

**MUNICIPAL
ASSISTANCE
CORPORATION
FOR THE CITY
OF NEW YORK**

3 June 1983

Hon. Arthur J. Kremer
Chairman
Ways and Means Committee
NEW YORK STATE ASSEMBLY
Albany, New York

Re: Assembly Bill 1738

Dear Mr. Kremer:

You have asked us whether Assembly Bill 1738 would have any negative impact with respect to bonds issued by the Municipal Assistance Corporation. This bill would amend Section 1115(a)(13) of the Tax Law of the State of New York to increase the exemption from certain sales and compensating-use taxes, including that imposed by Section 1107, for sales of tangible personal property made through coin-operated vending machines from ten cents or less to twenty-five cents or less.

This bill raises the issue of whether the proposed increase in the exemption would precipitate an event of default as defined in each of the Corporation's General Bond Resolutions. Those Resolutions provide in Section 1202(f) that each of the following is an event of default:

"the State shall for any reason fail or refuse to continue the imposition of * * * 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 if the rates of such taxes shall be reduced to rates less than those in effect (on July 2, 1975)."

Therefore, if the additional exemption from the tax proposed by this bill was determined to be either a failure or refusal by the State to continue the imposition of the Sales Tax or a reduction in rate, then this legislation would precipitate an event of default as defined in Section 1202(f) of the General Bond Resolutions.

3 June 1983
Hon. Arthur J. Kremer
Page 2

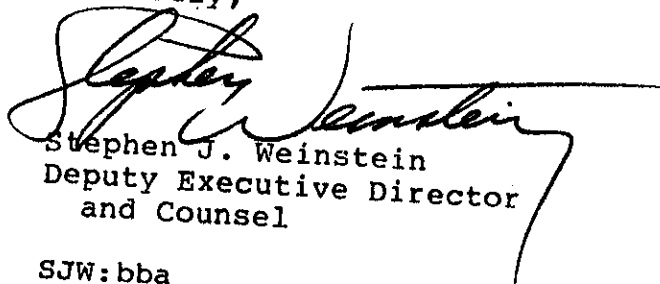
In the opinion of Bond Counsel and General Counsel to the Corporation, the proposed legislation would not constitute an event of default under the Resolutions. The Corporation concurs in this judgment.

However, under the Resolutions, the Corporation does not determine when an event of default has occurred; that determination is made by the Trustee under the Resolutions, United States Trust Company of New York. The Trustee, relying on opinions of the Corporation's Bond Counsel and General Counsel that enactment of Assembly Bill 1738 would not cause an event of default, has informed us that it does not believe that it is required to take any action with regard to the proposed legislation.

The conclusion that the proposed legislation does not constitute an event of default cannot be construed as acquiescence to other legislation providing additional exemptions from the Sales Tax or increasing existing exemptions. Careful consideration must be accorded any proposed change in exemptions to the Sales Tax, inasmuch as such exemptions either separately or cumulatively could constitute an event of default. Accordingly, great caution and restraint should be exercised by the Legislature in considering any additional or increased exemptions from the Sales Tax.

This letter addresses only the issue of the impact of the proposed legislation on the Corporation. We express no view as to the merits of the proposal embodied in Assembly Bill 1738.

Sincerely,


Stephen J. Weinstein
Deputy Executive Director
and Counsel

SJW:bba

CARTER, LEDYARD & MILBURN
COUNSELLORS AT LAW
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NEW YORK, N. Y. 10005

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CABLE ADDRESS
"LEDYARD" NEWYORK

June 1, 1983

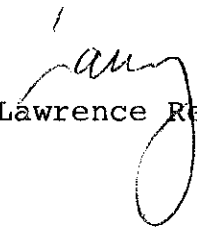
Stephen Weinstein, Esq.
Deputy Executive Director and Counsel
Municipal Assistance Corporation
for the City of New York
Suite 8901
One World Trade Center
New York, New York 10047

Re: Sales Tax Exemption

Dear Steve:

In accordance with your request, I enclose the letter of Mr. Hood stating the Trust Company's reliance on the opinions of Hawkins-Delafield and Paul Weiss with regard to the sales tax exemption question.

Very truly yours,


Lawrence Rimmel

LR:kag
Enclosure

cc: Ms. Irene R. Scocca
Mr. Pat V. Santivaschi

U.S. Trust

UNITED STATES
TRUST COMPANY
OF NEW YORK

45 Wall Street
New York, NY 10005
Tel (212) 425-4500

June 1, 1983

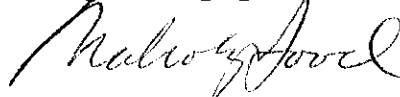
Stephen J. Weinstein, Esq.
Executive Director
and General Counsel
Municipal Assistance Corporation
For The City of New York
Suite 8901
One World Trade Center
New York, New York 10047

Dear Steve:

You have asked us whether United States Trust Company of New York, as Trustee under the General Bond Resolution dated July 2, 1975 and the Second General Bond Resolution dated November 25, 1975 (the "Resolutions") adopted by the Municipal Assistance Corporation For The City of New York, would consider passage of a new exemption from the sales tax pursuant to Assembly Bill No. 1738, as an event of default under either of the Resolutions.

