NEW YORK CITY OFFICE OF BUSINESS DEVELOPMENT
17 JOHN STREET
12TH FLOOR
NEW YORK, NY 10038

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 7/5/89

TO: Quinten Spector - MAC
FROM: Michael Press - NYC 080

FOLLOWING THIS PAGE, THERE ARE 3 PAGES BEING FAXED TO THE ABOVE PERSON/PERSONS

ACTION TO BE TAKEN: DELIVER IMMEDIATELY
SEND BY MESSENGER
AS REQUESTED
FOR YOUR INFORMATION
PLEASE APPROVE AND CALL ME
OTHER ACTION TO BE TAKEN

Re: A.883
NYC Sales Tax Exemption on Machinery & equip. purchase

THANK YOU!
AN ACT to amend the tax law, in relation to exempting the purchase or use of certain machinery and equipment from sales and compensating use taxes for cities of one million or more

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

Section 1. Subdivision (b) of section 1107 of the tax law, as amended by chapter 685 of the laws of 1986, is amended to read as follows:

(b) Exceptions. (1) The exemptions provided for in paragraph (12) of subdivision (a) of section eleven hundred fifteen and subdivision (c) of such section eleven hundred fifteen shall not apply. (2) The transitional provisions contained in section eleven hundred sixty shall not apply to the taxes imposed by this section. (3) Where a sale of tangible personal property or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the property sold or the property upon which the services were performed is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property by the purchaser. (4) The provisions of section twelve hundred fourteen shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the additional taxes imposed by subdivision (a) hereof. (5) Where a retail

EXPLANATION—Matter in italics (underlined) is new; matter in brackets [ ] is old law to be omitted.
sales tax or a compensating use tax was legally due and paid to any
municipal corporation in this state, without any right to a refund or
credit therefor, with respect to the sale or use of tangible personal
property or any of the services subject to sales or compensating use
tax, if the use of such property or services is then subject to the com-
penating use tax imposed by this section and such tax is at a higher
rate than the rate of tax imposed by such municipal corporation, the tax
imposed by this section shall also apply but only to the extent of the
difference in such rates. (6) For purposes of this section, for periods
of continuous occupancy first commencing after June third, nineteen hun-
derd eighty, the term "permanent resident" means any occupant of any
room or rooms in a hotel for at least one hundred eighty consecutive
days shall be considered a permanent resident with regard to the period
of such occupancy. For purposes of this subdivision, a payment to the
tax commissioner of a tax imposed by a municipal corporation shall be
deemed a payment to such municipal corporation. (7) The provision for a
refund or credit contained in clause six of subdivision (a) of section
eleven hundred nineteen shall not apply.

§ 2. Paragraph (1) of subdivision (a) of section 1210 of the tax law,
as amended by chapter 686 of the laws of 1986, is amended to read as
follows:

(1) Either, all of the taxes described in article twenty-eight of
this chapter, at the same uniform rate, as to which taxes all provisions
of the local laws, ordinances or resolutions imposing such taxes shall
be identical, except as to rate and except as otherwise provided herein,
with the corresponding provisions in such article twenty-eight, includ-
ing the definition and exemption provisions of such article, so far as
the provisions of such article twenty-eight can be made applicable to
the taxes imposed by such city or county and with such limitations and
special provisions as are set forth in this article; provided, however,
that any local law enacted by any city of one million or more, imposing
the taxes authorized by this subdivision, shall omit the exception
provided in [paragraph twelve of subdivision (a) of section eleven hun-
dred fifteen and] subdivision (c) of [such] section eleven hundred fif-
teen and, unless such city elects otherwise, the provision for refund or
credit contained in clause six of subdivision (a) of section eleven hun-
dred nineteen, and may omit (A) the exception provided in paragraph (3)
of subdivision (c) of section eleven hundred five for receipts from
laundring, dry-cleaning, tailoring, weaving, pressing, shoe repairing
and shoe shining and (B) the exception provided in paragraph (1) of sub-
division (f) of section eleven hundred five for charges to a patron for
admission to, or use of, facilities for sporting activities in which
such patron is to be a participant, such as bowling alleys and swimming
pools. The taxes authorized under this subdivision may not be imposed
by a city or county unless the local law, ordinance or resolution im-
poses such taxes so as to include all portions and all types of
receipts, charges or rents, subject to state tax under sections eleven
hundred five and eleven hundred ten, except as provided in the following
sentence. Any local law, ordinance or resolution enacted by any city of
less than one million or by any county or school district, imposing the
taxes authorized by this subdivision, shall exclude from the operation
of such local taxes all sales of tangible personal property for use or
consumption directly and predominantly in the production of tangible
personal property, gas, electricity, refrigeration or steam, for sale,
by manufacturing, processing, generating, assembling, refining, mining,
extracting, farming, agriculture, horticulture or floriculture, and all
Sales of telephone central office equipment and station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or in initiating and switching telephone or telegraph communication and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) of section eleven hundred nineteen.

§ 3. This act shall take effect on December 1, 1989.
May 1, 1989
(UNI 06012)
(UNI 06045)

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

Attention: Mr. Pat V. Santivasci
Senior Vice President

Municipal Assistance Corporation
For The City of New York
Suite 8901
One World Trade Center
New York, New York 10048

Attention: Maxine H. Gillman, Esq.
Counsel and Secretary

Gentlemen and Ladies:

At your request, we have reviewed the attached "Draft For Discussion" (received by our office on April 13, 1989) of a bill entitled "AN ACT to amend the tax law relating to the temporary municipal assistance sales and compensating use taxes for cities of one million or more" (the "Bill"), together with a memorandum dated March 28, 1989, from Mr. Michael R. Press, Assistant Commissioner, Policy and Program Development, The City of New York, Office of the Mayor, addressed to Mr. Kevin O'Connor (the "Memorandum").
You have asked whether the enactment of the Bill would constitute an "event of default" under Section 1202(f) of the General Bond Resolution of the Corporation, adopted July 2, 1975, as amended and supplemented, or under Section 1202(f) of the Second General Bond Resolution of the Corporation, adopted November 25, 1975, as amended and supplemented (collectively, the "Resolutions").

We have examined the Bill, the Memorandum, the Resolutions, the attached opinion letter, dated April 12, 1989, of Orrick, Herrington & Sutcliffe (Bond Counsel to the Corporation), the attached opinion letters, dated April 17, 1989, of Paul, Weiss, Rifkind, Wharton & Garrison (General Counsel to the Corporation), and such other matters of law as we have deemed necessary.

Based upon the foregoing, we confirm our previous advice to you that we concur with the conclusions of Bond Counsel and General Counsel that the enactment and implementation of the Bill would not constitute an "event of default" under Section 1202(f) of either Resolution.

Very truly yours,

[Signature]

[Text]

RRG/ad
DRAFT FOR DISCUSSION

AN ACT to amend the tax law relating to the temporary municipal assistance sales and compensating use taxes for cities of one million or more.

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

Section 1. Subdivision (b) of section eleven hundred seven of the tax law, as added by chapter 168 of the laws of 1975, is amended to read as follows:

(b) Exemptions. (1) The exemptions provided for in [paragraph (12) of subdivision (a) of section eleven hundred fifteen and] subdivision (c) of [such] section eleven hundred fifteen shall not apply. (2) The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section. (3) Where a sale of tangible personal property or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the property sold or the property upon which the services were performed is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or
will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property by the purchaser. (4) The provisions of section twelve hundred fourteen shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the additional taxes imposed by subdivision (a) hereof. (5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property or any of the services subject to sales or compensating use tax, if the use of such property or services is then subject to the compensating use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates. (6) For purposes of this section, for periods of continuous occupancy first commencing after June third, nineteen hundred eighty, the term "permanent resident" means any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days shall be considered a permanent resident with regard to the period of such occupancy. For purposes of this subdivision, a payment to the tax commission of a tax imposed by a municipal corporation shall be deemed a payment to such
municipal corporation. (7) The provision for a refund or credit contained in clause six of subdivision (a) of section eleven hundred nineteen shall not apply.
MEMORANDUM

March 28, 1989

TO: Kevin O'Connor
FROM: Michael Press

SUBJ: MANUFACTURERS' SALES TAX EXEMPTION

As you know, the City sales tax code does not conform with the State's on the subject of manufacturing equipment purchases. The State offers an outright exemption of such purchases while the City is forced to grant its sales tax relief through a year-end income tax credit. The reason for this discrepancy is that the City's sales tax was pledged toward MAC debt retirement in 1975. Although the servicing of MAC debt never draws more than a fraction of the total sales tax stream, any willful diminution of the stream on the part of the State or the City raises the possibility of an event of default on the MAC bonds.

