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November 4, 2008

The Honorable David Paterson
Governor
State of New York
State Capitol
Albany, NY 12224

Re: New York Stock Transfer Tax

Dear Governor Paterson:

We are writing to strongly recommend that the New York State stock transfer tax be repealed. As discussed below, with the retirement of all Municipal Assistance Corporation ("MAC") bonds as of July 1, 2008, there is no longer a reason to retain the tax.¹

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.² 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 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

¹ On January 29, 2008, the Tax Section sent a letter to former Governor Eliot Spitzer also urging repeal of the stock transfer upon the retirement of all MAC bonds. That letter, which was substantively identical to this one, was endorsed by the Executive Committee of the New York State Bar Association.

² Tax Law §§ 270 and 270-e.1.

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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.³ 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The stock transfer tax could not be completely repealed in 1981 because the stamp tax revenues were pledged to secure certain MAC bonds.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.⁴ 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.”⁵

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.⁶ 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.

Under the terms of the Municipal Assistance Corporation Refinancing Act,⁷ all MAC bonds were retired as of July 1, 2008. As of that date, the stock transfer tax revenues were no longer needed to secure MAC bonds. It is clear that the stock transfer tax raises negligible revenue since it is fully refundable, but results in administrative costs to the Tax Department and compliance and record keeping costs to taxpayers.⁸

Since the MAC bonds have been retired and the stock transfer tax is already fully refundable, there would appear to be no further need to retain the tax. The stock transfer tax imposes an unnecessary compliance and record keeping burden on taxpayers and their

³ Tax Law § 280-a.

⁴ State Fin. Law § 92-b.3.

⁵ Budget Report for Bill No. 5-6671, ¶ 1.

⁶ 20 N.Y.C.R.R. § 52.1.

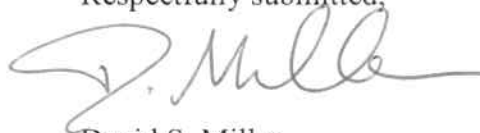
⁷ L. 2003, ch. 63, part V.

⁸ Stock transfer tax “collections” for the 12-month period ending March 31, 2008 exceeded \$16 billion. Quarterly Report for the Quarter Ending March 31, 2008, Municipal Assistance Corporation for the City of New York, p. 9. It is very likely, however, that the vast majority of those “collections” were from securities brokers and dealers and were not actually charged and remitted to the Department. We have been informed by Department officials that during this 12-month period, 71,972 in stock transfer tax stamps were purchased, generating only \$663,535 in tax. Even this relatively small amount of tax received would also have been fully (or nearly fully) refunded through the Department’s rebate procedure. Although we are unable to confirm the amount of stock transfer tax revenues actually retained by the Department during that period, we believe it was negligible.

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.

For these reasons, we strongly recommend that the stock transfer tax be repealed as soon as possible, and suggest that it be repealed as part of the Governor's budget bill for the upcoming fiscal year beginning April 1, 2009.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'D. Miller', written in a cursive style.

David S. Miller

cc:

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

Daniel Smirlock, Deputy Commissioner
Department of Taxation and Finance