We have received opinions of Hawkins, Delafield & Wood and of Paul, Weiss, Rifkind, Wharton & Garrison which state that adoption of the Bill would not cause an "event of default" to occur. In reliance on that opinion, we do not believe that any action is required by the Trustee with regard to this particular exemption. However, we shall continue to examine the question if additional amendments are passed.

Very truly yours,



Malcolm J. Hood
Senior Vice President

Harkins, Delafield & Wood
67 Wall Street, New York 10005

(Area Code 212) 820-9300

Cable Address: "Hawhdel New York"

Writer's Direct Dial Number
(212) 820-9382


June 1, 1983

Steven J. Weinstein, Esq.
Municipal Assistance Corporation
One World Trade Center
New York, New York

Dear Steve:

As per your request, I enclose one (1) executed copy
of an opinion of this firm with respect to Assembly Bill 1738.

Sincerely,


Jack Schrager

JS:jj
Enc.

Hawkins, Delafield & Wood
67 Wall Street, New York 10005

May 23, 1983

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

Municipal Assistance Corporation
For The City of New York
New York, New York

Re: Assembly Bill No. 1738

Gentlemen:

Our client, the Municipal Assistance Corporation For The City of New York ("MAC"), has asked us whether Assembly Bill No. 1738 dated January 18, 1983 (the "Bill"), a copy of which is attached hereto, would, if enacted into law, precipitate an event of default within the meaning of Section 1202(f) of MAC's General Bond Resolution adopted July 2, 1975 and Second General Bond Resolution adopted November 25, 1975, each as amended and supplemented (collectively, the "General Bond Resolutions").

The text of the Bill as submitted to us would amend Section 1115(a)(13) of the Tax Law, which provides an exemption from the sales and compensating use taxes imposed by Sections 1105 and 1110. Under the Tax Law, the exemption provisions to the taxes imposed by Sections 1105 and 1110 also apply to the taxes imposed by Sections 1107 and 1108. The Bill would exempt from such taxes

"Tangible personal property sold through coin operated vending machines at twenty-five cents or less, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the state tax exemption."

In its current form, Section 1115(a)(3) exempts tangible personal property sold through coin operated vending machines at ten cents or less instead of twenty-five cents or less.

Each of the General Bond Resolutions provides in Section 1202 thereof that 'Each of the following events is hereby declared an "event of default," that is to say; if * * *

"(f) the State [defined as 'The State of New York'] shall for any reason fail or refuse to continue the imposition of * * * the Sales Tax [defined as 'the sales and compensating use taxes imposed by Section 1107 of Article 28 of the Tax Law of the State'] imposed by Section 1107 of Article 28 of the Tax Law [sic] 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]."

The Bill raises two questions:

First, whether if enacted into law it would be a failure or refusal by the State (as defined) to continue the imposition of the Sales Tax (as defined) 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 Sales 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 Sales 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. Tested by such legal criteria as we have considered appropriate in making such an analysis, it is our opinion 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 [4% in the case of Section 1107(a) and 6% in the case of Section 1107(c)] have been "reduced to rates less than those in effect" on July 2, 1975.

Very truly yours,



STATE OF NEW YORK

1738

1983-1984 Regular Sessions

IN ASSEMBLY

January 18, 1983

Introduced by M. of A. KREMER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to exempting from sales and use tax tangible personal property sold through vending machines at twenty-five cents or less

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

- 1 Section 1. Paragraph thirteen of subdivision (a) of section eleven
- 2 hundred fifteen of the tax law, as added by chapter five hundred sixty-
- 3 eight of the laws of nineteen hundred sixty-five, is amended to read as
- 4 follows:
- 5 13. Tangible personal property sold through coin-operated vending
- 6 machines at [ten] twenty-five cents or less, provided the retailer is
- 7 primarily engaged in making such sales and maintains records satisfac-
- 8 tory to the state tax commission.
- 9 § 2. This act shall take effect on the first day of August in the year
- 10 in which it shall have become a law.

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

LBD04813-01-3

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*MEMBER CALIFORNIA & DISTRICT OF COLUMBIA BARS ONLY

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May 31, 1983

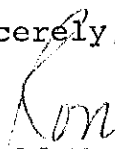
Stephen J. Weinstein, Esq.
Deputy Executive Director
and Counsel
Municipal Assistance Corporation
For The City of New York
One World Trade Center, Suite 8901
New York, New York 10048

Dear Steve:

Enclosed is an executed copy of our opinion relating to the proposed increase in the sales tax exemption for certain tangible personal property sold through coin-operated vending machines.

Best regards.