The manufacturers have complained about the burdens of the City's credit mechanism from its inception. The fact that the company mustshell out the sales tax up front, and await its return through our income tax system, creates a serious paperwork burden for the taxpayer, as well as for the City and State tax administrative authorities. Taking the credit requires maintaining records and filing a special form with the income tax return. Unsophisticated companies without good accountants who are familiar with this quirk in our tax law sometimes miss out on this benefit.
The current sales tax credit carries a price-tag of $28 million annually. It is clear that a reduction of this amount ($28.8 million) in MAC's resource stream would not diminish the coverage on outstanding debt. This is evident from the favorable dynamics between MAC's future debt service requirements and the City's sales tax yield. Annual MAC debt service is scheduled to peak this fiscal year at $935 million while the resource stream will exceed debt service needs by $3 1/2 billion. Sales tax receipts alone are expected to rise by an average of $200 million annually for the foreseeable future. On an annual basis, therefore, the proposed exemption would merely reduce the growth in excess coverage.

The cost to the City would be less than $1 million annually in foregone interest earnings. Offsetting some of this would be a reduction in the cost of administering and accounting for the tax. The switch would require State legislation which could be folded into the City's annual sales tax extension bill.

The retention of this $28 million within the MAC revenue stream creates an undue hardship for the portion of New York City's business community that can least afford it. Concern over the loss of our manufacturing job base has recently increased with the release of 1988's grim figures--13,200 manufacturing jobs were lost last year, up from 11,600 the year before. We do not want this job loss situation to be met with perceived indifference by City Hall and Albany. There is plenty of bad news for business in the Mayor's Financial Plan and the Governor's budget. We need to balance off some of these negatives, especially for small manufacturers. This proposal would demonstrate that even when the City's and State's own resources are low, progress can be made on their issues.
or other action taken under this Resolution, the Corporation shall furnish the Trustee a certificate of an Authorized Officer, upon which the Trustee may rely, describing all Bonds so to be excluded.

1106. **Notation on Bonds.** Bonds delivered after the effective date of any action taken as in Article X or this Article XI provided may, and if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by the Corporation and the Trustee as to such action, and in that case upon demand of the Holder of any Bond Outstanding at such effective date and upon presentation of his Bond for such purpose at the corporate trust office of the Trustee suitable notation shall be made on such Bond by the Trustee as to any such action. If the Corporation or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and the Corporation to conform to such action shall be prepared and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder, for Bonds of the same Series and maturity then Outstanding, upon surrender of such Bonds with all unpaid coupons, if any, appertaining thereto.

**ARTICLE XII**

**Defaults and Remedies**

1201. **Trustee to Exercise Powers of Statutory Trustee.** The Trustee shall be and hereby is vested with all of the rights, powers and duties of a trustee appointed by Bondholders pursuant to Section 3017 of the Act and the right of Bondholders to appoint a trustee pursuant to Section 3017 of the Act is hereby abrogated in accordance with the provision of subdivision 2(g) of Section 3012 of the Act.

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

(a) the Corporation shall default in the payment of the principal, Sinking Fund Installments, if any, or Redemption Price of any Bond when and as the same shall become due, whether at maturity or upon call for redemption or otherwise; or

(b) the Corporation shall default in the payment of interest on any of the Bonds and such default shall continue for a period of thirty (30) days; or

(c) the Corporation shall fail or refuse to comply with the provisions of subdivision 1 of Section 3036 of the Act, or the State Comptroller shall fail to pay to the Corporation, as and
when required by such Section, for deposit in the Capital Reserve Fund, the Debt Service Fund or the Operating Fund any amount or amounts as shall be certified by the Chairman pursuant to such provisions of the Act or the Corporation shall fail or refuse to deposit in the Capital Reserve Fund or the Debt Service Fund the amount or amounts received by the Corporation for deposit in such Funds, respectively; or

(d) the Corporation shall fail or refuse to comply with the provisions of subdivisions 3 and 4 of Section 3036 of the Act, or the State shall fail to appropriate and pay to the Corporation, as and when required by such Section, for deposit in the Capital Reserve Fund any amount or amounts as shall be certified by the Chairman pursuant to such provisions of the Act or the Corporation shall fail or refuse to deposit in the Capital Reserve Fund the amount or amounts received by the Corporation for deposit in such Fund; or

(e) the Corporation shall fail or refuse to comply with the provisions of the Act, other than as provided in (c) or (d) above, or shall default in the performance or observance of any other of the covenants, agreements or conditions on its part contained in this Resolution, any Series Resolution, any Supplemental Resolution, or in the Bonds, and such failure, refusal or default shall continue for a period of forty-five (45) days after written notice thereof by the Holders of not less than five per centum (5%) in principal amount of the Outstanding Bonds; or

(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

(g) the State shall fail to maintain the existence of either the special account for the Corporation in the municipal assistance tax fund established pursuant to Section 92-d of the State Finance Law or the stock transfer fund established by Section 92-b of said Law.

1203. Remedies. (1) Upon the happening and continuance of any event of default specified in paragraph (a) or (b) of Section 1202, the Trustee shall proceed, or upon the happening and continuance of any
1106. **Notation on Bonds.** Bonds delivered after the effective date of any action taken as in Article X or this Article XI provided may, and if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by the Corporation and the Trustee as to such action, and in that case upon demand of the Holder of any Bond Outstanding at such effective date and upon presentation of his Bond for such purpose at the corporate trust office of the Trustee, suitable notation shall be made on such Bond by the Trustee as to any such action. If the Corporation or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and the Corporation to conform to such action shall be prepared and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder, for Bonds of the same Series and maturity then Outstanding, upon surrender of such Bonds with all unpaid coupons, if any, appertaining thereto.

**ARTICLE XII**

**Defaults and Remedies**

1201. **Trustee to Exercise Powers of Statutory Trustee.** The Trustee shall be and hereby is vested with all of the rights, powers and duties of a trustee appointed by Bondholders pursuant to Section 3017 of the Act and the right of Bondholders to appoint a trustee pursuant to Section 3017 of the Act is hereby abrogated in accordance with the provisions of subdivision 2(g) of Section 3012 of the Act.

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

(a) the Corporation shall default in the payment of the principal, Sinking Fund Installments, if any, or Redemption Price of any Bond when and as the same shall become due, whether at maturity or upon call for redemption or otherwise; or

(b) the Corporation shall default in the payment of interest on any of the Bonds and such default shall continue for a period of thirty (30) days; or

(c) the Corporation shall fail or refuse to comply with the provisions of subdivision 1 of Section 3036-a of the Act, or the State Comptroller shall fail to pay to the Corporation, as and when required by such Section, for deposit in the Capital Reserve Fund, the Bond Service Fund or the Operating Fund any amount or amounts
as shall be certified by the Chairman pursuant to such provisions of the Act or the Corporation shall fail or refuse to deposit in the Capital Reserve Fund or the Bond Service Fund the amount or amounts received by the Corporation for deposit in such Funds, respectively; or

(d) the Corporation shall fail or refuse to comply with the provisions of subdivisions 2 and 3 of Section 3036-a of the Act, or the State shall fail to appropriate and pay to the Corporation, as and when required by such Section, for deposit in the Capital Reserve Fund any amount or amounts as shall be certified by the Chairman pursuant to such provisions of the Act or the Corporation shall fail or refuse to deposit in the Capital Reserve Fund the amount or amounts received by the Corporation for deposit in such Fund; or

(e) the Corporation shall fail or refuse to comply with the provisions of the Act, other than as provided in (c) or (d) above, or shall default in the performance or observance of any other of the covenants, agreements or conditions on its part contained in this Resolution, any Series Resolution, any Supplemental Resolution, or in the Bonds, and such failure, refusal or default shall continue for a period of forty-five (45) days after written notice thereof by the Holders of not less than five per centum (5%) in principal amount of the Outstanding Bonds; or

(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

(g) the State shall fail to maintain the existence of either the special account for the Corporation in the municipal assistance tax fund established pursuant to Section 92-d of the State Finance Law or the stock transfer tax fund established by Section 92-b of said Law; or

(h) the State shall for any reason fail or refuse to apportion and pay Per Capita Aid or shall fail to maintain the State Aid Fund and the Special Aid Account therein or shall reduce the amount of Per Capita Aid payable during the current Fiscal Year to an amount less than the maximum amount of principal of and interest matur-
April 12, 1989

Maxine H. Gillman, Esq.
Municipal Assistance Corporation
for the City of New York
One World Trade Center
New York, New York 10048

Dear Max:

At your request, we have reviewed a draft of a bill being introduced in the New York State Legislature, a copy of which is appended hereto (the "Bill"). The Bill would exempt from the sales and compensating use taxes imposed by the State of New York (the "State") within the City of New York (the "City") pursuant to section 1107 of the Tax Law (the "MAC Tax") the purchase of manufacturing equipment. A memorandum dated March 28, 1989 from Mr. Michael Press of the Office of the Deputy Mayor for Finance and Economic Development recites that the imposition of such tax creates an undue hardship for manufacturers in the City. In addition, such exemption would not result in a loss of revenue to the City, as the sales tax currently paid is returned in the form of an income tax credit to the payors.

