, the higher rates of § 270 applied without limitation on the total tax liability; if sold the securities on a New York exchange, the one-half rate of § 270-a applied and then only up to a $350 tax liability. Similarly, residents engaging in large block transactions on the New York exchanges were subject to a maximum tax levy of $350; but if they sold out-of-State, their tax bill would be limited only by the number of shares sold. Thus, under § 270-a the choice of exchange by all nonresidents and by residents engaging in large transactions is not made solely on the basis of nontax criteria. Because of the delivery or transfer in New York, the seller cannot escape tax liability by selling out-of-State, but he can substantially reduce his liability by selling in-State. The obvious effect of the tax is to extend a financial advantage to sales on the New York exchanges at the expense of the regional exchanges. Rather than “compensating” New York for a supposed competitive disadvantage resulting from § 270, the amendment forecloses tax-neutral decisions and creates both an advantage for the exchanges in New York and a discriminatory burden on commerce to her sister States.

*   *   *

Because it imposes a greater tax liability on out-of-state sales than on in-state sales, the New York transfer tax, as amended by § 270-a, falls short of the substantially even-handed treatment demanded by the Commerce Clause.

In a further discussion of this basic reasoning, the Court responded to two arguments which were advanced by
the New York Court of Appeals in holding that the distinction between in-state and out-of-states sales was constitutional.

The first of these arguments was that, as to New York residents, the higher tax on large out-of-state sales would have no "practical" effect, since, in the words of the Court of Appeals, "it is more than likely ... that the sale would be made on a New York exchange in any event." The Supreme Court disposed of this argument by noting, first, that if the Court of Appeals' assumption were correct, there would have been no reason for the New York State Legislature to reduce the tax burden on in-state sales by residents in order to retain their sales in New York, and, second, that the discriminatory burden of limiting the maximum tax to in-state sales was not insubstantial.

The second argument advanced by the Court of Appeals was that, as to the discriminatory tax burden on out-of-state sales by non-residents, Section 270-a did not discriminate against interstate commerce in favor of intrastate commerce, but rather discriminated between two kinds of interstate transactions, a distinction which it apparently believed to be permissible under the Commerce Clause.

The Supreme Court responded to this argument as follows:
Both the maximum tax and the rate reduction provisions of § 270-a discriminate against out-of-state sales by nonresidents. The fact that this discrimination is in favor of nonresident, in-state sales which may also be considered as interstate commerce, see Freeman v. Hewitt, supra, at 258-259, does not save § 270-a from the restrictions of the Commerce Clause. A State may no more use discriminatory taxes to assure that nonresidents direct their commerce to businesses within the State than to assure that residents trade only in intrastate commerce.

The language used by the Court in responding to this second argument should be read with some care: the Court did not say that a State may not use taxes to encourage non-residents to direct their commerce to business within the State, but rather that a State may not use "discriminatory taxes" to achieve such result. The "discriminatory" tax to which the Court was referring in the instant case was, of course, the Stock Transfer Tax which discriminated between in-state and out-of-state sales.

In reversing the case, the Supreme Court remanded the case to the New York Court of Appeals for further proceedings consistent with the Supreme Court's opinion. In remanding the case, the Supreme Court included in a footnote the following statements with reference to a savings provision which was enacted concurrently with Section 270-a:

When enacted § 270-a, the New York Legislature also enacted a savings provision such that the invalidity of any part of the amendment should not affect the enforcement of any other part. It is not clear from the savings provision whether the legislature intended that the distinction between residents and nonresidents should survive the invalidation of the discrimination between in-state and out-of-state sales. Compare New York laws of 1968, c. 827, § 10 with id., § 11. Construction of the savings clause is, of course, a question of state law appropriately decided by the state courts.
Sections 10 and 11 of Chapter 827 of the laws of 1968, to which the Supreme Court refers to in this footnote, provide as follows:

Separability of Provisions. Laws 1968, c. 827, § 10, provided: "If any section of this act, [amending this section and amending sections 270, 272, 276, 278 and 280] or the repeal, amendment, or change made by any such section to any item, clause, sentence, subparagraph, paragraph, subdivision, section or other part of article twelve of the tax law, or the application thereof to any person or circumstances, shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this act or any other item, clause, sentence, subparagraph, paragraph, subdivision, section or other part of article twelve of the tax law repealed, amended or changed by this act, or the application of such section of this act or such section or part of a section of such article twelve of the tax law repealed, amended or changed by this act, directly involved in such holding, to any person or circumstances therein involved."

