

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

11 June 1990

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

Re: S. 8460/A. 11693

Dear Mr. Collins:

This is in response to your letter of May 15, 1990 and will confirm my oral advice to Terry Boyle concerning the amendments affecting Section 1107 of the Tax Law (the "Section 1107 Tax") contained in Senate Bill 8460 and Assembly Bill 11693, which is the State of New York's budget bill for its fiscal year beginning April 1, 1990 (the "Budget Bill").

In your letter, you have cited various provisions of the Budget Bill which would have the effect of broadening the base of the Section 1107 Tax and/or accelerating payments thereunder, including the imposition of a sales tax on furnishing entertainment services via 800 or 900 numbers and a provision which would broaden the scope of taxable motor vehicle lease transactions and accelerate the payment of those sales taxes. In addition, you have described in your letter numerous services, currently subjected to a New York City (the "City") sales tax under Section 1212-A of the Tax Law, which would become subject to the Section 1107 Tax under the Budget Bill were the City to fail to continue the imposition of its own sales tax pursuant to Section 1212-A.

Taking into account all current additions to the Section 1107 tax base and acceleration of payments of Section 1107 Taxes, you estimate that the annual increase in Section 1107 Tax revenues resulting from these Budget Bill amendments would be approximately \$20 million.

Importantly, you cite only one provision of the Budget Bill which is expected to result in a diminution of the Section 1107 Tax base. Currently, as you state, providers of interior decorating, design, and protective and detective services who purchase tangible personal property for use in rendering these services must pay the Section 1107 Tax at

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the time of purchase and subsequently apply for a refund or credit. Under the new provision, purchases of tangible personal property for these uses would, in effect, be exempt from the Section 1107 Tax. You estimate the annual Section 1107 Tax revenue loss resulting from this proposal to be under \$1 million. The net effect of the Budget Bill on Section 1107 Tax revenues, therefore, is an estimated annual gain of \$19 million.

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, \$7.1 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 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 Tax exemption proposals.

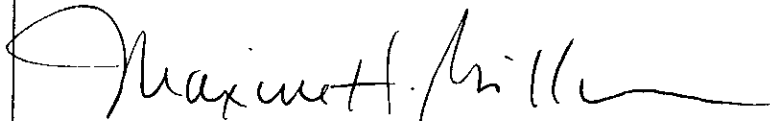
We have reviewed your summary of the Budget Bill as it affects the Section 1107 Tax and the portions of such bill which were enclosed with your letter, and have consulted with our outside counsel. Because the net effect of the Budget Bill on Section 1107 Tax revenues is estimated to be a \$19 million annual gain, we do not oppose its enactment. If, however, at some future point in time, the base of the Section 1107 Tax were proposed to be amended to rescind the boardening and/or accelerating provisions of the Budget Bill without also rescinding that portion of the Budget Bill which would diminish the base, we would ask for the opportunity to reexamine the issue of whether the resulting reduction in Section 1107 Tax revenues would pose concerns under the Corporation's general bond resolutions.

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For The City of New York*

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As always, we appreciate the opportunity to comment on legislation which would affect the Corporation's revenue streams and to have our views taken into account.

Sincerely,

A handwritten signature in cursive script, reading "Maxine H. Gillman". The signature is written in dark ink and includes a long horizontal flourish at the end.

Maxine H. Gillman  
Counsel

MHG:vrw:110