CHAPTER 166

LAWS OF 19 91 MEMORANDUM NO.

SENATE BILL ASSEMBLY BILL 8491

S. 6079 A. 8491

1991-1992 Regular Sessions

SENATE - ASSEMBLY

DATE RECEIVED BY GOVERNOR:

6/5

ACTION MUST BE TAKEN BY:

6/17

DATE GOVERNOR'S ACTION TAKEN:

JUN 12 1991

C0000

SENATE VOTE 37 Y 22 N

DATE 6/3/91

ASSEMBLY VOTE 79 Y 71 N

DATE 6/3/91

HOME RULE MESSAGE ___ Y ✓ N

BILL IS DISAPPROVED

DATE ____________

COUNSEL TO THE GOVERNOR

NEW YORK STATE ASSEMBLY
TWO HUNDRED FOURTEENTH SESSION

REPRINT
DATE: 06/03/91

DATE: 06/03/1991
TIME: 07:34:55 PM

BILL: A8491 R.R. NO: 70 SPONSOR: RULES

Enacts Omnibus Revenue Act of 1991; repealers

MESSAGE OF NECESSITY

NAY	Abbate PJ	Y	Genovesi AJ	NAY	O'Neil JG
NAY	Anderson RR	Y	Glick DJ	NAY	Ortloff C
NAY	Balboni MA	Y	Gottfried RN	NAY	O'Shea CJ
Y	Barbaro FJ	Y	Graber VJ	NAY	Parment WL
NAY	Burnett HW	Y	Grannis A	NAY	Parola FE
NAY	Barraga TF	Y	Green RL	NAY	Pataki GE
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Y	Catapano TF	Y	Jenkins C	NAY	Schmidt FD
NAY	Christensen JK	NAY	John SV	Y	Seabrook L
Y	Clark BM	Y	Kaufman SB	Y	Seminerio AS
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Y	Friedman G	Y	Nolan CT	Y	Young GP
NAY	Frisa D	Y	Norman C	Y	Zaleski TM
NAY	Gaffney RJ	NAY	Nortz HR	Y	Zimmer MN
Y	Gantt DF	NAY	Nozzolio MF	Y	Mr. Speaker

YEAS: 79 NAYS: 71

CONTROL: 55331075 CERTIFICATION: /S/ FRANCINE M. MISASI
CLERK OF THE ASSEMBLY

LEGEND: Y=YES, NAY=NO, NV=ABSTAIN, ABS=ABSENT,
ELB=EXCUSED FOR LEGISLATIVE BUSINESS, EOR=EXCUSED FOR OTHER REASONS.

C00002

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Corrections
A 8491
S 6079

P 17 L 55
P 23 L 14
P 26 L 1
P 28 L 46
P 56 L 1
P 66 L 35
P 73 L 4
P 82 L 36
P 140 L 3, 4
P 147 L 18
P 167 L 41
P 170 L 29
P 172 L 55
P 173 L 20
P 174 L 7
P 180 L 9
P 182 L 7
P 183 L 31
P 191 L 38

1991

ASSEMBLY

The Assembly Bill by Assem. RULES Calendar No. 1125 Assembly No. 8491 Sen. Rept. No. ____

Entitled: "AN ACT to amend the tax law, in relation to deduction or credit by a shareholder under the article 22 income tax for tax imposed under article 9-A of the tax law, or by another state or political subdivision thereof, on the income of an S corporation, and the administrative code of the city of New York, in relation [illegible] from a change in actuarial funding [illegible] authorities [illegible] authorization of the New York state housing finance agency [illegible] and providing for the repeal of such [illegible] provisions relating thereto and [illegible] assessments; and to amend the insurance law, in relation to determination and transfer of surplus surplus moneys of the medical malpractice insurance association; to amend the tax law, in relation to the imposition of a privilege tax on the importation of gas services for consumption and imposing a temporary metropolitan transportation tax surcharge on gas importers; to amend the labor law and the executive law, in relation to the consolidation of the state labor relations board and [illegible] board into a state employment relations board and to repeal certain provisions of the labor law relating thereto; to amend the real property tax law, the state finance law and the real property law, in relation to fees to be charged on behalf of the state division of equalization and assessment and the imposition of a fee for recording real property transactions; and to amend the state finance law, in relation to prompt contracting and reimbursement of loan costs for not-for-profit organizations and creating a not-for-profit short term revolving fund

... WAS HAD THEREON

The Presiden[t] ... ill, and the facts which necessitate an im... ing upon the desks of the members in f... elected voting in favor thereof and three...