Tax Rates in Event of Repeal. Laws 1968, c. 827, § 11, provided: "In the event that section four of this act or subdivision one or two of section two hundred seventy-six of the tax law as added thereto by such section four, shall be held to be invalid by reason of unconstitutionality, whether federal or state, then in either of such events, in the case of such subdivision one, the rates of tax provided by section two hundred seventy-six of the tax law, as amended by this act, [amending this section and amending sections 270, 272, 276, 277, 278 and 280] shall be deemed to have applied and shall apply to resident individuals and non-resident individuals alike, and in the case of such subdivision two, the rates of tax provided for by section two hundred seventy-six of the tax law as amended by this act shall be deemed to have applied and shall apply to all transactions subject to the tax imposed by article twelve of the tax law, without any limitations as to the maximum amounts of tax due on any such transactions."
The Resolutions of the Corporation

Section 1202(f) of the General Bond Resolution of the Corporation provides as follows:

1202. Events of Default Each of the following events is hereby declared an "event of default," that is to say; if

* * *

(f) the State shall for any reason fail or refuse to continue the imposition of either the Sales Tax imposed by Section 1107 of Article 28 of the Tax Law as the same may be from time to time amended or the Stock Transfer Tax imposed by Sections 270 and 270-a of Article 12 of such Law as the same may be from time to time amended or if the rates of such taxes shall be reduced to rates less than those in effect on the date of this Resolution;

Section 1202(f) of the Second General Bond Resolution in substantially identical to this Section.*

Section 1202(f), therefore, sets forth a two-part test for determining whether an Event of Default occurs with respect to any change in the Stock Transfer Tax.

The first test (the "First Test"), as it applies to the Stock Transfer Tax, is whether there has been any failure or refusal by the State for any reason to continue the imposition of the Stock Transfer Tax imposed by Sections 270 and 270-a, as the

* Section 1203 of each of the Resolutions sets forth remedies available in the event that an Event of Default occurs. Section 1203 provides that, in the event of an Event of Default of the type referred to in Section 1202(f), the Trustee may, but need not, institute such a suit and, upon the demand of the holders of 25% or more of the "Outstanding Bonds" (as defined in the Resolutions), must institute such a suit.
same may be from time to time amended. There are at least two aspects of this First Test which may allow for a considerable degree of flexibility in making any changes to the current version of Sections 270 and 270-a.

The first is that the prohibition contained in this First Test runs against "the State." Any action taken by a branch of the Federal Government, including the United States Supreme Court or the Congress, or the implementation of any specific action mandated by the Congress or by the Federal Courts, may not violate this prohibition. However, it would be highly unlikely (and perhaps improper) for the Supreme Court to take any further action by way of implementing its decision, other than remanding the case to the State Court, as it has already done. It would be equally unlikely that Congress would act with respect to this problem, because the basis of such an action would be to assist one State and an industry within it with respect to economic matters to the possible detriment of industries located within other States. The term "the State" in the Resolutions does offer some flexibility, however, in that it is possible to interpret the term "the State" for this purpose as referring only to the State Legislature or to a State agency and not to a State court. If this argument is accepted, any action taken by the Court of Appeals might not violate the First Test.

The other aspect of this First Test which may allow for some flexibility is that the First Test refers to the Stock
Transfer Tax "as the same may be from time to time amended."
This language on its face would, therefore, allow wide latitude
for amendment of the Stock Transfer Tax, so long as such action
is the not the equivalent of a repeal of that Tax.

We believe that the constraints imposed by the First
Test would apply equally to changes in the non-resident reduction
and to the maximum tax, such that if a change in the non-resident
reduction did not violate the First Test, a comparable change in the
the maximum tax would probably also not violate such Test.