Sincerely,


Ronald M. Soiefer

Enclosures

1s

BY HAND

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*MEMBER CALIFORNIA & DISTRICT OF COLUMBIA BARS ONLY

May 31, 1983

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

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, Bill S. 3100, A. 1738, dated January 18, 1983, a copy of which is attached hereto (the "Bill"), 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

Municipal Assistance Corporation

2

United States Trust Company of New York

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.

Section 1202(f) of each of the Resolutions 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"

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

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

Municipal Assistance Corporation

3

United States Trust Company of New York

Based upon the foregoing, in our opinion, the adoption and implementation of the Bill will not create an "event of default" under Section 1202(f) of either of the Resolutions.

Very truly yours,

Paul, Weiss, Rifkind, Wharton & Garrison.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

STATE OF NEW YORK

1738

1983-1984 Regular Sessions

IN ASSEMBLY

January 18, 1983

Introduced by M. of A. KREMER -- read once and referred to the Committee
on Ways and Means

AN ACT to amend the tax law, in relation to exempting from sales and use
tax tangible personal property sold through vending machines at
twenty-five cents or less

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

- 1 Section 1. Paragraph thirteen of subdivision (a) of section eleven
2 hundred fifteen of the tax law, as added by chapter five hundred sixty-
3 eight of the laws of nineteen hundred sixty-five, is amended to read as
4 follows:
5 13. Tangible personal property sold through coin-operated vending
6 machines at [ten] twenty-five cents or less, provided the retailer is
7 primarily engaged in making such sales and maintains records satisfac-
8 tory to the state tax commission.
9 § 2. This act shall take effect on the first day of August in the year
10 in which it shall have become a law.

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

LBD04813-01-3

MEMORANDUM

By Messenger

7878

Date:

18 May 1983

To:

Allen L. Thomas, Donald J. Robinson, John J. Keohane, Jack M. Schragger, Robert R. Grew, Lawrence Rimmel

From:

Stephen J. Weinstein

Re:

Proposed Sales Tax Legislation

MUNICIPAL
ASSISTANCE
CORPORATION
FOR THE CITY
OF NEW YORK

Enclosed are materials which I received yesterday from the Assembly Ways and Means Committee.

These materials include a bill (Assembly 1738) which would increase the present sales tax exemption for sales made through coin-operated vending machines from 10 cents to 25 cents. At my request, the Committee has provided an analytical summary of the potential fiscal impact of such legislative action, which is also enclosed.

As you may recall, we have faced the issue of proposed sales tax exemptions in light of the default provisions in our general bond resolutions on previous occasions. The only instance I recall in which legislation was enacted was a 1978 exemption concerning aircraft maintenance operations located within New York City, at that time estimated to result in an annual revenue decrease of approximately \$1 million. I am enclosing copies of previous correspondence with regard to those matters.

Given the fact that we have all considered these issues thoroughly before and the small amount of revenue involved here, analysis of this particular proposal should present no novel considerations.

Please review the enclosed materials and let me have your views as soon as possible.

Enclosures



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

ARTHUR J. KREMER
CHAIRMAN
WAYS AND MEANS COMMITTEE

May 12, 1983

Stephen A. Weinstein, Esq.
MAC
Suite 8901
One World Trade Center
New York, NY 10048

RE: Assembly Bill A. 1738 (S. 3100)

Dear Mr. Weinstein:

Please be advised that the above proposed legislation, a copy of which is enclosed herein, has been introduced by me during this legislative session.

In essence, this bill would exempt from sales and use tax certain tangible personal property sold through coin-operated vending machines at 25 cents or less instead of 10 cents or less.

As you will note, the proposed legislation would affect sales tax collected on a statewide basis and as a result thereof, I would appreciate your reviewing same so as to advise this office whether such legislation will have any negative impact upon MAC bonds.

In the event this legislation is acceptable to you and MAC, I would appreciate your forwarding to me a letter indicating same so that this legislation can be acted upon.

I am also enclosing herein a memorandum from our fiscal staff which may be of assistance to you in this matter. Should you have any questions regarding the above, please do not hesitate to communicate with me or my counsel, Joel B. Mayer.

Thank you for your prompt and considerate attention herein.

Very Truly Yours


ARTHUR J. KREMER
Chairman

AJK/lpt
Enclosures

STATE OF NEW YORK

1738

1983-1984 Regular Sessions

IN ASSEMBLY

January 18, 1983

Introduced by M. of A. KREMER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to exempting from sales and use tax tangible personal property sold through vending machines at twenty-five cents or less

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- 10 in which it shall have become a law.

