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

8 August 1988

William F. Collins, Esq.
Deputy Commissioner and Counsel
New York State Department
of Taxation and Finance
W.A. Harriman Campus
Albany, New York 12227

Re: Exemption From Sales Tax - Services of Training and Maintaining a Racehorse

Dear Mr. Collins:

This letter will confirm my telephone advice to Bruce Kastor last week.

By letter dated July 20, 1988, you requested the views of the Corporation as to whether enactment of a bill providing, among other things, an exemption from the sales tax imposed under Section 1107 of the Tax Law (the "Section 1107 Tax") for the services of training and maintaining a racehorse (the "Racehorse Exemption"), could constitute an event of default under the Corporation's general bond resolutions.

You state in your letter that this bill would codify what has been the reality of sales tax receipts from such an enterprise resulting from prior Department policy --since only the remainder of a trainer's receipts over expenses had been taxed, a negligible amount had been collected over the years. Furthermore, assuming taxation based on the gross receipts rather than the net receipts from such services, you estimate the loss of Section 1107 tax revenue from enactment of the Racehorse Exemption to be less than $500,000 annually.

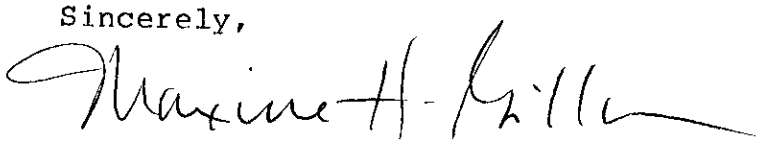
As you know, our general bond resolutions state that an event of default has arisen with respect to the Section 1107 Tax when either of two situations has occurred -- a failure or refusal to continue to impose such tax or a reduction in the rate of such tax from the rate existing on July 2, 1975. Our bond counsel's position is that the State has failed to continue to impose the Section 1107 Tax when such tax is no longer "generally" imposed, and that specific exemptions must be viewed on a cumulative basis. However, neither we at the Corporation nor our 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 Section 1107 Tax is the essence of the security behind the Corporation's bonds, $7.6 billion of which are currently outstanding, 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. As you know, we have, from time to time over the years, made formal objections to a wide variety of Section 1107 exemption proposals.

We have reviewed your summary of the Racehorse Exemption and the bill embodying such exemption, and have consulted with our outside counsel. Because the Racehorse Exemption would not significantly alter the amount of sales tax receipts from such an enterprise resulting from prior Department policy and because the estimated Section 1107 revenue loss, even assuming taxation on a gross basis, is de minimis, we do not oppose its enactment.

Thank you for the opportunity to express our views.

Sincerely,



Maxine H. Gillman
Counsel

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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
W. A. HARRIMAN CAMPUS
ALBANY, NY 12227

WILLIAM F. COLLINS
DEPUTY COMMISSIONER AND COUNSEL

July 20, 1988

Maxine Gillman, Esq.
Counsel
Municipal Assistance Corporation
for the City of New York
One World Trade Center
Suite 9801
New York, New York 10048

Re: Exemption from Sales and Use Taxes for the Services of Training and Maintaining a Racehorse

Dear Ms. Gillman:

This is to request the concurrence of the Municipal Assistance Corporation of the City of New York ("MAC") with our view that enactment of S. 9207/A. 11980, a Budget Bill which has passed both houses of the Legislature, would not constitute an event of default under the General Bond Resolution and the Second General Bond Resolution of MAC.

Section 119 of the bill, copies of relevant pages of which are enclosed, would amend section 1115 of the Tax Law to add a new subdivision (m), to be effective immediately, to exempt from state and local sales and compensating use taxes the services of training and maintaining a racehorse to race in a race or race meeting held pursuant to the Racing, Pari-Mutuel Wagering and Breeding Law (Racing Law), or similar law of another state, when the services are rendered by a trainer to the owner. Tangible personal property transferred by the trainer to the owner in conjunction with the rendering of such exempt services would also be exempt. But sales of such tangible personal property or services to the trainer would not be considered sales for resale and thus would be taxable to the trainer, much as sales of tangible personal property and services by a veterinarian, otherwise taxable, are exempt to the client but taxable to the veterinarian (Tax Law, § 1115(f)). The term "trainer" is defined as one licensed under the Racing Law and a "racehorse" is defined as a horse registered with an appropriate club or association or, during its first 24 months of life, a horse eligible to be so registered. Although "training and maintaining" is not defined, we understand the term to be inclusive of a broad

range of services provided by the trainer necessary to keep a racehorse fit and ready for racing.