The second test (the "Second Test") contained in
Section 1202(f) is that an Event of Default occurs "if the
rates of such taxes shall be reduced to rates less than in
effect" on July 2, 1975. Whether this Second Test would be
violated by any change in Sectins 270 and 270-a would depend
chiefly upon the interpretation on the word "rate."*

* In contrast to the First Test, a violation of the Second Test does
not appear to depend upon any action being taken by "the State,"
and, therefore, it is probably not relevant for the purposes of
the Second Test whether any changes in the Stock Transfer Tax are
effected by a State court, on the one hand, or by the State
Legislature or an administrative agency, on the other hand.

In addition, there is no explicit reference in the Second Test to
the Tax Law, "as the same may be from time to time amended."
Nevertheless, it is arguable that because Section 10 of the
Chapter Laws, quoted above and discussed in detail below, was
the law at the time that the Resolutions were drafted, it was,
therefore, contemplated by the draftsmen of the Resolutions
that certain changes, within reasonable limits, would take
place as a result of the operation of Sections 10 and 11 without
resulting in a violation of the Second Test and, therefore, an
Event of Default.
Several interpretations of the term "rate" are possible. Under one interpretation, which we believe to be the reasonable and correct interpretation, the term "rate," as used in this Second Test, refers specifically to the word "rate" as it is used in Section 270-a.

Specifically, Section 270-a provides that:

"... the rates of tax set forth in paragraph (a) of this subdivision and the maximum amounts of tax set forth in subdivision two of this section shall apply, in the case of those sales made within this state subject to tax under section two hundred seventy and described in paragraph (a) of this subdivision and subdivision two of this section.

"(a) On such sales by a non-resident during the period set forth in the following table, the rates of tax shall be the percentage, set forth in such table of the rates of tax provided in section two hundred seventy of this article." (Emphasis added.)

These provisions of the statute make clear that the Legislature intended that the word "rate," as used in the statute, is to refer only to the number of cents of tax imposed for each share involved in a transaction subject to the tax, and that the word "rate" does not apply to the maximum tax imposed by subsection (2) of Section 270-a. The most convincing argument that this interpretation of the term "rate" is the correct interpretation is that the draftsmen of the Resolution had before them this exact statutory language and chose to use the word "rate" in drafting this Second Test. (Indeed, persons present at the time when this Second Test was drafted have stated that
a broader test, which would have included restrictions on decreasing the amount of tax payable on any transaction, were considered by the underwriters and their counsel, and specifically rejected in favor of this more limited application of the Second Test to the "rate" of the Stock Transfer Tax.) Further evidence of the correctness of this interpretation is found in opinions of Bond Counsel, which historically have drawn a distinction between the "rate" of tax and the "amount" of tax.

Although other interpretations of the word "rate" are, of course, possible, we believe that they are improper in the present context. For example, as suggested above, the term "rate" could be interpreted broadly to mean the amount of tax payable on any particular transaction as a result of application of both the rates referred to in Sections 270 and 270-a and the maximum tax. Under this broader interpretation of the word "rate," any change in the maximum tax would, therefore, be a change in the rate. For the reasons discussed in the preceding paragraph, we believe that this interpretation would be incorrect in the context of the Second Test.

We believe that, in contrast to the constraints imposed by the First Test, the constraints imposed by the Second Test, as interpreted in this manner, would apply chiefly to changes in the non-resident reduction and only to a lesser degree, if at all, to changes in the maximum tax.
Assuming that the narrower interpretation of the word "rate" discussed above is the operative interpretation for the purposes of the Second Test, and that, therefore, the Second Test chiefly applies to changes in the non-resident reduction, one question with respect to which there may be room for discussion is whether in the application of the non-resident reduction to out-of-state sales would constitute a reduction in the "rate." We believe that it may reasonably be asserted that the application of the non-resident reduction to such sales does not involve a reduction in rate, because the rates of tax imposed by Section 270-a have not changed, but only the application of the lower rate to a new class of transactions. Under this line of reasoning, such a change would be analogous to the change effected by Section 21(2)(d) of the Federal Securities Act Amendments of 1975, which did not result in the occurrence of an Event of Default. Like the application of the non-resident reduction to out-of-state sales, the adoption of the Federal Securities Act Amendments resulted in a lower tax - i.e., no tax -- payable on a certain class of transactions, in that such Amendments exempt transactions from the Stock Transfer Tax when the only taxable event within the State was the transfer of shares on the books of a registered clearing house or transfer agent.
Options for Imposition of
Stock Transfer Tax After
Boston Stock Exchange Decision