As you know, the MAC Tax is a principal source of payment for the debt of the Municipal Assistance Corporation for the City of New York (the "Corporation") issued pursuant to its General Bond Resolution adopted July 2, 1975 and its Second General Bond Resolution adopted November 25, 1975, each as amended and supplemented (collectively, the "General Bond Resolutions"). Each of the General Bond Resolutions provides in Section 1202(f) that the following is an event of default:

"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 . . . or if the rates of such taxes shall be reduced to rates less than those in effect on July 2, 1975;"
Maxine H. Gillman, Esq.
Municipal Assistance Corporation
for the City of New York
April 12, 1989
Page 2

The Bill raises two questions:

First, whether if enacted into law it would be a
failure or refusal by the State to continue the imposition of
the MAC Tax as the same may from time to time be amended; and

Second, whether if enacted into law it would constitute
a reduction in the rates of the MAC Tax to less than the rates
in effect on July 2, 1975.

The ultimate issue is whether the exemption and
exception from the tax imposed by Section 1107 contemplated by
the Bill, if enacted, will precipitate an "event of default" as
defined in Section 1202(f) of each of the General Bond
Resolutions.

In determining whether an act of the legislature in the
form of an amendment to the MAC Tax would constitute an "event
of default" within the purview of Section 1202(f), it is
essential to analyze the nature, purpose, terms and effect
thereof in each instance. Having tested this analysis with such
legal criteria as we have considered appropriate, we advise you
that the Bill would not cause an "event of default" to occur
because the State will neither have failed nor refused "to
continue the imposition" of the taxes imposed by Section 1107
"as the same may be from time to time amended" nor will the
rates have been "reduced to rates less than those in effect" on
July 2, 1975.

With kindest personal regards, I remain

Very truly yours,

John J. Keohane

JJK/mm
April 18, 1989

BY HAND

Maxine H. Gillman, Esq.
Counsel and Secretary
Municipal Assistance Corporation
For The City of New York
Suite 8901
One World Trade Center
New York, New York 10048

Re: United States Trust Company
of New York, as Trustee

Dear Max:

Thank you very much for sending us a copy of the Paul Weiss opinion dated yesterday with reference to the proposed sales tax bill.

As discussed on the telephone, I expect we will be able to hand you our favorable opinion within the next several days, subject to holiday schedules.

With all best regards,

Very truly yours,

Robert R. Crew

RRG/dbc

cc: Mr. Pat V. Santivasci (w/enc.)
April 17, 1989

Municipal Assistance Corporation
for The City of New York
Suite 8901
One World Trade Center
New York, New York 10048

Ladies and Gentlemen:

As requested by the Municipal Assistance Corporation for The City of New York (the "Corporation"), we have reviewed a draft headed "Draft for Discussion" of a bill entitled "AN ACT to amend the tax law relating to the temporary municipal assistance sales and compensating use taxes for cities of one million or more" (the "Bill"). The Bill was provided to us by the Corporation, together with a memorandum dated March 28, 1989 from Michael Press, Assistant Commissioner, Policy and Program Development, The City of New York, Office of the Mayor, addressed to Kevin O'Conner (the "Memorandum").

You have asked whether, in our opinion, adoption of the Bill and implementation of the tax exemption provided for therein would constitute an "event of default" under Section 1202(f) of the General Bond Resolution of the Corporation, adopted July 2, 1975 (the "General Bond Resolution") or Section 1202(f) of the Second General Bond Resolution of the Corporation, adopted November 25, 1975 (the "Second General Bond Resolution").

In this connection, we have reviewed the Bill, the General Bond Resolution and the Second General Bond Resolution and such other matters of law and fact, including the
Municipal Assistance Corporation  
for The City of New York

Memorandum, as we have deemed necessary in order to form the opinion expressed herein.

Based upon the foregoing, in our opinion, adoption and implementation of the Bill would not constitute an "event of default" under Section 1202(f) of the General Bond Resolution or Section 1202(f) of the Second General Bond Resolution.

Very truly yours,

[Signature]

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
April 12, 1989

United States Trust Company
of New York, as Trustee
New York, New York

Gentlemen:

We are Bond Counsel to the Municipal Assistance Corporation For The City of New York (the "Corporation") and have this day delivered to the Corporation an opinion dated the date hereof with respect to a draft of a bill being introduced in the New York State Legislature which would exempt the purchase of manufacturing equipment from the sales and compensating use taxes imposed in the State of New York within The City of New York pursuant to section 1107 of the Tax Law. You are entitled to rely on said opinion as if the same were addressed to you but solely for the benefit of, and as if the Trustee were one of, the holders of the Bonds.

Very truly yours,

[Signature]
April 12, 1989

Municipal Assistance Corporation
for the City of New York
One World Trade Center
New York, New York 10048

Gentlemen:

At your request, we have reviewed a draft of a bill being introduced in the New York State Legislature, a copy of which is appended hereto (the "Bill"). The Bill would exempt the purchase of manufacturing equipment from the sales and compensating use taxes imposed by the State of New York (the "State") within the City of New York (the "City") pursuant to section 1107 of the Tax Law (the "MAC Tax"). A memorandum dated March 28, 1989, from Mr. Michael Press of the office of the Deputy Mayor for Finance and Economic Development recites that the imposition of such tax creates an undue hardship for manufacturers in the City. In addition, such exemption would not result in a loss of revenue to the City, as the sales tax currently paid is returned in the form of an income tax credit to the payors.

As you know, the MAC Tax is a principal source of payment for the debt of the Municipal Assistance Corporation for the City of New York (the "Corporation") issued pursuant to its General Bond Resolution adopted July 2, 1975, and its Second General Bond Resolution adopted November 25, 1975, each as amended and supplemented (collectively, the "General Bond Resolutions"). Each of the General Bond Resolutions provides in Section 1202(f) that the following is an event of default:

"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 . . . or if the rates of such taxes shall be reduced to rates less than those in effect on July 2, 1975;"
The Bill raises two questions:

First, whether, if enacted into law, it would be a failure or refusal by the State to continue the imposition of the MAC Tax as the same may from time to time be amended; and

Second, whether, if enacted into law, it would constitute a reduction in the rates of the MAC Tax to less than the rates in effect on July 2, 1975.

The ultimate issue is whether the exemption and exception from the tax imposed by Section 1107 contemplated by the Bill, if enacted, will precipitate an "event of default" as defined in Section 1202(f) of each of the General Bond Resolutions.

In determining whether an act of the legislature in the form of an amendment to the MAC Tax would constitute an "event of default" within the purview of Section 1202(f), it is essential to analyze the nature, purpose, terms and effect thereof in each instance. Having tested this analysis with such legal criteria as we have considered appropriate, we advise you that the Bill would not cause an "event of default" to occur because the State will neither have failed nor refused "to continue the imposition" of the taxes imposed by Section 1107 "as the same may be from time to time amended" nor will the rates have been "reduced to rates less than those in effect" on July 2, 1975.