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

LBD04813-01-3

TO: JOEL PLATT
 FROM: KEN GOLD
 DATE: MAY 4, 1983
 RE: FISCAL IMPACT OF A. 1738, VENDING MACHINE SALES

This bill would raise the price limit, from ten to twenty-five cents, for exempting from the sales and compensating use tax, certain sales of tangible personal property through vending machines. Three different estimates of the fiscal impact of this bill are summarized as follows:

<u>Estimator</u>	<u>Exempt Receipts (\$ million)</u>	<u>State Revenue Loss (\$)</u>	<u>MAC Revenue Loss (\$)</u>	<u>Other Local Revenue Loss (\$)</u>	<u>Total Sales Tax Loss (\$)</u>
Dept. of Tax & Finance		320,000.00	160,000.00	120,000.00	600,000.00
Ways & Means	5.324	213,000.00	106,000.00	80,000.00	399,000.00
Folz Vending, Inc.	4.0	160,000.00	80,000.00	60,000.00	300,000.00

The Department's Bureau of Research and Statistics offered an estimate of the total State and local sales tax loss of \$600,000.00. The Ways and Means Committee's estimate is detailed below. Folz's estimate of the total State and local revenue loss was originally \$120,000. Subsequent discussion with Folz's legislative council, Robert Malito, led to the revision of this figure to \$300,000.00. This revision is consistent with Folz's estimating procedure as explained below.

Throughout this analysis, the local portion of the sales tax losses has been estimated on the basis that: (1) 50% of exempt receipts were subject to the MAC tax of 4%; and (2) 50% of the exempt receipts were subject to other local sales taxes at an average rate of 3%.

Ways and Means Committee

This estimate is based on data from the "1982 Vending Industry Census", American Automatic Merchandiser, April 1983. This census provides: (1) an estimate of gross national receipts from various vending machine products; and (2) the percentage of operators charging certain prices. It was necessary to transform the data as follows:

1. Products qualifying for the exemption were chosen from all the products listed in the census.

2. The 1982 national gross receipts were increased by 5% to account for inflation. The resulting estimates of 1983 national gross receipts were multiplied by 7% to derive New York State's share of national gross receipts.
3. All receipts from products priced at or below twenty-five cents would not qualify for this exemption. In order for such receipts to qualify, the vendor must receive 75% or more of all his vending machine receipts from products priced at or below twenty-five cents. Consequently, the percentages as reported in the above article were multiplied by approximately 1/3 to estimate exempt receipts.

The exempt receipts for the various qualified vending products are listed below:

<u>Qualified Product</u>	<u>1983 NYS Gross Receipts (\$ million)</u>	<u>% Exempt Receipts</u>	<u>Exempt Receipts (\$ million)</u>
Gum & Mints	6.744	15%	1.016
Candy	61.900	1%	.619
Snacks & Chips	31.286	3%	.939
Cookies	8.729	1%	.087
Cracker Sandwiches	11.526	3%	.346
Cup Soft Drinks*	46.343	5%	2.317
TOTAL			5.324

* Not all cup soft drink receipts that qualify for an exemption based on unit price would be exempted by this bill. A portion of such receipts are exempted under a statute not amended by this bill. Total qualified receipts of cup soft drinks were multiplied by 2/3 to estimate such receipts exempted by this bill.

Folz Vending, Company, Inc.

Folz estimated a fiscal impact of \$120,000 in two ways:

Method 1:

- a. Folz paid \$60,000 in State and local sales taxes on vending machine products priced between 10¢ and 25¢.
- b. Such sales by Folz represent 20% of the New York State market, which implies a possible revenue loss of \$300,000.
- c. Folz, at first, believed that 40% of such sales would not be exempted by this bill, which reduced the fiscal impact to \$180,000.
- d. Finally, 20% of the \$300,000, or \$60,000, was attributed to sales in New York City. Originally, Folz believed such sales would not be exempted by this bill. This yielded a final potential revenue loss of \$120,000.

Method 2:

- a. There are approximately 60,000 gumball machines statewide that produce an annual average of \$115 in receipts or \$8 million in total annual receipts.
- b. Currently, \$4 million of such receipts are exempt and the remaining \$4 million are due to unit sales priced between 10¢ and 25¢.
- c. Based on an average State and local sales tax rate of 7½%, \$300,000 is generated by the remaining \$4 million.
- d. 40% of such sales were originally thought not to be affected by this bill, which reduced the potential fiscal impact to \$180,000.
- e. Finally, 20% of such sales corresponded to New York City and were considered to be excepted from this bill. This yielded a potential revenue loss of \$120,000.

The 40% reduction represented vending machine sales of food and beverages, which were thought to be unaffected by this bill. Actually, only vending machine sales of food and beverages in a prepared state for on-premises consumption would be unaffected. This deduction is not appropriate, because Folz does not make vending machine sales of prepared foods. Also, A. 1783 does not contain an exception for purposes of the Municipal Assistance Corporation. Consequently, steps (c) and (d) of Method 1, and steps (d) and (e) of Method 2 are not appropriate. In this manner, a fiscal impact of \$300,000 is consistent with Folz's estimating methods.