Although the explicit statutory language does not make it clear that paragraph (1) of subdivision (m) is meant to be an exemption from sales and use taxes, the title and content of the section to which the subdivision has been added ("Exemptions from sales and use taxes") and the reference in paragraph (2) of the new subdivision to paragraph (1) as an exemption clearly indicate the Legislature's intent to create an exemption. Thus, in our opinion, this result could be reached by construction. However, since exemptions are strictly construed, we have recommended that the language should be clarified at the earliest opportunity, should the bill become law. Similarly, the inference of such legislative intent to include such exemption language at the end of the first sentence of paragraph (2) also needs to be made clear in light of the similarity of the provision to the veterinarian exemption, and the taxability of sales of such tangible personal property and services to the trainer as set forth in the second sentence of such paragraph (2). Otherwise, sales of such property and services would be subject to double taxation, which we speculate is not the probable legislative intent here.

This statutory provision would, in the main, codify longstanding Department policy with respect to the subject of training fees. Since Commissioner Joseph Murphy's letter of August 25, 1965, and Counsel Best's opinion dated February 7, 1966, receipts from trainer's services have been taxable only on any excess remaining to the trainer after deduction of all expenses attributable to such services. Thus, since near the inception of the sales tax, tax has not as a practical matter been collected on any significant proportion of such trainer charges.

The revenue loss attributable to the tax imposed by section 1107 of the Tax Law for the benefit of the holders of MAC obligations with respect to the exemption of such services and property had been estimated to be no more than five hundred thousand dollars before Roosevelt Raceway ceased operations, based on a state and local estimate of one million dollars of a broad range of services to racehorses. But it is certainly substantially less than that amount now that Roosevelt has closed. Total revenues generated under section 1107 amounted to about 2.16 billion dollars for the fiscal year ending March 31, 1988. Thus the estimated reduction in revenues under section 1107 occasioned by this exemption would have amounted to approximately twenty-three thousandths of one percent of the total sales and use tax revenues generated under section 1107 had Roosevelt remained open, but such reduction is even less now that Roosevelt has closed.

Section 1202 of the General Bond Resolution provides, in pertinent part, as follows:

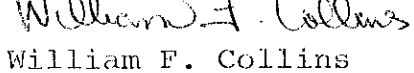
> 1202. "Events of Default" Each of the following events is hereby declared an "event of default," that is to say; if . . .
>
> (f) the State shall for any reason fail or refuse to continue the imposition of either the Sales Tax imposed by Section 1107 of Article 28 of the Tax Law as the same may be 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 . . . . (underlining supplied for emphasis)

Section 1202 of the Second General Bond Resolution contains substantially the same language.

We believe that the exemption proposed in this bill certainly does not involve a failure or refusal to continue the imposition of the sales tax imposed by Tax Law, section 1107, or a change in the rate of the section 1107 tax. Indeed, it appears that section 1202 of the Bond Resolutions contemplates changes, other than repeal, in the components of the tax as they may be amended from time to time.

Furthermore, the revenue loss under the exemption is expected to amount to, at most, only about twenty-three thousandths of one percent and is, therefore, de minimis. In my opinion, such a loss could not reasonably be interpreted as a repeal of the tax or as a reduction in the tax rate, even if it were to be assumed that an exemption could possibly constitute a reduction in rate. Thus we have concluded that enactment of the exemption from sales and use taxes, including the section 1107 taxes, found in such bill does not constitute an event of default under the MAC Bond Resolutions. Do you concur?