Very truly yours,

[Signature]
12 April 1989

Mr. Stanley E. Grayson
Deputy Mayor for Finance
and Economic Development
City Hall
New York, New York 10007

Re: Manufacturing Equipment Exemption

Dear Mr. Grayson:

You have asked us to review your proposal to exempt from the special State Sales Tax imposed within the City (the "Special Sales Tax") manufacturing equipment purchases. You have furnished us with a memorandum dated March 28, 1989, from Mr. Michael Press of your office regarding this proposal. It indicates that this exemption would concur the Special Sales Tax to the treatment of manufacturing equipment purchases for purposes of the State's regular statewide sales tax. It points out that while this would result in an approximate $29 million annual diminution of Special Sales Tax receipts, there would be no real cost to the City because the City currently provides credits against other taxes for such Special Sales Tax amounts. Yet, it asserts, such a cumbersome arrangement is proving increasingly burdensome and costly for manufacturers in the City, imposing an economic burden that could further erode that portion of the City's job base.

As you know, the Special Sales Tax constitutes the principal revenue source behind Municipal Assistance Corporation obligations, of which approximately $7.6 billion are currently outstanding. Both of the Corporation's General Bond Resolutions provide as an event of default a failure or refusal to continue to impose the Special Sales Tax or a reduction in the rate of such tax from the rate existing at the time of their adoption in 1975. Bond Counsel to the Corporation have advised us that specific exemptions must be viewed with regard to the continued imposition of a general tax under that provision. However, neither the Corporation nor its Bond Counsel is the final arbiter as to when an event of default under our resolutions has occurred. Short of a court of law, it is the Trustee for the bondholders, and in some cases the bondholders themselves, who make the determination.
Because the Special Sales Tax is the essence of the security behind the Corporation's bonds and is recognized as such by the market and rating agencies alike, we have zealously protected its integrity from the outset by respectfully requesting that our views be taken into consideration at such time as any legislation affecting either the base or the rate of such tax is under consideration. Over the years since 1975, we have had many opportunities to examine legislation proposing exemptions from such tax. In doing so, we have taken into account the effects of the specific proposals on a cumulative basis, as we must do under our Resolutions. We have almost always concluded against the exemptions as a matter of law.

We have given your manufacturing equipment purchase exemption proposal due consideration, and we share your concern for the adverse impact of the present tax arrangement on the manufacturing sector of the City's economy. Bond Counsel, General Counsel, and Counsel to the Trustee have advised us that, in their opinion, enactment of your proposal, in and of itself, would not result in an event of default under the Corporation's General Bond Resolutions. Therefore, we do not oppose its enactment.

However, we remain concerned about the potential for additional exemptions to be proposed in the future. You should be aware that we will be obliged to continue to object to almost all such proposals, as we have in the past.

Thank you for soliciting our views.

Sincerely,

[Signature]

Stephen J. Weinstein
Executive Director

cc: Mr. Michael R. Press
Assistant Commissioner
Policy and Program Development

SJW:vsj#202
July 21, 1989

Mr. Felix G. Rohatyn  
Chairman  
Municipal Assistance Corporation  
One World Trade Center  
Suite 8901  
New York, NY 10048  

Dear Felix:

I sincerely appreciate the assistance you have given us on the subject of the sales tax on purchases of manufacturing equipment by City firms. Without your swift and incisive attention we would have been unable to achieve the favorable legislative result we were seeking, viz., to grant an outright exemption to the City's manufacturers who for years have been forced to pay the tax up front and await reimbursement through their income taxes. The sensitivity you demonstrated on this issue speaks of a keen understanding of the fragility of the City's business climate, especially within the industrial community.

As a result, in the difficult years ahead, New York City manufacturers will be able to purchase new equipment without the burden of laying out the additional four percent City tax. This will be a boon to them in their struggles to survive and remain competitive in New York City. For this, we thank you.

Very truly yours,

Stanley E. Grayson

SEG:lm

cc: Steve Weinstein
MEMORANDUM

March 28, 1989

TO: Kevin O' Connor
FROM: Michael Press

SUBJ: MANUFACTURERS' SALES TAX EXEMPTION

As you know, the City sales tax code does not conform with the State's on the subject of manufacturing equipment purchases. The State offers an outright exemption of such purchases while the City is forced to grant its sales tax relief through a year-end income tax credit. The reason for this discrepancy is that the City's sales tax was pledged toward MAC debt retirement in 1975. Although the servicing of MAC debt never draws more than a fraction of the total sales tax stream, any willful diminution of the stream on the part of the State or the City raises the possibility of an event of default on the MAC bonds.

The manufacturers have complained about the burdens of the City's credit mechanism from its inception. The fact that the company must shell out the sales tax up front, and await its return through our income tax system, creates a serious paperwork burden for the taxpayer, as well as for the City and State tax administrative authorities. Taking the credit requires maintaining records and filing a special form with the income tax return. Unsophisticated companies without good accountants who are familiar with this quirk in our tax law sometimes miss out on this benefit.
Page #2

SUBJ:  MANUFACTURERS' SALES TAX EXEMPTION

The current sales tax credit carries a price-tag of $28 million annually. It is clear that a reduction of this amount ($28.8 million) in MAC's resource stream would not diminish the coverage on outstanding debt. This is evident from the favorable dynamics between MAC's future debt service requirements and the City's sales tax yield. Annual MAC debt service is scheduled to peak this fiscal year at $935 million while the resource stream will exceed debt service needs by $3 1/2 billion. Sales tax receipts alone are expected to rise by an average of $200 million annually for the foreseeable future. On an annual basis, therefore, the proposed exemption would merely reduce the growth in excess coverage.

The cost to the City would be less than $1 million annually in foregone interest earnings. Offsetting some of this would be a reduction in the cost of administering and accounting for the tax. The switch would require State legislation which could be folded into the City's annual sales tax extension bill.

The retention of this $28 million within the MAC revenue stream creates an undue hardship for the portion of New York City's business community that can least afford it. Concern over the loss of our manufacturing job base has recently increased with the release of 1988's grim figures—13,200 manufacturing jobs were lost last year, up from 11,600 the year before. We do not want this job loss situation to be met with perceived indifference by City Hall and Albany. There is plenty of bad news for business in the Mayor's Financial Plan and the Governor's budget. We need to balance off some of these negatives, especially for small manufacturers. This proposal would demonstrate that even when the City's and State's own resources are low, progress can be made on their issues.
DRAFT FOR DISCUSSION

AN ACT to amend the tax law relating to the temporary municipal assistance sales and compensating use taxes for cities of one million or more.

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

Section 1. Subdivision (b) of section eleven hundred seven of the tax law, as added by chapter 168 of the laws of 1975, is amended to read as follows:

(b) Exemptions. (1) The exemptions provided for in paragraph (12) of subdivision (a) of section eleven hundred fifteen and] subdivision (c) of [such] section eleven hundred fifteen] shall not apply. (2) The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section. (3) Where a sale of tangible personal property or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the property sold or the property upon which the services were performed is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or
will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property by the purchaser. (4) The provisions of section twelve hundred fourteen shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the additional taxes imposed by subdivision (a) hereof. (5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property or any of the services subject to sales or compensating use tax, if the use of such property or services is then subject to the compensating use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates. (6) For purposes of this section, for periods of continuous occupancy first commencing after June third, nineteen hundred eighty, the term "permanent resident" means any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days shall be considered a permanent resident with regard to the period of such occupancy. For purposes of this subdivision, a payment to the tax commission of a tax imposed by a municipal corporation shall be deemed a payment to such
municipal corporation. (7) The provision for a refund or credit contained in clause six of subdivision (a) of section eleven hundred nineteen shall not apply.
Act to Exempt Sales of Precious Metal Bullion from Sales Tax 1989
21 July 1989

Mr. Glenn Weiner
New York State Department of Economic Development
1515 Broadway
New York, New York 10036

Re: S.1782-A

Dear Glenn:

This will follow up our telephone conversation of today in which you requested the Corporation's position on Senate Bill Number 1782-A with regard to its potential impact on the Corporation's bonds, of which over $7 billion are currently outstanding. As I understand from our conversation, S.1782-A has passed both houses of the State Legislature and is awaiting imminent action by Governor Cuomo. Your call was the first instance in which the Corporation received any notification of passage of this legislation.