KG/lp

posed by § 1105(a) and the compensating use tax imposed by § 1110, receipts from the sale of "commercial aircraft primarily engaged in interstate or foreign commerce, machinery or equipment to be installed in such aircraft, and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines."

Each of the General Bond Resolutions of MAC provides in § 1202 thereof that "Each of the following events is hereby declared an "event of default," that is to say; if * * *

"(f) the State [defined as 'The State of New York'] shall for any reason fail or refuse to continue the imposition of * * * the Sales Tax [defined as 'the sales and compensating use taxes imposed by Section 1107 of Article 28 of the Tax Law of the State'] imposed by Section 1107 of Article 28 of the Tax Law [sic] 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]."

The proposed 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 Sales Tax (as defined) 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 Sales 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 § 1107 contemplated by the bill, if enacted, will precipitate an "event of default" as defined in § 1202(f).

In determining whether an Act of the Legislature in the form of an amendment to the Sales Tax (as defined) would constitute an "event of default" within the purview of § 1202(f), it is essential to analyze the nature, purpose, terms and effect thereof in each instance. Tested by such legal criteria as we have considered appropriate in making such an analysis, it is our opinion that Senate Bill No. 10424 would not cause an "event of default" to occur because the State will neither have failed or refused "to continue the imposition" of the taxes imposed by § 1107 "as the same may be from time to time amended" nor will

Marilyn Friedma Esq.

3.

the rates [4% in the case of § 1107(a) and 6% in the case of § 1107(c)] have been "reduced to rates less than those in effect" on July 2, 1975.

Very truly yours,

Hawkins, Delaplane & Moore

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 PARK AVENUE
NEW YORK, N. Y. 10022

TELEPHONE (212) 644-8000
TELECOPIER (212) 644-8202

CABLE: LONGSIGHT, N. Y.
TELEX 12-7631

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LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

LLOYD R. GARRISON
COUNSEL

SIMON H. RIFKIND
HOWARD A. SEITZ
ADRIAN W. DEWIND
MORRIS S. ABRAM
MORDECAI ROCHLIN
PAUL J. NEWLON
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STEVEN B. ROSENFELD
ALBERT P. HAND
ROBERT S. SMITH
MAX GITTER
JOHN J. O'NEIL
CAMERON CLARK
LEWIS A. KAPLAN

WRITER'S DIRECT DIAL NUMBER

June 18, 1978

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, Bill S. 10424, A. 13109, dated June 14, 1978, a copy of which is attached (the "Bill"), 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

Municipal Assistance Corporation

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United States Trust Company of New York

has issued and has outstanding bonds pursuant to each of the Resolutions.

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

3

United States Trust Company of New York

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

In connection with the request referred to above, we have reviewed the Bill, 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 adoption and implementation of the Bill will not create an "event of default" under Section 1202(f) of either of the Resolutions.

Very truly yours,

Paul, Weiss, Rifkind, Wharton & Garrison
PAUL, WEISS, RIFKIND, WHARTON & GARRISON

RECEIVED	
MUNICIPAL ASSISTANCE CORPORATION	
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EJK _____	
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June 19, 1978


Mr. Stephen J. Weinstein
Deputy Executive Director
Municipal Assistance Corporation
For The City of New York
Room 4540
Two World Trade Center
New York, New York 10047

Dear Steve;

You have asked us whether, United States Trust Company of New York, as Trustee under the General Bond Resolution dated July 2, 1975 and the Second General Bond Resolution dated November 25, 1975 (the "Resolution") adopted by the Municipal Assistance Corporation For The City of New York, would consider passage of a new exemption from the sales tax pursuant to Senate Bill No. 10424, as a default under either of the Resolutions.

We have received an opinion of Hawkins, Dalafield & Wood which states that adoption of the Bill would not cause an "event of default" to occur. In reliance on that opinion, we do not believe that any action is required by the Trustee with regard to this particular exemption. However, we shall continue to examine the question if additional amendments are passed.

Very truly yours,


Malcolm J. Hood
Senior Vice President

/cg

One World Trade Center, Suite 8901
New York, New York 10048
Telephone: (212) 775-0010

**MUNICIPAL
ASSISTANCE
CORPORATION
FOR THE CITY
OF NEW YORK**

31 January 1980

Pat Curran, Esq.
Assistant Counsel to Senate Minority
NEW YORK STATE SENATE
316 Capitol Building
Albany, New York 12247

Dear Mr. Curran:

In response to your telephone inquiry with regard to possible proposals for exemptions from the New York State Sales Tax imposed by Section 1107 of Article 28 of the Tax Law, I am enclosing for your information a copy of a letter submitted by the Municipal Assistance Corporation to the appropriate committees of the State Senate and Assembly concerning certain legislation proposed and enacted in 1978.