This section of the memorandum sets forth the possible options which we believe would be in compliance with the Supreme Court's decision and would, therefore, not violate the Commerce Clause. In each case, the distinction between in-state and out-of-state sales would be eliminated, as required by the Court's decision. This section discusses the method of implementation of each of such options, the permissibility of the adoption of each option under the Resolutions (i.e., whether an Event of Default would result) and the potential economic consequences caused by possible changes in patterns of stock sales which might occur after the adoption of each of these options.

Option 1: Eliminate non-resident reduction; eliminate maximum tax.

(a) Method of Implementation: Because this Option is the result of what would follow if Section 11 of the Chapter Laws, quoted above, were controlling, this Option could probably be implemented by the Court of Appeals without new legislation. In reaching such a result, the Court of Appeals would find that Section 270-a was declared by the Court unconstitutional in toto, and that, therefore, the provisions of Section 11 were controlling. The adoption of such a view would not adopt the Supreme Court's suggestion contained in Footnote 15 of the Court's opinion quoted above, which clearly
implies that the State Court has within its discretion the power to interpret the savings provision of Section 10 of the Chapter Laws to save the portion of the statute which does not violate the Commerce Clause.

(b) **Permissibility Under the Resolutions:** The effect of adopting Option 1 would be that (i) all sales by residents and non-residents would be taxed equally and (ii) the amount payable on any sale would be limited only by the number of shares sold.

Adoption of this Option would clearly not violate the First Test, because the Stock Transfer Tax would continue to be imposed, because there would probably be no action by the "State" if the Court took the necessary action to adopt this Option, and because this change would constitute a permissible amendment of the Tax Law. The adoption of this Option would not violate the Second Test, in that no matter how broadly the word "rate" is interpreted, the rate would be increased and not decreased.

(c) **Potential Economic Consequences:** Because the tax payable by non-residents would increase to the full rate paid by residents, and particularly because the $350 maximum tax would not apply to transactions whether by residents or non-residents and whether made in-state or out-of-state, the Stock Transfer Tax would be likely to become a deterrent
To engage in any transactions subject to New York tax. Therefore, it is probable that adoption of this Option would result in a decrease in the volume of transactions on New York exchanges and indeed a decrease in all other actions which would trigger the application of the Stock Transfer Tax.

Option 2: Maintain non-resident reduction; maintain maximum tax.

(a) Method of Implementation: This Option comes closest to preserving the basic structure of Sections 270 and 270-a, in that it merely eliminates the distinction between in-state and out-of-state transactions. In order to achieve this result, the Court of Appeals could adopt what is a narrower, but perhaps more justifiable, reading of the Boston Stock Exchange case, than that referred to above with respect to Option 1 by determining that the Supreme Court held only that the distinction between in-state and out-of-state transactions contained in Section 270-a violated the Commerce Clause.

The deletion of the words "within the state" in subsections (1) and (2) of Section 270-a would achieve this result. To alter the statute in this manner, the Court would rely on Section 10 of the Chapter Laws quoted above, which was referred to by the Supreme Court in Footnote 15 of its
opinion.* It would seem, based on Footnote 15, that the Court of Appeals could reasonably rely on Section 10, rather than Section 11, because Footnote 15 makes clear that the Supreme Court did not take the position that Section 11 would automatically be controlling as a result of its decision. Rather, the Supreme Court stated that it was "not clear" from Section 10 whether the distinction between residents and non-residents should survive the invalidation of the distinction between in-state and out-of-state sales and that construction of the savings provision is a question of State law to be decided by State courts. Although the Supreme Court did not refer in Footnote 15 to the maximum tax, there appears to be no reason why its reference to the non-resident reduction should not equally apply to the maximum tax, since both the non-resident reduction and the maximum tax were enacted as part of the same law, and Section 10 should, therefore, be equally applicable to each. [Query: Whether the Legislature must nevertheless amend the law, even if Court of Appeals were to rely on the savings provision?]