According to the package of materials you telecopied to me, S.1782-A would exempt from the state Sales tax and the special sales tax imposed only within New York City (the "Special Sales Tax") sales of precious metal bullion to be held for investment. The "Fiscal Implications" section of the memorandum prepared for such bill states that the revenue effect of the bill would be positive, in that the State is expected to gain $955,000 in increased sales tax on storage fees in the first three years, and at least $515,000 annually thereafter. These figures appear to be derived from a letter sent to Evan A. Davis, Counsel to the Governor, by McNamee, Lochner, Titus & Williams, P.C., Counsel to Citibank, N.A., urging enactment of S.1782-A. You stated that you were not aware of any independent analyses done by State Executive or Legislative staffs as to these figures, and I have been unable to ascertain from the State Department of Taxation and Finance whether they have in fact conducted an analysis of the fiscal implications of this bill.

The Special Sales Tax constitutes the principal revenue source behind Municipal Assistance Corporation obligations. Both of the Corporation's General Bond Resolutions provide as an event of default a failure or refusal to continue to
impose the Special Sales Tax or a reduction in the rate of such tax from the rate existing at the time of their adoption in 1975. Bond Counsel to the Corporation have advised us that specific exemptions must be viewed with regard to the continued imposition of a general tax under that provision. However, neither the Corporation nor its Bond Counsel is the final arbiter as to when an event of default under our resolutions has occurred. Short of a court of law, it is the Trustee for the bondholders, and in some cases the bondholders themselves, who make the determination.

Because the Special Sales Tax is the essence of the security behind the Corporation's bonds and is recognized as such by the market and rating agencies alike, we have zealously protected its integrity from the outset by respectfully requesting that our views be taken into consideration at such time as any legislation affecting either the base or the rate of such tax is under consideration. Over the years since 1975, we have had many opportunities to examine legislation proposing exemptions from such tax. In doing so, we have taken into account the effects of the specific proposals on a cumulative basis, as we must do under our Resolution. We have almost always concluded against the exemptions as a matter of law.

Because assertions have been made that S.1782-A would not result in any loss of Special Sales Tax revenue, it appears that the Corporation would have no basis for objecting to its enactment. However, in being requested to analyze this legislation at the eleventh hour, we have been placed in the troublesome position of accepting at face value an interested party's estimate of fiscal impact without having the opportunity to verify this estimate with an objective source within the State government. For this reason, we ask that, in the future, we be given adequate notice that legislation of this type is pending so that we may conduct a thorough review of any potential impact on our revenue streams.

Thank you for soliciting our views.

Sincerely,

Maxine H. Gillman
Counsel

cc: Patrick Brown, Esq.
    Assistant Counsel to the Governor

vrw:110
TRANSMITTAL COVER SHEET

TO: Marie Gillman

FROM: Glenn Weiner

DATE: 7/24/89

TOTAL NO. OF PAGES TO FOLLOW: 7

MESSAGE:

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IF RESPONDING, CALL (212) 827-6113
INTRODUCED BY SENATOR OWEN JOHNSON

AN ACT to amend the tax law, in relation to exempting from the sales and use tax certain transactions in precious metal bullion held for investment purposes

PURPOSE

The bill amends Section 1115(a) of the Tax Law, to exempt the sales of precious metal bullion in excess of $1,000 from the sales and compensating use tax. The bill defines "precious metal bullion" and excludes as an exemption gold coins from the Republic of South Africa. Sales taxes would continue to apply to storage fees. Thus, the bill would treat precious metal bullion held for investment purposes in the same manner as other investments, such as securities, by exempting the sale in amounts of $1,000 and over from the sales tax.

JUSTIFICATION

The legislation would increase business activities in New York by increasing storage activities, bonded carrier shipments and other ancillary business. It would increase jobs in New York and provide increased revenue to the state because of the sales tax on storage fees. At least 15 states exempt the sales of precious metal bullion from their sales taxes. The most recent to do so was Massachusetts, and legislation has also been introduced in New Jersey to exempt such transactions from the sales tax. This legislation would enable New York State to become competitive in this business market, which is presently monopolized by Delaware and Rhode Island. Since precious metal is an investment similar to stock, securities or commodity futures, transactions in precious metals, like other investment transactions, should be exempt from sales tax.

FISCAL IMPLICATIONS

This bill would immediately produce additional revenue for the state and any county in which the precious metal is stored. Storage fees are subject to the sales tax. All available data indicates that, during the first three years, the sales tax on storage fees would produce over $825,600 in increased sales tax revenue, and thereafter an additional amount in excess of $515,000 annually.

EFFECTIVE DATE

Immediately.
July 10, 1989

Evan A. Davis, Esquire
Counsel to the Governor
Executive Chamber
New York State Capitol
Albany, New York 12224

Re: S.1762-A (Johnson, Goodman): A.2874-A (Pardun, Siegel)

AN ACT to amend the tax law, in relation to exempting from the sales and use tax certain transactions in precious metal bullion held for investment purposes.

Dear Mr. Davis:

This bill exempts the sales of precious metal bullion and coins having a value in excess of $1,000.00 from the sales and use tax.

Precious metal bullion is defined as bars, ingots or coins of gold, silver, platinum, palladium, rhodium, ruthenium or iridium. Coins from the Republic of South Africa are excluded from the exemption, as are precious metal objects that have been manufactured, processed, assembled or fabricated, i.e. jewelry, art objects, etc. Coins are exempted on the basis of their metal and not their numismatic value.

Our client, Citibank, N.A., urges that the Governor sign this bill.

The bill, in addition to increasing business activities in New York by utilizing existing storage facilities, would greatly increase bonded carrier shipments by New York concerns and would provide other ancillary business. Additional jobs would be
Evan A. Davis, Esquire

Page 2

July 10, 1989

created in the storage facilities and the number of precious metal sales personnel in New York would increase. Because storage fees are subject to the sales tax and because only a minimal amount of taxable sales of precious metal bullion presently occur in New York, this legislation is REVENUE POSITIVE.

The best estimates of the industry are that during the first three years after passage, the State would net $953,000.00 in increased sales tax revenue from storage fees and $315,000.00 annually thereafter (see table attached).

This legislation would enable New York State to become competitive in the sale of precious metal bullion, presently monopolized by Delaware and Rhode Island, which, together with 15 other states, do not tax the sale of precious metal bullion.

Precious metals are an investment similar to stock, securities or commodity futures and transactions in precious metal bullion should be exempt from the sales tax, just like other investment transactions. Under the existing sales tax law, the overwhelming majority of retail investment sales are executed in other states. The sale by the U. S. Treasury of the American Eagle coins in 1987 and 1988 is a good example of revenue loss by New York. The bulk of the purchases were made and continue to be made outside of New York and the coins are being stored and distributed by out of state depositaries.

Citibank, N.A. urges enactment of this bill into law.

Respectfully submitted,

Edward A. Bogdan, Jr.

EAM:PS
Attachment
HAND DELIVERED
**TABLE**

**SILVER BULLION**

The industry estimates that over 300,000 bars of silver bullion are on deposit at Delaware and Rhode Island depositories. Information provided by other New York financial institutions indicate that upon enactment of the sales tax exemption, a substantial portion of these silver bars would be transferred to New York and that almost every new transaction involving the purchase of silver would result in those bars being delivered to New York City as it is the primary terminal market for precious metals. Once the silver bars are in New York, they will remain there indefinitely.

A conservative estimate is that within one year 100,000 additional bars of silver would be stored in New York City and that in two years the number could reach 200,000 and would thereafter "flatten out."

Storage fees vary, however we will use an average of $2.00 per bar, per month, which is very conservative. In the final month of the first year, the storage fees would be $200,000 and the sales tax on the fees would be $17,000. Using a multiplier of 6 months (rather than 13), it is conservatively estimated that the sales tax on the storage of silver alone would produce revenues of $108,000 in the first year. The sales tax on the storage of silver, by itself, compensates for any perceived revenue loss from sales in the first year.

In the second year, these silver storage tax revenues would increase to $315,000 and at the end of the third year would reach $420,000.

**GOLD BULLION**

New York City firms presently have, on deposit, in Delaware and Rhode Island, in excess of 60,000 gold bars, which is, again, a conservative estimate. We would again anticipate that approximately 1/3 of the bars would be moved to New York City in the first year and that the new sales made in New York would result in the additional 20,000 bars being deposited in New York by the end of the second year.

First year sales tax revenues on the storage of these bars would approximate $19,300, second year revenues would be $79,200, and third year revenues would reach $115,000.

**BULLION COINS**

It is our understanding that there are in excess of four million coins in storage in Delaware and Rhode Island depositories. Typically, the storage costs are 2 cents per coin per month. Based
on a minimum of four million coins in storage, $960,000 in storage fees would be produced and tax revenue on such fees of $79,200 realized annually.