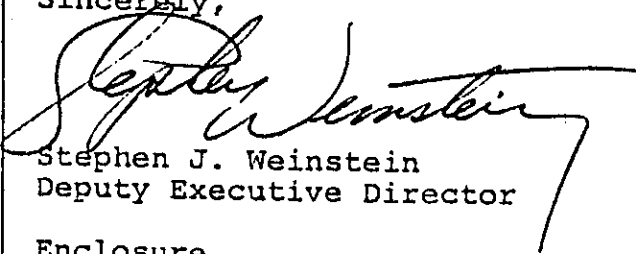
The enclosed letter sets forth reasons that careful consideration must be accorded any proposed exemptions to the aforementioned tax, inasmuch as such exemptions could separately or cumulatively constitute an event of default with respect to outstanding bonds issued by the Municipal Assistance Corporation.

I am furnishing this letter in order to provide you with background information only, and am not addressing any particular proposal for additional exemption legislation. Moreover, I emphasize that it is essential to submit to the Corporation any such proposal at the earliest possible stage of its development, in order that we may review it with respect to the default provisions of each of our general bond resolutions.

Thank you for requesting this information, so that you can incorporate it into your analysis, and for your appropriate concern over the effects of sales tax exemptions upon the outstanding debt of the Corporation.

If you would like any additional information, or if you have any questions, please feel free to contact John Bove or myself.

Sincerely,


Stephen J. Weinstein
Deputy Executive Director

Enclosure

cc: John G. Bove, Esq.



State of New York
Municipal Assistance Corporation
For The City of New York

Two World Trade Center
New York, N. Y. 10047

(212) 488-5720

Felix G. Ronatyn
Chairman

Board Members
Francis J. Barry
George M. Brooker
Thomas D. Flynn
George D. Gould
Dick Netzer
Richard Ravitch
Robert C. Weaver

Eugene Keilin
Executive Director

Writer's Direct Wire: (212) 488-5723

20 June 1978

Mr. John L. Hardy
Secretary
Assembly Ways and Means
Committee
NEW YORK STATE ASSEMBLY
State Capitol
Albany, New York 12214

Mr. James Biggane
Secretary
Senate Finance Committee
NEW YORK STATE SENATE
State Capitol
Albany, New York 12214

Gentlemen:

You have asked us whether Assembly Bill Number 13109 and Senate Bill Number 10424, which would amend Sections 1105 and 1115 of the Tax Law to exempt certain airline and aircraft-related parts and services from the sales and compensating-use tax, would constitute an event of default with respect to bonds issued by the Corporation and whether we can provide you with guidance for evaluating similar future proposals.

Provisions governing a determination as to whether there exists an event of default with respect to bonds of the Corporation are set forth in the General Bond Resolution and the Second General Bond Resolution of the Corporation adopted July 2, 1975 and November 25, 1975, respectively (hereinafter collectively referred to as the "Resolutions"). Each of the Resolutions provides in Section 1202 thereof that "Each of the following events is hereby declared an 'event of default':

* * *

"(f) the State shall for any reason fail or refuse to continue the imposition of * * * 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 if the rates of such taxes shall be reduced to rates less than those in effect [on July 2, 1975]."

Thus, Section 1202(f) imposes two tests to determine whether an exemption from the sales tax would precipitate an event of default:

First, whether if enacted into law it would be a failure or refusal by the State to continue the imposition of the Sales Tax (as defined) 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 Sales Tax to less than the rates in effect on July 2, 1975.

If the exemptions and exceptions from the tax proposed by the amendment were held to be either a failure by the State to continue the imposition of the Sales Tax or a reduction in rate, then this legislation would precipitate an event of default as defined in Section 1202(f) of the General Bond Resolutions.

In the opinion of Bond Counsel and General Counsel to the Corporation, the proposed legislation would not constitute an event of default under the Resolutions. The Corporation concurs in this judgment.

The Resolutions also provide that "upon the happening and continuance of any event of default specified in paragraph * * * f * * * of Section 1202 [referred to above], the trustee may proceed and upon the written request of the holders of not less than twenty-five percentum" of bonds outstanding under either of the Resolutions must proceed, "to protect and enforce its rights and the rights of the bondholders" by resort to a number of specified remedies.

Thus, under the Resolutions the Corporation does not determine when an event of default has occurred; that determination is made by the Trustee. The Corporation has been informed by the Trustee under the Resolutions, United States Trust Company of New York, that, relying on the opinion of the Corporation's Bond Counsel that enactment of the legislation would not cause an event of default, it does not believe that it is required to take any action with regard to the exemption in the proposed legislation.

The conclusion that the proposed legislation does not constitute an event of default cannot be construed as acquiescence to future legislation exempting or excepting additional items from the Sales Tax. Furthermore, no assurance can be given that bondholders will not assert that either this or a subsequent amendment of the Tax Law is an event of default and request that the Trustee take action to enforce their rights.

Exemptions from the Sales Tax, when viewed in and of themselves or when cumulated with all previous exemptions may constitute a failure to impose the tax, as amended. As stated above, we do not believe that this exemption, viewed alone or in conjunction with exemptions to date, constitutes such a failure. However, because the provisions of the Resolution involve an element of judgment on which legal views may differ, we cannot articulate a bright line by which to test such exemptions.