Very truly yours,



William F. Collins
Deputy Commissioner and Counsel

Enclosures
cc: Saul Heckelman
Mary Hanak
Kevin Murray

# STATE OF NEW YORK

S. 9207 A. 11980

# SENATE - ASSEMBLY

July 15, 1988

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law, the vehicle and traffic law and the public authorities law, in relation to establishing a new New York state infrastructure trust fund to temporarily transfer moneys to the general fund and making other related technical and conforming changes; to amend the private housing finance law, the local finance law, the real property law, the real property tax law, the state finance law, the tax law and chapter eight hundred ninety-eight of the laws of nineteen hundred eighty-six amending the private housing finance law and the real property tax law relating to low income housing and affordable home ownership, in relation to permanent housing for homeless families, equal employment opportunity, the low income housing trust fund program, the affordable homeownership development program, the mobile home cooperative fund program, regulation of mobile home parks, creation of special needs housing, creation of an infrastructure development demonstration program, housing assistance by the development authority of the North Country, bridge loans and creation of a low income turnkey enhanced housing trust fund program; enacting the Accelerated Capacity and Transportation Improvements of the Nineties Bond Act providing for the authorization to create a state debt in the amount of three billion dollars for the purpose of accelerating a program to improve the condition of New York state's highways and bridges, to relieve traffic congestion and to ensure the safety of our citizens and providing for the submission to the people of a proposition or question therefor to be voted upon at the general election to be held in November, nineteen hundred eighty-eight; to amend the state finance law, in relation to the probable life of certain state highways and bridges and creating the accelerated capacity and transportation improvements fund and the capacity,

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

LBD15727-05-8

bridge and highway improvements fund; the transportation law, in relation to the expenditure of moneys under the Accelerated Capacity and Transportation Improvements of the Nineties Bond Act; to amend the executive law and the state finance law, in relation to participation by minority group members and women on state contracts; to amend the tax law, in relation to the powers and duties of the division of the lottery and the payout prize on instant games and in relation to imposing the Diesel motor fuel taxes imposed by and pursuant to the authority of articles twelve-A, twenty-eight and twenty-nine thereof on the sale of Diesel motor fuel; the energy law, in relation thereto; chapter forty-four of the laws of nineteen hundred eighty-five amending the tax law relating to imposition of the motor fuel tax, in relation to the state motor fuels taxation advisory council; to amend the racing, pari-mutuel wagering and breeding law, in relation to powers and duties of the entities comprising the racing industry; the tax law, in relation to certain sales tax exemptions, and to repeal certain provisions relating thereto; and making appropriations therefor

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

b. Of the sums retained by the operator as provided in this subdivision, an amount equal to [one-half of] one per centum of daily pools derived from bets on simulcasts of harness races shall be paid to the agriculture and New York state horse breeding [and] development fund, and an amount equal to one-half of one per centum of daily pools derived from bets on simulcasts of running races shall be paid to the New York state thoroughbred breeding and development fund.

§ 117. Each association or corporation which is subject to the provisions of section two hundred twenty-eight or three hundred eighteen of the racing, pari-mutuel wagering and breeding law shall be allowed a credit against the pari-mutuel tax hereafter accruing, which credit shall be computed as follows: the amount of such credit shall be the difference between the amount of pari-mutuel tax payable pursuant to section two hundred twenty-eight or three hundred eighteen of the racing, pari-mutuel wagering and breeding law on or after April first, nineteen hundred eighty-eight, without regard to the tax rates imposed as a result of the enactment of this act, through the date of enactment and the amount which would have been so imposed had the tax rates in such section two hundred twenty-eight or three hundred eighteen, as amended by this act, as applicable, been effective on April first, nineteen hundred eighty-eight, provided, however, that such credit shall be reduced by the amount of tax which would have been imposed if the tax provisions of subdivision four of section three hundred eighteen of such law had also been effective on April first, nineteen hundred eighty-eight. In no event shall such credit for any day be allowed in excess of the amount of tax due the state for such day. However, any amount of credit not allowable on any such day may be carried over to the succeeding day or days. The amount of such credit may be deemed to be earned and accrued in the nineteen hundred eighty-eight calendar year even though some or all of such credit shall be paid after the nineteen hundred eighty-eight calendar year. Such credit shall be in lieu of any refund that may otherwise result from the amendments made by sections one hundred ten and one hundred twelve of this act.