Additional sales by New York dealers would result in larger income and therefore larger income taxes. More personnel in New York and more jobs in the New York City storage facilities would be required.

In summary:

| First year | Loss from sales | ($100,000) | Revenues from silver storage | 105,000 | Revenues from gold storage | 19,800 | Revenue from bullion coin storage | 40,000 | Increase in sales tax revenue | $54,800 |
| Second year | Loss from sales | ($100,000) | Revenues from silver storage | 315,000 | Revenues from gold storage | 79,100 | Revenue from bullion coin storage | 72,500 | Increase in sales tax revenue | 373,400 |
| Third year | Loss from sales | ($100,000) | Revenues from silver storage | 420,000 | Revenues from gold storage | 113,000 | Revenue from bullion coin storage | 72,200 | Increase in sales tax revenue | 517,200 |

Total increase in sales tax revenues for three years $517,200

ADDITIONAL ANNUAL REVENUES THEREAFTER $517,200
OFFICIAL COPY
STATE OF NEW YORK

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CAO WIO 188

1989-1990 Regular Sessions
SENATE — ASSEMBLY
February 1, 1989

IN SENATE — Introduced by Sens. JOHNSON, GOODMAN — read twice and ordered printed, and when printed to be committed to the Committee on Investigations, Taxation and Government Operations — reported favorably from said committee, ordered to first and second reading, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading amended and ordered reprinted, retaining its place in the order of third reading.

IN ASSEMBLY — Introduced by M. of A. PORDUM, ZIEGEL — read once and referred to the Committee on Ways and Means — committee discharged, bill amended; ordered reprinted as amended and recommitted to said committee.

AN ACT to amend the tax law, in relation to exempting from the sales and use tax certain transactions in precious metal bullion held for investment purposes.

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

1. Section 1. Paragraph 34 of subdivision (a) of section 3-16 of the tax law, as added by chapter 894 of the laws of 1947, is renumbered paragraph 25 and a new paragraph 34 is added to read as follows:

27. Precious metal bullion sold for investment, provided that (i) the retailer, if so required, is registered pursuant to section 3-16; (ii) the sale is made to a dealer in precious metals; (iii) the sale is made for investment purposes; (iv) the bullion is not in a form that is intentionally designed for immediate consumption, such as coins, bars, or ingots; and (v) the bullion is not for personal use or consumption. The term "precious metal bullion" means gold, silver, palladium, platinum, rhodium, ruthenium, or iridium, but shall not include coins of the Republic of South Africa or rare, fancy or special coins which have been manufactured, distributed, embellished, fabricated or used for an industrial purpose.

EXPLANATION—Matter in italics (underscored) is new matter; matter in brackets and italics [ ] is old law to be omitted.
OFFICIAL CO.

1. Precious Metal Bullion
2. shall be deemed to be paid for investment when it is sold for silver than
3. one thousand dollars and the purchaser or agent of the firm shall
4. hold it in the same form as when it was purchased and shall not
5. manufacture, process, assemble or fabricate such bullion for own use.
6. For purposes of this paragraph, the receipt of consideration given
7. shall be deemed to be paid for silver than.
8. The value of the metal content is at the time of sale of purchase, et al. Such
9. receipt or consideration does not include (a) one hundred forty-five
10. with respect to silver coin or bullion twenty percent. (b) Interest in
11. cannot exceed twenty percent of the amount or loss, etc. (c) one
12. hundred fifteen percent of the principal amount. (d) Interest on
13. one hundred fifty percent of the principal amount. (e) Interest on
14. forty percent of the principal amount. (f) Interest on one hundred
15. percent of the principal amount. Where there is no such closing
16. price for such metal, the average of the bid and asked cash price shall
17. be substituted for such closing price.

§ 2. This act shall take effect on the first day of the quarterly
18. sales tax as set forth in subdivision (b) of section 9 of the
19. law. However, that the commissioner of taxation and finance
20. may take action with respect to the adoption, amendment, suspension
21. or repeal any rule or regulation relating to this act, and may estab-
22. lish any procedure necessary for the timely implementation of this act,
23. on and after the date it shall have become a law.
Acts to Limit MAC Authority and Impose Fees on MAC

1989
6 April 1989

To:

Board of Directors

From:

Steve Weinstein

Re:

Legislative Proposals

Revenues

As discussed at today's meeting, a bill was recently introduced in the State Senate which appears intended to deprive the Corporation of control of disposition of certain of its revenues.

This bill represents an expansion of a proposal made in February by two of the sponsoring senators. At that time, the Chairman responded in a letter expressing his concern for the interests of the Corporation and the State. Copies of that correspondence are enclosed.

We have not yet had the opportunity to scrutinize the new bill, which was brought to our attention yesterday. A copy is enclosed. As the legal analysis proceeds with staff and outside counsel, I will keep you informed.

Charges

Also enclosed is a copy of the latest draft of a bill from the Governor's office which would impose certain charges on the Corporation, along with other State public authorities.

As pointed out at the meeting, the State would assess us annually for services rendered, as measured by our outstanding debt, and would be retroactive for one year. The Corporation's assessment would come to approximately $3.5 million each year, the highest for any of the authorities.

The State would also impose a fee of $2 per $1000 of any new bond issuances, which would have amounted to $3.4 million in calendar 1988.

These two yearly charges would aggregate about $7 million, exceeding the annual operating budget for the Corporation, currently at approximately $4 million.

Enclosures

aa:201
AN ACT to amend the public authorities law, in relation to the recovery of allocable governmental costs from public authorities and establishing a fee on public authority and industrial development agency issuance of certain bonds

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

Section 1. Title 8 and section 2950 of article 9 of the public authorities law, as added by chapter 201 of the laws of 1987, are renumbered title 9 and section 2960 and a new title 10 is added to read as follows:

TITLE 10
STATE GOVERNMENTAL COST RECOVERY SYSTEM

Section 2975. Recovery of state governmental costs from public authorities and public benefit corporations.

2976. Applicability of title.

§2975. Recovery of state governmental costs from public authorities and public benefit corporations. 1. Notwithstanding any other provision of law to the contrary, every public authority and every public benefit corporation or public corporation, whether such authority or corporation is otherwise governed by this chapter (such entities to be hereafter in this title referred to as "public authorities"), shall reimburse to New York State an allocable share of state governmental costs attributable to the provision of services to authorities, as determined pursuant to this title. The payment of such costs by authorities is a valid and proper purpose for which available authority funds may be applied.

2. (a) Annually the director of the budget, in consultation with the state comptroller, shall determine the total amount of expenses incurred or to be incurred during the state’s fiscal year in connection with the provision of central governmental services to public authorities. Such expenses, in addition to the direct costs of personal service, shall include indirect costs of employee benefits, maintenance and operation, state
equipment and facilities, rental for space occupied in state
leased facilities or the fair market rental value of space
occupied in state owned facilities, and contractual services, all
as attributable to the provision of otherwise unreimbursed
services to public authorities by the New York State department
of audit and control, department of law, executive chamber,
division of the budget, the legislature, and such other agencies,
boards or commissions as the director of the budget determines
provide such services to public authorities.

(b) On or before August 1, 1989 for the 1988-1989 and
1989-1990 state fiscal years, and on or before August first each
year thereafter, the director of the budget shall prorate the
lesser of: (i) the total amount of the annual expenses determined
pursuant to the preceding subdivision; or (ii) fifteen million
dollars annually. Public authorities shall be assessed such
prorated amounts based upon the proportion of the outstanding
debt, consisting of bonds, notes or similar obligations of each
authority, to the total of such debt for public authorities, as
such debt is reported in the executive budget for the state
fiscal year for which the assessment is payable. The director of
the budget shall credit toward such assessments the amount of any
voluntary or contractual payments, other than payments pursuant
to an agreement to repay state appropriations, made or to be made
by an authority to the state within such state fiscal year and
may reduce, in whole or part, the amount of any assessment if the
payment thereof would necessitate a state appropriation for the
purpose or would otherwise impose an extraordinary hardship upon
the affected authority.

3. The state treasurer shall impose and collect such
assessments, which shall be paid no later than December 31
following the imposition of the assessments, and pay the same
into the state treasury to the credit of the general fund.