* Section 10 of the Chapter Laws provides, in relevant part, that:

"If any section of this act, ... or the application thereof to any person or circumstance, shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this act, ... or the application of such section of this act ... to any other person or circumstance, but shall be confined in its operation to the section of this act or ... to the person and circumstance therein involved."

It would seem, therefore, that Section 10 would grant the Court of Appeals the power to strike only the words "within the state" from subsections (1) and (2) of Section 270-a.
(b) Permissibility Under the Resolutions: The effect of adopting Option 2 would be that (i) the maximum tax would apply to all out-of-state, as well as in-state, sales and (ii) the non-resident reduction would apply to the out-of-state sales as well as to in-state sales.

Adoption of this Option would not contravene the First Test because of the reasons set forth above with respect to Option 1. This Option would also not violate the Second Test, because neither of the two effects stated in the preceding paragraph would result in a diminution of the "rate," as that term is used in the Resolutions. Although, as stated above, it may be arguable that such effects would constitute a reduction in rate if the application of the non-resident reduction to out-of-state sales were deemed to be a reduction in rate, we believe that, as stated above, such a broad definition of the word "rate" is not the proper definition for the purposes of the Resolutions.

(c) Potential Economic Consequences: The effect of adoption of this Option would be to eliminate Stock Transfer Tax considerations from the choice made by the sellers of large blocks of stock and by non-resident sellers, such that such decisions would be based exclusively on the competitive considerations referred to by the Supreme Court, such as services, prices, historic trading habits and other market
considerations. To the extent that the New York exchanges could not compete with out-of-state exchanges, business on the New York exchanges would be reduced. If the New York exchanges were fully competitive with out-of-state exchanges, of course, they would suffer a diminution in their business only to the extent that the incentive provided by the distinction between in-state and out-of-state sales by the 1968 Amendments would then be lost. The adoption of Option 2 would continue to ameliorate the disincentive for non-residents to trade in New York State, in that the non-resident reduction would be preserved and this Option would continue to provide to all sellers the benefits of the maximum tax.

**Option 3:** Eliminate non-resident reduction; maintain maximum tax.

(a) **Method of Implementation:** The result of adopting this Option would, in effect, be to repeal subsection (1) of Section 270-a, but to eliminate only the words "within the state" from subsection (2) of Section 270-a. In contrast to the results stated with respect to Options 1 and 2, this result would appear to involve the making of a policy decision in excising the entire non-resident reduction, while eliminating only the distinction between in-state and out-of-state sales with respect to the maximum tax. Such a policy decision should probably be more appropriately made by the Legislature than by the Court.
(b) **Permissibility Under the Resolutions:** The effect of adopting this Option would be (i) to increase rates payable by non-residents to the full rates paid by residents, while (ii) applying the maximum tax to both in-state and out-of-state transactions.

For the reasons set forth with regard to Options 1 and 2, such a result would not violate the First Test (except that to the extent that the adoption of this Option would necessitate action by the State Legislature rather than by a State court, there would arguably be more action by the "State," as that term is used in this First Test, in adopting this Option. The effect of the adoption of this Option would also not violate the Second Test, assuming that the word "rate" is narrowly construed as stated above. In addition, this Option might prove more acceptable than Option 2 to those who adopt the view that the application of the non-resident rate to out-of-state sales would violate the Second Test, because, in eliminating the non-resident reduction on all transactions, the "rate" of tax payable by non-residents would not be decreased with respect to any transactions.

(c) **Potential Economic Consequences:** The effect of adopting this Option would be to eliminate those sales made on the New York exchanges by non-residents who had
made sales in New York as a result of the benefits of the non-resident reduction. With respect to block trades, the effect would be the same as that discussed with respect to Option 2 -- competitive factors would be the only relevant factors in determining where a block trade would be made.

**Option 4:** Eliminate maximum tax; maintain non-resident reduction.

(a) **Method of Implementation.** This Option would be effected by eliminating the words "within the state" from subsection (1) of Section 270-a and by repealing entirely subsection (2) of Section 270-a. As was discussed with respect to Option 3, this determination would appear to involve a policy determination more appropriately made by the Legislature than by the Court.