§ 118. The sum of twenty-five thousand dollars ($25,000), or so much thereof as may be necessary, is hereby appropriated to the New York state racing and wagering board from any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated for services and expenses of the board for the purposes of carrying out the provisions of sections one hundred ten through one hundred seventeen of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved by the chairman of the New York state racing and wagering board, or his duly designated representative in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

§ 119. Section eleven hundred fifteen of the tax law is amended by adding a new subdivision (m) to read as follows:

(m) (1) The services of training and maintaining a racehorse to race in a race or race meeting held, maintained or conducted pursuant to the

1 racing, pari-mutuel wagering and breeding law or a similar law of
2 another state, when the services are rendered by a trainer to the owner
3 of the horse;
4 (2) Tangible personal property actually transferred by a trainer to
5 the owner of the racehorse in conjunction with the rendering of a ser-
6 vice that is exempt under paragraph one of this subdivision. However,
7 the sale of any such tangible personal property or services taxable un-
8 der this article to a trainer shall not be deemed a sale for resale
9 within the meaning of paragraph four of subdivision (b) of section
10 eleven hundred one and shall not be exempt from retail sales or compen-
11 sating use tax;
12 (3) For purposes of this subdivision, a trainer means a horse trainer
13 licensed under the racing, pari-mutuel wagering and breeding law or a
14 similar law of another state, and a racehorse means a horse registered
15 with the jockey club, the United States trotting association, American
16 quarterhorse association or the National steeplechase and hunt associa-
17 tion or a horse, during the first twenty-four months of its life, if it
18 is eligible to be so registered.
19 § 120. Severability. If any clause, sentence, paragraph, section or
20 part of this act shall be adjudged by any court of competent jurisdic-
21 tion to be invalid, the judgment shall not affect, impair or invalidate
22 the remainder thereof, but shall be confined in its operation to the
23 clause, sentence, paragraph, section or part of this act directly in-
24 volved in the controversy in which the judgment shall have been
25 rendered.
26 § 121. This act shall take effect immediately provided, however, that:
27 (a) The Accelerated Capacity and Transportation Improvements of the
28 Nineties Bond Act, enacted and constituted by section fifty of this act,
29 shall not take effect unless and until it shall have been submitted to
30 the people at the general election to be held in November, nineteen hun-
31 dred eighty-eight and shall have received a majority of all the votes
32 cast for and against it at such election. Upon approval by the people
33 such act shall take effect immediately.
34 (b) The ballots to be furnished for the use of the voters under the
35 submission of the Accelerated Capacity and Transportation Improvements
36 of the Nineties Bond Act shall be in the form prescribed by the election
37 law and the proposition or question to be submitted shall be printed
38 thereon in substantially the following form, to wit, "To assure the con-
39 tinued construction, reconstruction, capacity improvement, replacement,
40 reconditioning and preservation of the state's highways and bridges and
41 of municipal bridges for the benefit of the inhabitants of the state,
42 shall section fifty of chapter (here insert the chapter number) of the
43 laws of nineteen hundred eighty-eight, enacting and constituting the
44 'ACCELERATED CAPACITY AND TRANSPORTATION IMPROVEMENTS OF THE NINETIES
45 BOND ACT' (name of act to be in bold upper case legend so as to be prom-
46 inently set out on the ballot) authorizing the creation of a state debt
47 in the amount of three billion dollars ($3,000,000,000) be approved?".
48 (c) Sections fifty-one, fifty-two, fifty-four and sixty of this act
49 shall take effect only in the event that the Accelerated Capacity and
50 Transportation Improvements of the Nineties Bond Act, enacted and con-
51 stituted by section fifty of this act, is approved by the people at the
52 general election held in November, nineteen hundred eighty-eight. Upon
53 such approval, said sections fifty-one, fifty-two, fifty-four and sixty
54 shall take effect immediately.
55 (d) The provisions of section two of this act shall take effect on
56 January first, nineteen hundred eighty-nine.