4. The provisions of subdivision two of this section shall
not apply to any authority which enters into a contract or
agreement with the director of the budget which otherwise
provides for cost recovery to the state and includes a provision that, in accordance with this subdivision, subdivision two of this section shall not apply to such authority.

5. On or before June 1, 1986, and annually on or before June 1, the Director of the Budget shall report to the respective chairpersons of the Assembly Ways and Means Committee and Senate Finance Committee the amount of cost recovery obtained pursuant to this title for the state fiscal year ending on the preceding March 31, together with copies of any contracts or agreements entered into pursuant to subdivision four of this section.

§2976. Fee on the issuance of certain bonds. 1. Notwithstanding any other law to the contrary, on or after June 1, 1989, every public authority or industrial development agency created by or pursuant to New York state law which issues bonds, notes or similar obligations, including: (a) a governmental purpose bond that is a state or local bond within the meaning of section 103 of the Internal Revenue Code; (b) a private activity bond within the meaning of section 141(a) of the Internal Revenue Code; or (c) a bond to which section 629(a)(1) of the Tax Reform Act of 1984 or section 1316(g)(8) of the Tax Reform Act of 1986 apply, shall pay to the state a bond issuance fee upon the issuance of such bonds in an amount determined pursuant to subdivision two of this section. Such fee shall be paid to the state department of taxation and finance, upon forms prescribed therefor, no later than fifteen days of the close of the calendar quarter within which such bonds are issued.

2. The bond issuance fee shall be computed by multiplying the principal amount of bonds issued by the percentage fee set forth in the schedule below, provided that: (a) the principal amount of bonds issued as part of an issue that is a qualified small issue bond for the purposes of section 144 of the Internal Revenue Code, shall be the amount or amounts thereof which qualify as small issue bonds; and (b) the issuance of bonds shall not include the remarketing of bonds.
SCHEDULE

Principal Amount of Bonds Issued       Percentage Fee

A. $1,000,000 or less                           0.05%
B. $1,000,001 to $5,000,000                  0.10%
C. $5,000,001 to $10,000,000               0.15%
D. More than $10,000,000                      0.20%

§2077. Applicability of title. 1. The provisions of this title shall not be construed to, nor shall they be implemented in such a manner as to, require the application of monies pledged to the security of bonds, notes or other obligations in violation of the applicable instruments, or otherwise impair the rights of bondholders of the entities affected by this title.

2. To the extent precluded by interstate or international compact which creates any public authority, the provisions of this title shall not apply to any such public authority until the passage of legislation, by the other party to such compact, which validates or has the same effect as this title.

§2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§3. This act shall take effect immediately.
STATE OF NEW YORK

1989-1990 Regular Sessions
IN SENATE
March 13, 1989

Introduced by Sens. PADAVAN, LEICHTER, BABBUSH, BERNESTEIN, CONNOR, GALIBER, GOODHUE, JENKINS, MARCHI, MEGA, OHRENSTEIN, GOLONOW, STAUBISKY, VELELLA. Read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions.

AN ACT to amend the public authorities law, in relation to excess moneys of the municipal assistance corporation

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

Section 1. Subdivision 3 of section 3036 of the public authorities law, as amended by chapter 201 of the laws of 1978, is amended to read as follows:

3. The corporation shall create and establish a special fund (herein referred to as the capital reserve fund), and shall pay into such capital reserve fund (i) any moneys appropriated and made available by the state for the purposes of such fund; (ii) any proceeds of sale of notes or bonds, to the extent provided in the resolution of the corporation authorizing the issuance thereof, and (iii) any other moneys which may be made available to the corporation for the purpose of such fund from any other source or sources. All moneys held in the capital reserve fund, except as hereinafter provided, shall be used solely for the payment of the principal of bonds secured by such capital reserve fund of the corporation, as the same may mature or otherwise become due, the purchase of such bonds of the corporation, the payment of interest of such bonds of the corporation or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity. If the amount contained in the capital reserve fund exceeds the amount required to be contained in such fund pursuant to this subdivision [three of this section] plus any additional amounts required to be con-

EXPLANATION—Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.
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tained in such fund pursuant to the terms of issuance of any bonds or
1 notes, such excess moneys [may] shall annually be withdrawn from the
2 capital reserve fund by the corporation and be paid to the municipality
3 except for moneys to be paid to the municipality pursuant to any
4 agreements by the governor, the mayor of the municipality and the cor-
5 poration entered into prior to the first day of January, nineteen hun-
6 dred eighty-nine, provided, however, that moneys in such fund shall not
7 be withdrawn therefrom at any time in such amounts as would reduce the
8 amount of such fund to less than the amount of principal and interest
9 maturing or otherwise becoming due in the succeeding calendar year on
10 all bonds of the corporation secured by such capital reserve fund; then
11 outstanding, except for the purpose of paying principal of and interest
12 on such bonds of the corporation maturing or otherwise due or becoming
13 due and for the payment of which other moneys of the corporation are not
14 available. Any income or interest earned by, or increment to, the capital
15 reserve fund due to the investment thereof may be transferred by the cor-
16 poration to any other fund of the corporation to the extent it does
17 not reduce the amount of the capital reserve fund below the amount of
18 principal and interest maturing or otherwise due or becoming due in the
19 succeeding calendar year on all bonds of the corporation secured by such
20 capital reserve fund then outstanding.
21 § 2. Subdivision 7 of section 3036 of such law, as amended by chapter
22 201 of the laws of 1978, is amended to read as follows:
23 7. The corporation shall create a debt service fund and an operating
24 fund and may create and establish such other fund or funds as may be
25 necessary or desirable for its corporate purposes. If the amounts con-
26 tained in such funds are in excess of the amounts required to be con-
27 tained in such funds for performance of their purposes and are in excess
28 terms of issuance of any bonds or notes, such excess moneys shall annu-
29 ally be withdrawn from such fund or funds and paid to the municipality
30 except for money to be paid to the municipality pursuant to any
31 agreements by the governor, the mayor of the municipality and the cor-
32 poration entered into prior to the first day of January, nineteen hun-
33 dred eighty-nine.
34 § 3. Subdivision 2 of section 3036-a of such law, as added by chapter
35 868 of the laws of 1978, is amended to read as follows:
36 2. The corporation shall create and establish a capital reserve fund
37 as an additional special fund, and shall pay into such capital reserve
38 fund (1) any moneys appropriated and made available by the state for the
39 purposes of such fund, (ii) any proceeds of sale [or] of notes or bonds,
40 to the extent provided in the resolution of the corporation authorizing
41 the issuance thereof, and (iii) any other moneys which may be made
42 available to the corporation for the purpose of such fund from any other
43 sources. All moneys held in the capital reserve fund, except
44 as hereinafter provided, shall be used solely for the payment of the
45 principal of bonds secured by such capital reserve fund of the corpora-
46 tion, as the same mature or otherwise become due, the purchase of such
47 bonds of the corporation, the payment of interest on such
48 bonds of the corporation or the payment of any redemption premium
49 required to be paid when such bonds are redeemed prior to maturity. If
50 required to be paid when such bonds are redeemed prior to maturity. If
51 the amount contained in the capital reserve fund exceeds the amount
52 required to be contained in such fund pursuant to this subdivision of
53 this section plus any additional amounts required to be contained in
54 such fund pursuant to the terms of issuance of any bonds or notes
55 secured by such capital reserve fund, such excess moneys [may] shall an-
shall be withdrawn from the capital reserve fund by the corporation and
paid to the municipality except for moneys to be paid to the municipality
pursuant to any agreements by the governor, the mayor of the municipality, and the corporation entered into prior to the first day of January, nineteen hundred eighty-nine; provided, however, that moneys in
such fund shall not be withdrawn therefrom at any time in such amounts
as would reduce the amount of such fund to less than the amount of prin-
cipal and interest maturing or otherwise due or becoming due in the suc-
ceeding calendar year on all bonds of the corporation secured by such
capital reserve fund then outstanding, except for the purpose of paying
principal of and interest on such bonds of the corporation maturing or
otherwise becoming due and for the payment of which other moneys of the
corporation are not available. Any income or interest earned by, or in-
crements to, the capital reserve fund due to the investment thereof may
be transferred by the corporation to any other fund of the corporation
to the extent it does not reduce the amount of the capital reserve fund
below the amount of principal and interest maturing or otherwise due or
becoming due in the succeeding calendar year on all bonds of the cor-
poration secured by such capital reserve fund then outstanding.
§ 4. This act shall take effect immediately.
15 February 1989

Senator Franz S. Leichter
Senator Frank Padavan
New York State Senate
Capitol
Albany, N.Y. 12247

Dear Senators Leichter and Padavan:

This letter is in response to your joint statement of February 7, 1989, which has been brought to my attention.