Further, certain amendments to the Sales Tax that change its character, method of assessment or other legal attributes might also constitute a failure to continue to impose the Sales Tax.

We identify our concern that at some future time, as yet unascertainable, newly created exemptions from sales taxation, or other changes in the Tax Law, will create an event of default under the Resolutions.

Accordingly, although we are of the opinion expressed above that the particular exemption embodied in the proposed legislation does not create an event of default, we believe that great caution and restraint should be exercised by the Legislature in considering any future exemptions from the Sales Tax.

The purpose of this letter is to furnish you with advice as to whether enactment of the proposed legislation would constitute an event of default with respect to the Corporation's bonds. The Corporation expresses no view as to the wisdom of enacting the proposed legislation, and this letter should not be construed as an opinion on the merits of the proposal.

Very truly yours,

Marilyn Friedman

Marilyn F. Friedman
Counsel

MFF:bba

One World Trade Center, Suite 8901
New York, New York 10048
Telephone: (212) 775-0010

**MUNICIPAL
ASSISTANCE
CORPORATION
FOR THE CITY
OF NEW YORK**

17 May 1983

Hon. Arthur J. Kremer
Chairman
Ways and Means Committee
NEW YORK STATE ASSEMBLY
Albany, New York

Re: Assembly Bill 1738

Dear Mr. Kremer:

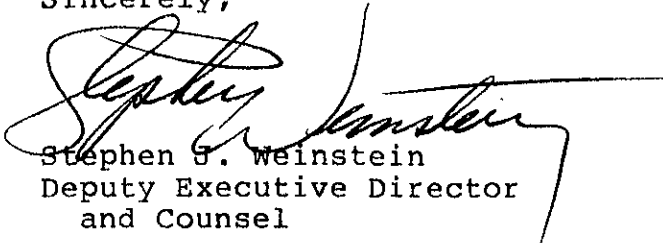
We have today received the materials you sent regarding
Assembly Bill 1738.

Thank you for bringing to our attention the proposed
legislation to increase the exemption from the sales tax
for sales made through coin-operated vending machines.

We, along with our counsel and counsel for our Trustee, are
presently reviewing this proposal.

We appreciate your need to have a reaction promptly and
expect to be able to respond on the substance shortly.

Sincerely,



Stephen S. Weinstein
Deputy Executive Director
and Counsel

SJW:bba



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

ARTHUR J. KREMER
CHAIRMAN
WAYS AND MEANS COMMITTEE

May 12, 1983

Stephen A. Weinstein, Esq.
MAC
Suite 8901
One World Trade Center
New York, NY 10048

RE: Assembly Bill A. 1738 (S. 3100)

Dear Mr. Weinstein:

Please be advised that the above proposed legislation, a copy of which is enclosed herein, has been introduced by me during this legislative session.

In essence, this bill would exempt from sales and use tax certain tangible personal property sold through coin-operated vending machines at 25 cents or less instead of 10 cents or less.

As you will note, the proposed legislation would affect sales tax collected on a statewide basis and as a result thereof, I would appreciate your reviewing same so as to advise this office whether such legislation will have any negative impact upon MAC bonds.

In the event this legislation is acceptable to you and MAC, I would appreciate your forwarding to me a letter indicating same so that this legislation can be acted upon.

I am also enclosing herein a memorandum from our fiscal staff which may be of assistance to you in this matter. Should you have any questions regarding the above, please do not hesitate to communicate with me or my counsel, Joel B. Mayer.

Thank you for your prompt and considerate attention herein.

Very Truly Yours


ARTHUR J. KREMER
Chairman

AJK/lpt
Enclosures

STATE OF NEW YORK

1738

1983-1984 Regular Sessions

IN ASSEMBLY

January 18, 1983

Introduced by M. of A. KREMER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to exempting from sales and use tax tangible personal property sold through vending machines at twenty-five cents or less

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

- 1 Section 1. Paragraph thirteen of subdivision (a) of section eleven
2 hundred fifteen of the tax law, as added by chapter five hundred sixty-
3 eight of the laws of nineteen hundred sixty-five, is amended to read as
4 follows:
5 13. Tangible personal property sold through coin-operated vending
6 machines at [ten] *twenty-five* cents or less, provided the retailer is
7 primarily engaged in making such sales and maintains records satisfac-
8 tory to the state tax commission.
9 § 2. This act shall take effect on the first day of August in the year
10 in which it shall have become a law.

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

LBD04813-01-3

MEMORANDUM

TO: JOEL PLATT
FROM: KEN GOLD
DATE: MAY 4, 1983
RE: FISCAL IMPACT OF A. 1738, VENDING MACHINE SALES

This bill would raise the price limit, from ten to twenty-five cents, for exempting from the sales and compensating use tax, certain sales of tangible personal property through vending machines. Three different estimates of the fiscal impact of this bill are summarized as follows:

<u>Estimator</u>	<u>Exempt Receipts (\$ million)</u>	<u>State Revenue Loss (\$)</u>	<u>MAC Revenue Loss (\$)</u>	<u>Other Local Revenue Loss (\$)</u>	<u>Total Sales Tax Loss (\$)</u>
Dept. of Tax & Finance		320,000.00	160,000.00	120,000.00	600,000.00
Ways & Means	5.324	213,000.00	106,000.00	80,000.00	399,000.00
Folz Vending, Inc.	4.0	160,000.00	80,000.00	60,000.00	300,000.00

The Department's Bureau of Research and Statistics offered an estimate of the total State and local sales tax loss of \$600,000.00. The Ways and Means Committee's estimate is detailed below. Folz's estimate of the total State and local revenue loss was originally \$120,000. Subsequent discussion with Folz's legislative council, Robert Malito, led to the revision of this figure to \$300,000.00. This revision is consistent with Folz's estimating procedure as explained below.

Throughout this analysis, the local portion of the sales tax losses has been estimated on the basis that: (1) 50% of exempt receipts were subject to the MAC tax of 4%; and (2) 50% of the exempt receipts were subject to other local sales taxes at an average rate of 3%.

Ways and Means Committee

This estimate is based on data from the "1982 Vending Industry Census", American Automatic Merchandiser, April 1983. This census provides: (1) an estimate of gross national receipts from various vending machine products; and (2) the percentage of operators charging certain prices. It was necessary to transform the data as follows:

1. Products qualifying for the exemption were chosen from all the products listed in the census.

2. The 1982 national gross receipts were increased by 5% to account for inflation. The resulting estimates of 1983 national gross receipts were multiplied by 7% to derive New York State's share of national gross receipts.
3. All receipts from products priced at or below twenty-five cents would not qualify for this exemption. In order for such receipts to qualify, the vendor must receive 75% or more of all his vending machine receipts from products priced at or below twenty-five cents. Consequently, the percentages as reported in the above article were multiplied by approximately 1/3 to estimate exempt receipts.

The exempt receipts for the various qualified vending products are listed below:

<u>Qualified Product</u>	1983 NYS <u>Gross Receipts</u> (\$ million)	<u>% Exempt Receipts</u>	<u>Exempt Receipts</u> (\$ million)
Gum & Mints	6.744	15%	1.016
Candy	61.900	1%	.619
Snacks & Chips	31.286	3%	.939
Cookies	8.729	1%	.087
Cracker Sandwiches	11.526	3%	.346
Cup Soft Drinks*	46.343	5%	2.317
<hr/>			
TOTAL			5.324

* Not all cup soft drink receipts that qualify for an exemption based on unit price would be exempted by this bill. A portion of such receipts are exempted under a statute not amended by this bill. Total qualified receipts of cup soft drinks were multiplied by 2/3 to estimate such receipts exempted by this bill.

Folz Vending, Company, Inc.

Folz estimated a fiscal impact of \$120,000 in two ways:

Method 1:

- a. Folz paid \$60,000 in State and local sales taxes on vending machine products priced between 10¢ and 25¢.
- b. Such sales by Folz represent 20% of the New York State market, which implies a possible revenue loss of \$300,000.
- c. Folz, at first, believed that 40% of such sales would not be exempted by this bill, which reduced the fiscal impact to \$180,000.
- d. Finally, 20% of the \$300,000, or \$60,000, was attributed to sales in New York City. Originally, Folz believed such sales would not be exempted by this bill. This yielded a final potential revenue loss of \$120,000.

Method 2:

- a. There are approximately 60,000 gumball machines statewide that produce an annual average of \$115 in receipts or \$8 million in total annual receipts.
- b. Currently, \$4 million of such receipts are exempt and the remaining \$4 million are due to unit sales priced between 10¢ and 25¢.
- c. Based on an average State and local sales tax rate of 7½%, \$300,000 is generated by the remaining \$4 million.
- d. 40% of such sales were originally thought not to be affected by this bill, which reduced the potential fiscal impact to \$180,000.
- e. Finally, 20% of such sales corresponded to New York City and were considered to be excepted from this bill. This yielded a potential revenue loss of \$120,000.

The 40% reduction represented vending machine sales of food and beverages, which were thought to be unaffected by this bill. Actually, only vending machine sales of food and beverages in a prepared state for on-premises consumption would be unaffected. This deduction is not appropriate, because Folz does not make vending machine sales of prepared foods. Also, A. 1783 does not contain an exception for purposes of the Municipal Assistance Corporation. Consequently, steps (c) and (d) of Method 1, and steps (d) and (e) of Method 2 are not appropriate. In this manner, a fiscal impact of \$300,000 is consistent with Folz's estimating methods.

KG/lp