(b) **Permissibility Under the Resolutions:** The effect of adoption of this Option would be (i) to extend the benefit of the non-resident reduction to all trades made in New York State and out of New York State, while (ii) eliminating the maximum tax on all transactions.

For the reasons discussed under Option 3, these effects would not violate the First Test. These effects would not violate the Second Test, assuming the narrowest inter-
pretation of the word "rate" were applied. If any broader definition of the word "rate" were applied, however, the adoption of this Option would create a problem in that the non-resident reduction would then apply to out-of-state transactions as well as in-state transactions.

(c) Potential Economic Consequences: The effect of adopting this Option would be to keep sales in New York by non-residents which had resulted from the benefits of the non-resident reduction and potentially attracting new sales by out-of-state residents which previously had taken place out-of-state. On the other hand, however, elimination of the maximum tax would, as discussed under Option 2, probably result in the loss of substantial number of sales, particularly block trades, which had previously taken place within the State.

[Separate sections should be added to the memorandum with respect to:

(1) the possibility of changing the amount of the maximum tax to an amount other than $350; and

(2) the possible availability of a tax credit.]
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In the past, some textbooks and articles have discussed the relationship between financial investment and stock returns. However, the literature suggests that stock returns are influenced by various factors, including market conditions, economic indicators, and company-specific events. This paper aims to explore the relationship between financial investment and stock returns in a more detailed and comprehensive manner.

We will use a combination of quantitative and qualitative methods to conduct our analysis. Quantitative methods will include statistical analysis of historical stock returns and financial data. Qualitative methods will involve case studies and expert interviews to gain a deeper understanding of the factors influencing stock returns.

The research will be divided into several sections. First, we will review the existing literature on the topic and identify gaps in the current research. Second, we will conduct a comprehensive analysis of stock returns and financial data. Third, we will examine the impact of market conditions and economic indicators on stock returns. Fourth, we will investigate the role of company-specific events in influencing stock returns.

The results of this study will provide valuable insights into the relationship between financial investment and stock returns. The findings will have implications for investors, policymakers, and financial practitioners. This research will contribute to the existing literature on financial investment and stock returns and will help inform future research and practice in this field.
MEMORANDUM IN SUPPORT

TITLE

AN ACT To amend the tax law, to exempt from the stock transfer tax certain sales by market makers.

SUMMARY OF PROVISIONS

This bill would exempt from the stock transfer tax, sales within the State of New York by securities dealers selling stock as a specialist or a market maker on an exchange or otherwise than on an exchange. Transactions taking place outside New York would not be exempt from the tax. If delivery takes place within the State, in addition, the tax will continue to be paid by persons selling stock to brokers or dealers within the State.

REASONS FOR SUPPORT

This limited exemption from the stock transfer tax is extended to New York dealers so that they can be in a somewhat better position to compete with dealers making markets in stocks outside the State. In addition, it could aid in stemming the flow of securities industry jobs out of the State and allow the industry to remain as the focal point of thousands of jobs, both financial and auxiliary, in the downtown area. The estimated reduction in transfer tax will be minimal in comparison to the revenues generated from those jobs which will be kept in the City.

Recent developments on the federal level -- both by Congress and the Securities and Exchange Commission -- are threatening New York's position as the financial center of the United States. The securities industry is now being faced with the development of a national market system in which competing securities markets will exist throughout the country.

As one of these market places, dealers in New York will have to remain competitive with other market places in order to maintain their share of business and to maintain New York's unique position. It is in the best interest of the City and State to aid the competitive position of the dealers in New York.
AN ACT

to amend the tax law to exempt from
the stock transfer tax certain sales
by market makers

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

Section 1. The tax law is hereby amended by amending section
two hundred seventy-five(a), to read as follows:

§ 270-5(a). A sale, agreement to sell, memorandum of
sale, or delivery or transfer of shares or certificates of stock
or any certificates taxable under this section, made on an organized
securities exchange within this state registered with the Securities
and Exchange Commission of the United States by any person, firm,
company, association or corporation registered with such exchange,
and engaged thereon, acting in his capacity as a market maker, or a
sale within the State otherwise than on such exchange by any person,
firm, company, association or corporation acting in the capacity of
a market maker. For the purposes of this section, the term "market
maker" means any specialist permitted to act as a dealer, any block
positioner acting in the capacity of a dealer, and any dealer who,
with respect to a security, holds himself out (by entering quotations
in an inter-dealer communications system or otherwise) as being willing
to buy and sell such security for his own account on a regular or
continuous basis.
TAXATION — STOCK TRANSFER TAX — ISSUE TO VOTING TRUSTEES AS TRANSFER BY STOCKHOLDERS. — The federal stock transfer tax applies to the issue of stock and "all sales, or agreements to sell...or transfers of legal title to shares...or to rights to subscribe for or to receive such shares..." to be paid by "any person who makes...or for whose use or benefit the same are made..." 44 Stat. 93, 101 (1926), 26 U.S.C. §§ 920, 921, 908 (1944). A corporation, its stockholders (prospective), and voting trustees entered into a voting trust agreement providing that "each stockholder...agrees to transfer to the voting trustees all the common stock...to which he owns, or hereafter shall own, either the legal or equitable title..." The trustees were to issue trust certificates to those specified by the corporation as entitled to receive them. The corporation issued shares directly to the trustees, and thereafter investors deposited money and certain stock with the corporation and received trust certificates in return. In reorganization proceedings, the United States claimed there was a taxable transfer of stock from the investors to the voting trustees. The master allowed the claim, but the district court denied it. The United States appealed. Held, that there was a taxable transfer, and that the corporation was liable for the tax. Order reversed. In re Consolidated Automatic Merchandising Corp., 98 F. (2d) 94 (C.C.A. 2d, 1940).

The Supreme Court has refused to restrict the federal stock transfer tax to technical sales by holding that a corporation makes a taxable transfer to its stockholders of "the right to receive" stock when it transfers its assets to another corporation with a direction that the latter issue its shares directly to the stockholders of the former. Raybestos-Manhattan Co. v. United States, 296 U.S. 50 (1935); see Note (1935) 44 Yale L. J. 1454. And it is further held that when, at the instance of one entitled to receive stock, the certificates are issued in the name of a nominee who receives no beneficial interest therein, there is a taxable transfer from the beneficial owner to the nominee. Poynor v. General Corp. v. Heer, 300 U.S. 208 (1937); United States v. Lawrence Smelt & Co., 89 F. (2d) 485 (C.C.A. 7th, 1937) (nominee never acquired possession of the certificates). This doctrine applies when the nominee is a voting trustee. Avery v. Sons Co. v. Glenn, 16 F. Supp. 54 (W. D. Ky. 1936); Middle States Petroleum Corp. v. United States, 18 F. Supp. 945 (Ct. Cl. 1937). In the principal case, since the voting trust would be abortive if no investors paid money into the corporation, it may well be urged that the payment credited to the investor a "right to receive" the stock which is immediately transferred under the agreement to the voting trustees. On the other hand, a stock argument might be made to the effect that the trust receives its vitality from a direct transfer of voting rights by the corporation, which transfer has already been taxed as issuance of stock, and that the investor buys only a beneficial interest in the trust. Cf. White v. Consolidated Equities, 25 F. (2d) 472 (C.C.A. 1st, 1927); Proumcor Corp. v. Lader, 1 Prentice-Hall 1937 Fed. Tax Serv. ¶ 1514 (E. D. Pa. 1937) (sale of voting trust certificates had no transfer of stock). This view receives support from the doctrine that the charging provisions of a tax statute are to be construed strictly in favor of the taxpayer. See Gould v. Gould, 245 U.S. 131, 133 (1917); United States v. Merriam, 263 U.S. 179, 188 (1923). If a taxable transfer is found, however, it seems clear that the corporation is liable to pay it. But a voting trust set up to insure continuity of management is clearly for the "use or benefit of the corporation. Middle States Petroleum Corp. v. United States, 86 Supp. (q) 244 (N. D. Ill. 1938). See also in the similar case, Dray v. United States, supra, at 61.