Your statement criticizes the Municipal Assistance Corporation for participation in the development of an agreement with the Governor and the Mayor for the Corporation to make available $600 million as part of a new construction program for New York City's public schools.

The Board of Directors of the Municipal Assistance Corporation is composed of persons who are public officers of the State of New York, with the statutory obligation and authority to administer its operations. The Corporation has always joined with the Governor as the highest elected official of the State and with the Mayor as the highest elected official of the City in developing the programs which culminated in the two prior agreements in 1984 and 1986 and the current agreement discussed in your statement. Under these three agreements, approximately $3.3 billion is being made available by the Corporation for public purposes deemed worthy by the Governor and the Mayor. Further, in those instances where legislation was required to implement the spending programs, as was the case with transit facilities in 1986 and with school construction in 1988, both the New York State Senate and Assembly adopted the necessary laws.

Any disposition of funds of the Corporation must, in the judgment of its Board, be consistent with its primary fiduciary obligations to its bondholders. The Board has determined that funding prudent investments in the City under these agreements furthers the interests of all of the bondholders over the long term.
Your statement may also create a perception that the New York State Legislature would be disposed now to alter the long-established flow of funds of the Corporation. The Municipal Assistance Corporation is today recognized as one of the strongest credits in the public sector by investors and rating agencies alike. It is of the utmost importance to maintain the hard-won integrity of the credit securing the Corporation's outstanding bonds, which inures to the continuing benefit of both the City and the State of New York.

Sincerely,

Felix G. Rohatyn
Chairman

cc: Governor Mario M. Cuomo
Executive Chamber
Albany, N.Y. 12224

ba:131
FOR RELEASE: Tuesday, 1:00 PM
February 7, 1989

CONTACT: Glenn von Nostitz at
518-455-2041 and Ed DeCosmo at
518-455-3381

PADAVAN AND LEICHTER LEGISLATION TO DENY
MUNICIPAL ASSISTANCE CORPORATION SOLE POWER
TO SPEND MAC SURPLUSES; SAY ELECTED OFFICIALS,
NOT FELIX ROHATYN, SHOULD APPROPRIATE MONEY

February 7 -- State Senators Franz S. Leichter (D, 28th S.D.,
Manhattan) and Frank Padavan (R, 11th S.D., Queens and Nassau)
today announced introduction of legislation to stop the
undemocratic and possibly unconstitutional process by which the
Municipal Assistance Corporation decides how public money is
going to be spent, without the normal legislative and executive
approvals required for appropriations.

The legislation, which denies MAC the power to singlehandedly
decide when and how to spend its enormous cash surpluses, is
prompted by the requirement placed on the Legislature last year
by Felix Rohatyn, the MAC Chairman, that a New York City School
Construction Authority be created before he would allow $600
million in built-up MAC reserves to be spent on school
construction projects.

Senator Leichter stated: "This is public money. It does not
belong to Felix Rohatyn. We appreciate Mr. Rohatyn's efforts to
ensure it is well spent, but a basic concept in American
government is that elected officials determine how public funds
are going to be appropriated. We fought a revolution over that.

"Elected representatives are directly accountable to the 
public. They can be kicked out of office if the electorate 
disagrees with how they are spending their money. The public did 
not vote for Mr. Rohatyn."

Senator Padavan commented: "The MAC was created by the State 
Legislature to help ensure the fiscal integrity of the City of 
New York.

"However, when the Chairman imperiously determines when 
surplus funds are released to the City of New York and imposes 
conditions upon their use -- as Mr. Rohatyn has done -- then he 
has stepped into the role of policy maker. This is completely 
beyond his authority," Senator Padavan said.

Under current law MAC "may" withdraw surpluses and pay them to 
the City. The new legislation requires MAC to annually pay any 
surpluses to the City's capital fund.

The two lawmakers explained that MAC's surpluses are entirely 
taxpayers' money, the use of which should be decided by elected 
officials: "MAC issues bonds that are repaid by the taxpayers 
through the sales tax and stock transfer tax. Although MAC has 
been able to refinance this debt at lower rates, and therefore 
needs less tax money for debt service, taxes are still being 
funneled to MAC to pay off bonds. The surplus generated from 
refinancing and by other methods* is not MAC's private money to 
do with as it pleases; it is taxpayers' money."

"If additional surpluses are generated in the 1990's this bill 
makes sure that elected -not appointed- officials determine how
they are spent," they stated.

Mr. Rohatyn is a partner in the firm of Lazard Freres, a Wall Street underwriter of municipal and corporate debt.

Padavan and Leichter added that their bill "in no way" affects the position of the holders of MAC bonds since it deals merely with monies in excess of the amount currently required by bond notes to be kept in reserve, with excess earnings from other funds and with monies made available through refinancings. They also said the legislation will not affect the disposition of surpluses under the MAC I, II and III agreements.

# # #

*The surpluses are being created primarily from releases in excesses from MAC's capital reserve funds, from debt service reductions from issuance of bonds for refunding purposes, and from earnings on other funds. Existing surpluses are being released by MAC under three agreements between Governor Cuomo, Mayor Koch, and MAC, as follows:

MAC I: In 1985 and 1986 a total of $365 million was agreed to be drawn from MAC surpluses and given to the City. The money was provided annually under the following schedule: 1984, $25 million; 1985, $90 million; 1986, $80 million; 1987, $85 million; 1988, $85 million.

The money was designated for completion of the Convention Center ($60 million), developing downtown areas outside of Manhattan ($60 million), housing construction subsidies ($100 million), manufacturers' relocation assistance ($40 million), school building maintenance ($16.1 million), adult literacy ($39.9 million), and computer education ($29 million).

MAC II: $1.6 billion was agreed to be provided to the City under a Memorandum of Understanding dated April 2, 1986. The money was agreed to be provided by MAC in annual installments from 1987 to 1995 for the following purposes: City operating purposes ($375 million total), NYCTA capital program ($925 million total), early retirement of MAC's debt ($300 million, which will have the effect of providing about $325 million in additional debt service savings and operating funds for the City.)
MAC III: MAC agreed to release $600 million, to be earmarked for school building construction and renovation projects, only after the Legislature last session passed a bill establishing a separate NYC school construction authority.
Amend Sec. 3036(3) of the Public Authorities law to read as follows:

3. The corporation shall create and establish . . . (same language) . . . if the amount contained in the capital reserve fund exceeds the amount required to be contained in such fund pursuant to the terms of issuance of any bonds or notes, such excess moneys (may) shall annually be withdrawn from the capital reserve fund by the corporation [.] and be paid to the capital fund of the municipality except for moneys to be paid to the municipality pursuant to any agreements by the governor, the mayor of the municipality and the corporation entered into prior to the first day of January, nineteen hundred and eighty-nine; provided, however, that moneys in such fund shall not be withdrawn therefrom at any time in such amounts as would reduce the amount of such fund to less than the amount of principal and interest maturing or otherwise becoming due in the succeeding calendar year on all bonds of the corporation secured by . . . (same language) . . . on all bonds of the corporation incurred by such capital reserve fund then outstanding.

Amend Sec. 3036-a(2) of the Public Authorities La to read as follows:

2. The corporation shall create and establish a capital reserve fund as an additional special fund, and shall pay into such special capital reserve fund (i) . . . . . if the amount contained in the capital reserve fund exceeds the amount required to be contained in such fund pursuant to this subdivision of this section plus any additional amounts required to be contained in such fund pursuant to the terms of issuance of any bonds or notes secured by such capital reserve fund, such excess moneys (may) shall annually be withdrawn from the capital reserve fund by the corporation [.] and paid to the capital funds of the municipality except for moneys to be paid to the municipality pursuant to any agreements by the governor, the mayor of the municipality and the corporation entered into prior to the first day of January, nineteen-hundred and eighty-nine; provided, however, that moneys . . . . (same language) . . . . fund then outstanding. (R-11th SD, Queens and Nassau) will discuss their new legislation denying the Municipal Assistance Corporation the power to singlehandedly decide how hundreds of millions of public dollars are spent at: