



# New York State Bar Association

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## TAX SECTION

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January 29, 2008

The Honorable Eliot Spitzer  
Governor  
State of New York  
State Capitol  
Albany, NY 12224

Re: New York Stock Transfer Tax

Dear Governor Spitzer:

This letter is prompted by recent changes to the procedures for purchasing New York State stock transfer tax stamps. These new procedures have led us to consider the scheduled July 1, 2008 retirement of Municipal Assistance Corporation for the City of New York ("MAC") bonds and to recommend that New York State take advantage of this upcoming opportunity to repeal the tax beginning July 1, 2008.

### Background

The stock transfer tax is currently imposed on sales, deliveries or transfers in New York of shares or certificates of stock and stock rights. The tax is calculated based on the number of shares transferred, at rates of up to 5 cents per share, with a maximum tax of \$350 for any single transaction.<sup>1</sup> It is one of the oldest taxes in New York State, having been enacted in 1905. It has been the subject of United States Supreme Court jurisprudence in *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318 (1977), where the Supreme Court held that

<sup>1</sup> Tax Law §§ 270 and 270-e.1.

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amendments to the law in 1968 that caused out-of-state sales to be taxed more heavily than most in-state sales unconstitutionally discriminated against interstate commerce. After the *Boston Stock Exchange* decision, the tax was effectively phased out and, since October 1981, all taxpayers are entitled to a 100% rebate of the tax paid, provided a rebate claim is made within two years of payment.<sup>2</sup> Consequently, the tax generates minimal, if any, revenue for New York State.

The stock transfer tax could not be completely repealed in 1981 because the stamp tax revenues were pledged to secure certain MAC bonds. As a result of actions taken to address the New York City fiscal crisis during the 1970s, the MAC was created in June 1975 to provide financial assistance to the City, principally through the issuance of bonds and notes. In order to provide a revenue stream to secure the MAC bonds, revenue from the stock transfer tax was pledged to MAC bondholders.<sup>3</sup> The stock transfer tax was retained so that the tax revenues “would remain available to the [MAC] for its debt service requirements in accordance with its bond resolutions and applicable law.”<sup>4</sup>

For taxpayers other than securities brokers and dealers the tax is paid by purchasing “tax stamps,” affixing them to the bill of sale or stock certificate surrendered, and then canceling the tax stamps so they cannot be used again.<sup>5</sup> The 100% rebate of tax paid through the purchase of stamps can be obtained by filing a claim for rebate with the New York State Department of Taxation and Finance (“Tax Department”). Securities brokers and dealers are permitted to make payment through a clearing corporation or other authorized agent without the use of tax stamps. We understand that the general practice for broker-dealers is to submit stock transfer tax reports to the Tax Department, but not actually charge and remit the stamp tax, since these firms are entitled to a 100% rebate without having to actually file rebate claims.

Until recently, taxpayers other than broker-dealers were able to purchase tax stamps at J.P. Morgan Chase Bank (formerly Bank of New York) branches located in Manhattan. This long-standing arrangement enabled taxpayers or their representatives in the New York City area to purchase tax stamps in person and to affix and cancel the stamps on the same day the stamps were purchased. Effective August 1, 2007, tax stamps are no longer sold at bank branches in Manhattan, and can only be purchased directly from the Tax Department’s Treasury Division in Albany. Although the Tax Department will send the purchased tax stamps by overnight delivery if a courier billing number is provided, even this expedited procedure results in a minimum 2-3 day delay for taxpayers to purchase and receive tax stamps and adds to the cost of compliance.

### **Stock Transfer Tax Repeal**

The new procedures for purchasing tax stamps have led us to consider whether the stock transfer tax itself serves a continuing purpose. As noted above, the tax raises negligible

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<sup>2</sup> Tax Law § 280-a.

<sup>3</sup> State Fin. Law § 92-b.3.

<sup>4</sup> Budget Report for Bill No. 5-6671, ¶ 1.

<sup>5</sup> 20 N.Y.C.R.R. § 52.1.

revenue since it is fully refundable, but it results in administrative costs to the Tax Department and compliance and record keeping costs to taxpayers.<sup>6</sup>

Under the terms of the Municipal Assistance Corporation Refinancing Act,<sup>7</sup> all MAC bonds have now either been satisfied or, if not satisfied, have been economically defeased.<sup>8</sup> Any remaining defeased but outstanding MAC bonds will be fully retired no later than July 1, 2008. As of that date, the stock transfer tax revenues will no longer be needed to secure the MAC bonds.

Since the MAC bonds are scheduled to retire and the stock transfer tax is already fully refundable, there would appear to be no further need to retain the tax beginning July 1, 2008. The stock transfer tax imposes an unnecessary compliance and record keeping burden on taxpayers and their representatives, and an administrative burden on the Tax Department. In addition to eliminating the compliance burdens on securities brokers and dealers, repealing the tax would relieve taxpayers and their representatives of the needless and cumbersome process of purchasing tax stamps and then filing applications for rebate, which is nothing more than a trap for the unwary. Repeal of the tax might also have a positive effect on the New York State and City economies by removing any potential disincentive to carry out stock transfers in New York. Furthermore, retaining the stock transfer tax after July 1, 2008 would burden the New York State and City financial and legal sectors by retaining needless and costly procedures that do not apply to stock transactions conducted outside New York State.

For these reasons, we strongly recommend that the stock transfer tax be repealed effective July 1, 2008. This could be made part of the Governor's final budget bill for the upcoming fiscal year beginning April 1, 2008, which would facilitate a smooth transition period leading up to the repeal date.

Pending repeal of the stock transfer tax, we also urge the Tax Department to restore the New York City retail option for purchasing tax stamps as it has done for many years. If tax stamps cannot be sold through a retail bank branch, alternatively we propose that tax stamps be made available for purchase at the Tax Department's offices at 1740 Broadway in Manhattan.

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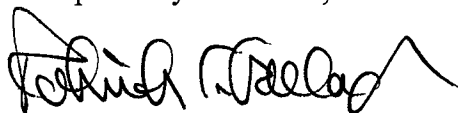
<sup>6</sup> Stock transfer tax "collections" for the most recent 12-month period ending June 30, 2007 exceeded \$14 billion. Annual Report 2007, Municipal Assistance Corporation for the City of New York, p.1. Presumably the vast majority of those collections was from securities brokers and dealers and was immediately rebated by the Tax Department. The relatively small amount of transfer tax received through tax stamps, which we understand was less than \$1 million for the 12-month period ending March 31, 2007, would also have been fully refundable through the Department's rebate procedure.

<sup>7</sup> L. 2003, ch. 63, part V.

<sup>8</sup> The Sales Tax Asset Receivable Corporation ("STARC"), a local development corporation created by the City of New York, issued 30 year bonds to allow the repayment of the MAC bonds.

We appreciate your consideration of our comments and recommendations. Please let us know if we can assist you in any other way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick C. Gallagher", with a stylized flourish at the end.

Patrick C. Gallagher  
Chair

cc:

Hon. Robert L. Megna, Commissioner  
Department of Taxation and Finance



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January 29, 2008

The Honorable Joseph L. Bruno  
New York State Senate Majority Leader  
909 Legislative Office Building  
Albany, NY 12247

The Honorable Sheldon Silver  
New York State Assembly Majority Leader  
932 Legislative Office Building  
Albany, NY 12248

Re: New York Stock Transfer Tax

Dear Messrs. Bruno and Silver:

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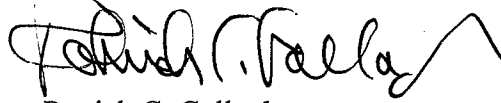
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