AYE	Dist.				Dist.		NAY
	17	Mr. Babbush	EXCUSED		46	Mr. McHugh	
	43	Mr. Bruno			23	Mr. Mega	
	25	Mr. Connor			30	Mrs. Mendez	
	40	Mr. Cook			22	Ms. Montgomery	
	61	Mr. Daly			42	Mr. Nolan	
	44	Mr. Farley			27	Mr. Ohrenstein	
	31	Mr. Galiber			14	Mr. Onorato	
	13	Mr. Gold			36	Mrs. Oppenheimer	
	32	Mr. González			11	Mr. Padavan	
	37	Mrs. Goodhue			29	Mr. Paterson	EXCUSED
	26	Mr. Goodman			54	Mr. Perry	
	18	Mr. Halperin			56	Mr. Present	
	6	Mr. Hannon			55	Mr. Quattrociocchi	
	48	Ms. Hoffmann			41	Mr. Saland	
	38	Mr. Holland			47	Mr. Sears	
	4	Mr. Johnson			50	Mr. Seward	
	53	Mr. Kehoe			60	Mr. Sheffer	
	33	Mr. Korman			9	Mr. Skelos	
	52	Mr. Kuhl			20	Miss Smith	
	2	Mr. Lack			19	Mr. Solomon	
	39	Mr. Larkin			35	Mr. Spano	
	1	Mr. LaValle			57	Mr. Stachowski	
	28	Mr. Leichter			45	Mr. Stafford	
	8	Mr. Levy			12	Mr. Stavisky	
	51	Mr. Libous			3	Mr. Trunzo	
	49	Mr. Lombardi			7	Mr. Tully	
	15	Mr. Maltese			34	Mr. Velella	
	24	Mr. Marchi			59	Mr. Volker	
	5	Mr. Marino			10	Mr. Waldon	
	21	Mr. Markowitz			16	Mr. Weinstein	
	58	Mr. Masiello					

AYES 37
NAYS 22

Ordered, that the Secretary return said bill to the Assembly with a message that the Senate has concurred in the passage of the same.

1991

ASSEMBLY

The Assembly Bill by Assem. RULES Calendar No. 1125 Assembly No. 8491 Sen. Rept. No. ______
Entitled: "

AN ACT to amend the tax law, in relation to deduction or credit by a under chapter 17 of title 11 thereof; to amend the tax law, in relation to disposition of lottery sales revenues and unclaimed prize money; and to amend the tax law, in relation to the taxability of certain under article 28 of such law and pursuant to the authority of article 29 thereof; to amend the tax law, in relation to the taxability of certain shipping and delivery charges, under article 28 of such law and pursuant to the authority of article 29 thereof; to amend the tax law, in relation to the requirement of a tentative payment of estate tax and requiring an estimated payment of gift tax; to amend the public authorities law, in relation to savings

E WAS HAD THEREON

No. 1 (THREE DAY MESSAGE OF GOVERNOR)

The President put the question whether the Senate would agree to final passage of said bill, and the facts which necessitate an immediate vote thereon having been certified by the Governor, the same being upon the desks of the members in final form, it was decided in the affirmative, a majority of all the members elected voting in favor thereof and three-fifths being present as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	17	Mr. Babbush	EXCUSED	—	46	Mr. McHugh	
—	43	Mr. Bruno		—	23	Mr. Mega	
	25	Mr. Connor	—	—	30	Mrs. Mendez	
—	40	Mr. Cook			22	Ms. Montgomery	—
—	61	Mr. Daly			42	Mr. Nolan	—
—	44	Mr. Farley		—	27	Mr. Ohrenstein	
—	31	Mr. Galiber			14	Mr. Onorato	—
—	13	Mr. Gold			36	Mrs. Oppenheimer	—
—	32	Mr. González		—	11	Mr. Padavan	
—	37	Mrs. Goodhue			29	Mr. Paterson	EXCUSED
—	26	Mr. Goodman			54	Mr. Perry	—
—	18	Mr. Halperin		—	56	Mr. Present	
—	6	Mr. Hannon			55	Mr. Quattrociocchi	—
	48	Ms. Hoffmann	—	—	41	Mr. Saland	
	38	Mr. Holland	—		47	Mr. Sears	—
—	4	Mr. Johnson		—	50	Mr. Seward	
	53	Mr. Kehoe	—	—	60	Mr. Sheffer	
	33	Mr. Korman	—	—	9	Mr. Skelos	
	52	Mr. Kuhl	—		20	Miss Smith	—
—	2	Mr. Lack			19	Mr. Solomon	—
—	39	Mr. Larkin		—	35	Mr. Spano	
—	1	Mr. LaValle			57	Mr. Stachowski	—
	28	Mr. Leichter	—	—	45	Mr. Stafford	
—	8	Mr. Levy			12	Mr. Stavisky	—
—	51	Mr. Libous		—	3	Mr. Trunzo	
—	49	Mr. Lombardi			7	Mr. Tully	
—	15	Mr Maltese		—	34	Mr. Velella	
—	24	Mr. Marchi		—	59	Mr. Volker	
—	5	Mr. Marino			10	Mr. Waldon	—
	21	Mr. Markowitz	—		16	Mr. Weinstein	—
	58	Mr. Masiello	—				

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AN ACT to amend the tax law, in relation to deduction or credit by a shareholder under the article 22 income tax for tax imposed under article 9-A of the tax law, or by another state or political subdivision thereof, on the income of an S corporation, and the administrative code of the city of New York, in relati... a change in actuarial funding the tax law, in ... authorities from ... New York state housing finance agency ... authorization of the ... realized by public ... providing for the repeal of such ... relating thereto and ... in relation to determina- assessments; and to amend the insurance law, in relation to determination and transfer of surplus surplus moneys of the medical malpractice insurance association; to amend the tax law, in relation to the imposition of a privilege tax on the importation of gas services for consumption and imposing a temporary metropolitan transportation tax surcharge on gas importers; to amend the labor law and the executive law, in relation to the consolidation of the state labor relations board and ... board into a state employment relations board and to repeal certain provisions of the labor law relating thereto; to amend the real property tax law, the state finance law and the real property law, in relation to fees to be charged on behalf of the state division of equalization and assessment and the imposition of a fee for recording real property transactions; and to amend the state finance law, in relation to prompt contracting and reimbursement of loan costs for not-for-profit organizations and creating a not-for-profit short term revolving fund

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	61	Mr. Daly			42	Mr. Nolan	
	44	Mr. Farley			27	Mr. Ohrenstein	
	31	Mr. Galiber			14	Mr. Onorato	
	13	Mr. Gold			36	Mrs. Oppenheimer	
	32	Mr. González			11	Mr. Padavan	
	37	Mrs. Goodhue			29	Mr. Paterson	EXCUSED
	26	Mr. Goodman			54	Mr. Perry	
	18	Mr. Halperin			56	Mr. Present	
	6	Mr. Hannon			55	Mr. Quattrociocchi	
	48	Ms. Hoffmann			41	Mr. Saland	
	38	Mr. Holland			47	Mr. Sears	
	4	Mr. Johnson			50	Mr. Seward	
	53	Mr. Kehoe			60	Mr. Sheffer	
	33	Mr. Korman			9	Mr. Skelos	
	52	Mr. Kuhl			20	Miss Smith	
	2	Mr. Lack			19	Mr. Solomon	
	39	Mr. Larkin			35	Mr. Spano	
	1	Mr. LaValle			57	Mr. Stachowski	
	28	Mr. Leichter			45	Mr. Stafford	
	8	Mr. Levy			12	Mr. Stavisky	
	51	Mr. Libous			3	Mr. Trunzo	
	49	Mr. Lombardi			7	Mr. Tully	
	15	Mr. Maltese			34	Mr. Velella	
	24	Mr. Marchi			59	Mr. Volker	
	5	Mr. Marino			10	Mr. Waldon	
	21	Mr. Markowitz			16	Mr. Weinstein	
	58	Mr. Masiello					

AYES 37
NAYS 22

Ordered, that the Secretary return said bill to the Assembly with a message that the Senate has concurred in the passage of the same.

Moore   S. 8491

Oppose

Legislative Memorandum

New York Chamber of Commerce

90 South Swan Street
Albany, N.Y. 12210-2103
Tel. 518 463-4319
Fax: 518 463-8657

One Battery Park Plaza
New York, NY 10004-1405
Tel: 212 493-7500
Fax: 212 344-3344

PETROLEUM BUSINESS TAX

We understand that an increase in the Petroleum Business Tax is under consideration to help balance the State's budget. We urge in the strongest possible terms that the State exempt utility companies from this tax increase.

Without an exemption, such a tax would place a heavy burden on those utilities that are most dependent on petroleum products to generate electricity including those in the entire downstate region. Energy costs in New York City, for example, are already the highest in the nation. A substantial part of these high costs are state and local taxes that are passed through to the customer. These energy taxes too are the highest in the nation: 23.5 cents out of every dollar paid by Consolidated Edison customers. The State's proposed Petroleum Business Tax would add significantly to high energy costs in New York City at the very moment that the City's administration also is considering imposing substantial property tax increases of its own on utilities. The problem of high energy costs is not limited to New York City, however. Other regions in the State are confronting similar problems.

The cost of energy is a major factor in determining the cost of doing business especially for certain key industries like manufacturing, financial services, and printing. Raising these costs by indirect taxation would only accelerate the movement of these key industries out of the region. The State has already suffered an exodus of many manufacturing companies and their attendant jobs, and the ease with which financial service companies can move their back office operations elsewhere puts that industry in jeopardy as well.

This kind of a tax would undermine the economy of the State and prove more costly in the long-run in terms of jobs and revenues than can be justified by any short-term budgetary gain.

We strongly urge you to exempt utilities, and therefore their residential and business customers, from this indirect tax increase.

Dated: May 22, 1991

Respectfully submitted,

Paul Moore

Moore 307c   A 8491

Oppose Legislative Memorandum

New York City Partnership

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Dated: May 22, 1991

Respectfully submitted,

James P. Dafford

000012

Memo A-3149

Oppose Legislative Memorandum

New York City Partnership

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Fax: 212 344-3344

GROSS RECEIPTS TAX ON BUSINESSES

We understand that a Gross Receipts Tax on business is being considered to help balance the State's budget. We strongly urge the State to refrain from imposing such a tax.

Taxing the gross receipts of businesses is unfair and is unsound tax policy.

It is unfair because it takes no account of a taxpayer's ability to pay. It falls heavily on those companies whose profits are low and especially on those that are operating at a loss. It can be devastating during an economic slowdown when many companies are struggling just to meet their payrolls. Even in the best of times, however, a gross receipts tax falls disproportionately on those businesses that operate with low profit margins.

A gross receipts tax is unsound tax policy because it sends exactly the wrong message to those businesses that are considering whether to locate or expand in the state, or, for that matter, that are considering leaving. The effect of imposing the tax is likely to be counterproductive. Corporations in New York City, for example, already pay two corporation taxes (state and city) and two temporary corporate tax surcharges (both state). Imposing a gross receipts tax on top of this already substantial burden during a recession would only accelerate the pattern of lay-offs and move-outs that is already evident. This may do permanent harm to the state's ability to recover its economic vitality.

Dated: May 21, 1991

Respectfully submitted,

James P. Gifford

000014

Moore A 3449

Oppose Legislative Memorandum

New York Chamber of Commerce

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Dated: May 21, 1991

Respectfully submitted,

Paul Moggett

C00014

C-166

B-201

TEN-DAY BILL
BUDGET REPORT ON BILLS

Session Year: 1991

SENATE | Introduced by: | ASSEMBLY

No. 6079 | Committee on Rules | No. 8491

Law: Numerous -- see attachments Sections: Numerous -- see attachments

Division of the Budget recommendation on the above bill:

Approve: X **Veto:** ____ **No objection:** ____ **No recommendation:** ____

1. Subject and purpose: To provide revenues to support State government operations during the 1991-92 fiscal year; to make a variety of programmatic and fiscal changes to other State laws to reduce or modify spending requirements; and to enact provisions governing contracting with nonprofit organizations.

2. - 7. See Attachments A and B for descriptions of provisions, significant issues and more detailed fiscal impact analysis.

8. Budget implications: The revenue and financing provisions of the bill are estimated to provide some $1.775 billion in support of spending during the State's 1991-92 fiscal year. In addition, some relatively modest amounts of disbursement savings will also be realized as a result of the legislation.

9. Recommendation: As described in the attachment, there are several troublesome provisions of this legislation. The provisions affecting contracting with not-for-profit service providers, in particular, would warrant a veto were they passed by the Legislature as a separate measure. Despite these concerns, however, and considering the State's overall fiscal needs at this time, the Division of the Budget recommends that the bill be approved.

Date: June 12, 1991 Examiner: [signature]

Disposition: Ch. No. Veto No.

C00025

ATTACHMENT A:
SELECTED PROVISIONS OF SENATE 6079 - ASSEMBLY 8491

Senate 6079 - Assembly 8491

Bill Sections: 1-6

Laws: Tax

1. Summary of provisions: The provisions of bill sections one through six:

   (1) clarify the application of the resident credit under Article 22 of the Tax Law for taxes paid to other states by S-corporations. Under the bill, taxes paid by the entity are not creditable against the Article 22 taxes of the shareholder;

   (2) deny a deduction under Article 22 for taxes paid by S-corporations under Article 9-A of the Tax Law;

   These sections are identical to the Budget proposal contained in S.2941/A.4441, except that the effective date for the credit provisions is for taxable years beginning in 1991 and thereafter, rather than taxable years beginning in 1990 and thereafter as originally proposed.

2. Significant issues: None.

3. Fiscal impact: The change in effective date reduces the value of these provisions to the 1991-92 Financial Plan from $19 million to $9 million.

Senate 6079 - Assembly 8491

Bill Sections: 7-16-d

Laws: Tax, Public Service

1. Summary of provisions: Sections 7 through 16-b of the bill, effective July, 1, 1991, amend Tax Law section 186-a(4) and 188(1) and various provisions of Article 13-A of the Tax Law to:

(a) Increase the rate of the privilege tax based upon nonresidential petroleum products and airplane fuel (including kerojet fuel) by 4.5 cents per gallon -- use in farming production is exempted. The temporary 15 percent business tax surcharge now in effect causes this to become a 5.18-cent rate increase. Effective rates of the tax after credits prior to these changes ranged from 1.22 cents for electric-generating residual fuel to 7.59 for automotive fuels. Under these changes, they will range from 6.4 to 12.77 cents. All receipts from the added rate would go to the General Fund in fiscal year 1991-92; thereafter, the Mass Transportation Operating Assistance Fund would receive 27.3 percent of the nonsurcharge revenues and, in 1992-93 only, an additional $28 million;

(b) Extend the base of the tax to nonresidential natural gas at the rate of 44.5 cents per Mcf. With the 15% surcharge, this rate becomes 51.18 cents per Mcf. Exempted would be: (i) natural gas produced for self use where the producer does not offer natural gas for sale in the regular course of business, and (ii) natural gas used by a cogenerator to produce steam or electricity for a thermal host;

(c) Provide a full credit to effectively exempt natural gas used to generate residential electricity, and restrict use of the existing 13-A credit for fuel used by a utility in generating electricity to that used to generate residential electricity;

(d) Eliminate the preferential tax rate applicable with respect to kerojet fuel, increasing the rate of tax to from 2.3 cents 7.59 cents per gallon -- the rate applicable to automotive fuels and aviation gasoline;

(e) Revise the method by which utilities claim their credits by exempting their purchases of fuel and providing for their conversion to direct pay permittees (paying the tax directly) under Article 13-A. These provisions were included in a 1991-92 Executive Budget proposal;

C00015

(f) Correct for an unintended reduction in the 15 percent surcharge on utilities caused by the taking of 13-A credits against Article 9 tax. The bill eliminates that effect and require utilities to pay a 15 percent tax measured by credits taken against Article 9 tax for taxable years ending in 1990. These provisions were included in the 1991-92 Executive Budget proposal; and

(g) Tax carriers on fuel imported into the State in their fuel tanks, to minimize the incentive to avoid the 13-A tax through out-of-State purchases. This provision was included in the 1991-92 Executive Budget proposal.

2. Significant issues:

There are numerous problems with the drafting of the above-noted provisions added to the Budget proposal. These have been described in correspondence from State tax counsel; they range from unintended taxation to duplicate credits. These drafting flaws are serious and require corrective legislation.

In addition, the effective date of the provisions, July 1, 1991, has made it impractical to impose a floor tax on inventory in the State on the date of the rate changes or to accomplish a full and orderly implementation of the provisions in time for the effective date. As a consequence, these provisions cannot be expected to result in a full yield in this, the initial year, of their effect.

3. Fiscal impact:

It is anticipated that these provisions will yield additional General Fund receipts estimated at $524 million in fiscal year 1991-92, and added Mass Transportation Operating Assistance Fund receipts of $9 million that year.

Senate 6079 - Assembly 8491

Bill Sections: 17-21

Laws: Tax

1. Summary of provisions: Sections 17 through 21 of the bill amend sections 1101(b), 11105(b), 1110, 1131(4) and 1210(b)(1) of the Tax Law to include telephone answering services in the base of State and local sales and use taxes.

2. Significant issues: None known.

3. Fiscal impact: Effective September 1, 1991, these provisions are projected to yield $2 million in increased State General Fund-Local Government Assistance Tax Fund receipts in fiscal year 1991-92. Local sales tax jurisdictions will experience comparable revenue gains.

Senate 6079 - Assembly 8491

Bill Sections: 22-37

Laws: Public Authorities

1. Summary of provisions: Sections 23-36 amend various provisions of the Public Authorities Law dealing with local water and sewer authorities to reaffirm long-standing State policy with respect to the treatment of interest on tax exempt bonds and to clarify that the exemption granted to the income from bonds issued by such authorities is from direct taxation only. The effective date of these sections is the original effective date of each of the authorizing statutes.

   Section 22 of the bill is statement of legislative intent setting out the Legislature's original and current position on the appropriate tax treatment of such interest.

   Section 37 of the bill provides that, should the enacted effective dates prove invalid, the effective date of the various sections shall be the effective date of this bill.

   Except for section 22, these provisions are identical to the Budget proposal contained in S. 2974/A.4474. Section 22 articulates the arguments for enactment of the legislation.

2. Significant issues: None

3. Fiscal impact: These provisions will preserve a significant amount of State tax revenue over the next several years.

Senate 6079 - Assembly 8491

Bill Sections: 38

Laws: Tax

1. Summary of provisions: This section amends section 210 of the Tax Law to continue the 5 percent rate applicable to alternative taxable income under Article 9-A of the Tax Law for the 1991 and 1992 tax years. Under existing law, the rate would have fallen to 4.5 percent in 1991 and 3.5 percent in 1992.

   The bill differs from the permanent 5 percent rate proposed in the Budget and contained in S.2961/A.4461.

2. Significant issues: None.

3. Fiscal impact: This provision will prevent a $10 million revenue loss in the State 1991-92 fiscal year.

Senate 6079 - Assembly 8491

Bill Sections: 39

Laws: Chapter 517, Laws of 1986

1. Summary of provisions: This section amends Chapter 517 of the Laws of 1986 to limit the amount of tax receipts paid by the Long Island Lighting Company that can be diverted to the support of the Long Island Power Authority to the lesser of $11 million or the amount appropriated therefore. Current law provides that as much as $11 million annually can be so diverted.

   This provision is identical to the Budget proposal contained in S.2917/A.4417.

2. Significant issues: None.

3. Fiscal impact: This change, coupled with the absence of an appropriation to the Authority, will prevent any diversion of tax receipts in 1991-92.

Senate 6079 - Assembly 8491

Bill Sections: 42-104

Laws: Tax

1. Summary of provisions: Sections 42 to 103 amend sections 184-a, 186-b, 186-c,197-a, 197-b, 209-b, 213-a, 213-b, 1455-b, 1460, 1461, 1505-a, 1513 and 1514 of the Tax Law to require estimated payments of the MTA surcharge under Articles 9, 9-A, 32 and 33.

   The provisions apply to taxable years beginning after 1990.

   Section 104 provides that no penalties or interest will be imposed on payments due prior to September 15, 1991 if they are paid by that date.

   The provisions applying the estimated payment requirements to the payment of the MTA surcharge are identical to those proposed in the Budget and contained in S.2990/A.4490. However, that bill also contained an extension of the surcharge by one year, thru taxable periods ending before December 31, 1993.

2. Significant issues: Failure to extend the surcharge as proposed in the Executive Budget will produce cash flow difficulties for the MTA early in the State's 1992-93 fiscal year unless action is taken by very early in 1992. Moreover, assuming the surcharge will be extended at some date, considerable administrative and compliance confusion will be created by the interaction of the estimated tax requirements and the, what has now become traditional, late extension of the surcharge.

3. Fiscal impact: These provisions make possible a $208 million General Fund spending savings in the State's 1991-92 fiscal year.

Senate 6079 - Assembly 8491

Bill Sections: 109-126-a

Laws: Tax Law; Administrative Code of City of New York; Codes and Ordinances of the City of Yonkers

1. Summary of provisions: These sections amend the Tax Law, the Administrative Code of the City of New York and the Codes and Ordinances of the City of Yonkers to:

   (1) Revise the withholding remittance standards for withholding of tax under the personal income taxes imposed pursuant to such statutes;

   (2) Adopt a combined withholding and wage reporting system for employers subject to such reporting requirements, including expanded magnetic media reporting requirements; and

   (3) revise the penalty structure that applies to such reports to both strengthen the applicable penalties while providing greater abatement discretion to the Commissioner.

   While the precise provisions have been substantially revised, the program to be adopted under the authority provided by these statutory changes is substantially similar to one proposed in the Budget and contained in S.2994/A.4494.

2. Significant issues: None.

3. Fiscal impact: The revised remittance schedules set out in the bill are expected to generate some $20 million in additional withholding receipts in the State's 1991-92 fiscal year.

Senate 6079 - Assembly 8491

Bill Sections: 127, 128

Law: Vehicle and Traffic

1. Summary c ions:

   Bill sectio 127 adds a new subdivision 20 to section 401 of the Vehicle and Traffic Law to impose a 15 percent surcharge on registration and reregistration fees for passenger-type motor vehicles, auto trucks, tractors, buses, taxicabs, livery, road rollers, historical vehicles, tow trucks, rental vehicles, trailers, etc.

   Bill section 128 amends section 410(5) of the Vehicle and Traffic Law to increase the annual registration fee for motorcycles from $10 to $11.50.

2. Significant issues:

   The limited time before the August 1, 1991 effective date for these provisions will not permit the Department of Motor Vehicles to change fee rates and test the fee rate changes on its computer system, using the procedures that will best ensure that no erroneous documents are sent to vehicle owners. The short time frame also has caused DMV to interrupt its regular registration process and redo some already-completed parts of that process for many registrations commencing on and after August 1, 1991.

3. Fiscal impact:

   These sections will increase motor vehicle registration fee receipts by an estimated $30 million in State fiscal year 1991-92.

Senate 6079 - Assembly 8491

Bill Sections: 135 through 138-f

Law: Tax; Insurance

1. Summary of provisions: Section 135 adds a new Article 15 to the Tax Law, relating to tax on transfer of certain auto insurance awards. Sections 136 through 138-b make accommodating and conforming amendments to Tax Law sections 171-a, 1132, 1134, 1135 and 1816(new). Under these provisions, generally effective September 1, 1991, sales tax includable in auto insurance awards will be remittable by insurance carriers directly to the State. Direct remittance will not be required when the claimant pays for repair or replacement before the award is received (in which case, the insurer reimburses the claimant), or in certain nonresident instances. Claimants would be provided with credit vouchers and stubs, which they will use in lieu of paying sales tax to the auto repair shops or auto dealers.

   Section 138-e calls for the Commissioner of Taxation and Finance, in consultation with the Superintendent of Insurance, to report by February 1, 1993, to executive and legislative heads on the effectiveness of the new article. A preliminary report is due February 1, 1992.

   Section 138-f calls for a Taxation and Finance study of means of improving sales tax compliance in various areas, with a preliminary report due February 1, 1992, and a final report due January 1, 1993.

2. Significant issues: The new scheme is fraught with vulnerabilities, to such an extent that little, if any, added revenue can be expected to result from it.

3. Fiscal impact: No fiscal gains are anticipated from these provisions.

Senate 6079 - Assembly 8491

Bill Sections: 139-145

Laws: Tax

1. Summary of provisions: These sections amend Article 22 of the Tax Law and have the effect of continuing the personal income tax rate and deduction structure in effect for the 1990 tax year through the 1991 tax year. The provisions that would have taken effect in 1991 have been eliminated from the statute. The provisions of existing law affecting taxes in 1992 and thereafter have been left substantially unchanged.

   While the effect on the 1991 tax year is identical to the impact of the Budget proposal contained in S. 2943/A.4443, the longer-term effects diverge sharply. The Executive Budget had proposed to make 1990 law permanent. These provisions of the bill allow the tax cut to resume in 1992.

2. Significant issues: Relative to baseline projections based on the Executive Budget, the law in effect for 1992 and thereafter under this bill will reduce State revenues by between $750 and $800 million in State fiscal year 1992-93.

3. Fiscal impact: These provisions prevent the loss of some $400 million tax receipts in the State's 1991-92 fiscal year.

Senate 6079 - Assembly 8491

Bill Sections: 146-149-b

Laws: Tax

1. Summary of provisions: Section 147 of the bill imposes a privilege tax on the importation into New York of natural gas by other than a public utility, on and after August 1, 1991. The tax is imposed at a rate of 3.75 percent of the cost of the gas. Gas used to produce steam and electricity at a co-generation facility for use of the "thermal energy host" associated with such facility is exempt from this tax.

   Imported gas delivered by a public utility is subject to a tentative tax computed as the product of the tax rate and the "wellhead price" per thousand feet of gas for the prior calendar year (as determined and published by the U.S. Department of Energy) times the volume of gas delivered. The utility is required to collect and bill the tax to the consumer. The consumer can file for a refund where the tentative tax so computed exceeds the actual tax liability. Where such gas is delivered by other than a public utility, the consumer is responsible for the tax directly.

   In the case of gas delivered by a public utility, the tax is computed monthly and is generally subject to the fiduciary provisions of the sales tax law. As regards payment, the tax is to be remitted quarterly on the same schedule as the normal payment of utility taxes under section 197-b of the tax law.

   In cases where no such utility is involved, the tax is due quarterly, following the quarterly pattern for the sales and use tax.

   The provisions of Article 27 generally apply to the new tax. Taxpayers are also subject to a 15 percent Statewide surcharge for the balance of 1991, and 10 percent surcharge for 1992 (bill section 148 - law section 189-b), and to the metropolitan commuter transportation tax surcharge (bill section 148 - law section 189-a).

   The MTA surcharge expires for taxable months ending after December 31, 1991.

   Section 149 of the bill provides a severability clause for the new tax and sets forth legislative intent with respect to equalizing the tax burden between consumers who purchase gas from a public utility versus those, affected by the new tax, who import directly.

Section 149-a of the bill directs the Public Service Commission to reflect the tax in prices paid to co-generation facilities or "qualifying facilities" for electricity purchased from them by public utilities and provides that such added costs can be passed on through the fuel adjustment clause to the nonresidential customers of such utilities.

2. <u>Significant issues</u>: The statute as drafted is incomplete. It provides no mechanism for determining the applicable tax in a case where a consumer imports gas extracted from his own wells (i.e., where there is no sale). Nor does it impose a tax on consumption of gas produced within the State.

3. <u>Budget implications</u>: In view of the shortcomings in the tax noted above, the exemption for gas used by co-generation facilities and the use of wellhead price as a measure of tax, the tax as drafted is unlikely to generate any material revenues during 1991-92. The Legislature has indicated an expectation that some $10 million would be forthcoming.

Senate 6079 - Assembly 8491

Bill Sections: 150 through 153

Law: Tax

1. Summary of provisions:

   Bill section 150 amends section 1612 of the Tax Law to increase from 50 percent to 55 percent the percentage of instant scratch-off ticket sales dedicated to prizes. This section also increases from 40 percent to 50 percent the percent of Pick 10 game sales to be dedicated to prizes. This section also clarifies that 40 percent remains the prize percentage limit in the Lotto and Cash 40 games.

   Bill section 151 amends section 1614 of the Tax Law to authorize that unclaimed prize money be retained in the Lottery Prize Account to fund special prizes in future lottery games.

   Bill section 152 prohibits the Lottery Division from conducting instant or scratch-off games where the amount paid in prizes, in the aggregate, exceeds 55 percent of the amount for which tickets have been sold.

   Bill section 153 requires the Lottery Division to submit, to the Budget Director, the Chairman of the Assembly Ways and Means Committee, and the Chairman of the Senate Finance Committee, a plan and quarterly updates detailing use of unclaimed prize funds.

   These provisions take effect immediately upon enactment.

2. Significant issues:

   The prohibition of any higher prize payout for the instant game will restrict the lottery director's ability to experiment with improvements in the instant game in a relatively risk-free environment.

3. Fiscal impact:

   These sections will increase lottery receipts for education by an estimated $17 million in State fiscal year 1991-92.

Senate 6079 - Assembly 8491

Bill Sections: 154-159

Laws: Tax

1. Summary of provisions:

These provisions amend Tax Law sections 1101(b)(5) and (6), and 1110 and add new sections 1101(b)(14), 1115(a)(28) and (o), and 1118(11) to the Tax Law to explicitly include prewritten computer software as tangible personal property subject to State and local sales and use taxation, to define that term, and to exempt from such taxation certain services performed on computer software.

2. Significant issues:

The provisions adopted are narrowed than those proposed in the Executive Budget. Exemption of section 1105(c) services performed on computer software may exclude certain receipts now taxable and probably will exclude from tax charges included in the Budget proposal calculations.

3. Fiscal impact:

Effective September 1, 1991, these provisions are projected to increase 1991-92 State General Fund-Local Government Assistance Tax Fund sales tax receipts by $12 million.

Senate 6079 - Assembly 8491

Bill Sections: 160-161

Laws: Tax

1. Summary of provisions: These provisions of the bill amend Tax Law sections 1101(b)(3), 1160(a)(2) and 1110 to include in the definition of receipt for sales tax purposes any shipping or delivery charges included by a vendor in the sale of taxable tangible personal property or a taxable service, regardless of how stated or provided.

2. Significant issues: None.

3. Fiscal impact: It is anticipated that these provisions, effective September 1, 1991, will yield added 1991-92 State General Fund-Local Government Assistance Tax Fund receipts estimated at $4 million.

Senate 6079 - Assembly 8491

Bill Sections: 303 - 308; 317 - 324

Laws: Facility Development Corporation Act; New York State Medical Care Facilities Finance Agency Act; Private Housing Finance Law; State Finance Law

1. Summary of provisions:

(a) Sections 303 through 308 authorize the Medical Care Facilities Finance Agency to issue bonds to finance the renovation of space leased by Not-for-Profit Corporations for programs established under the Department of Mental Hygiene as long as the premises is leased for a period equal to or greater than the life of the bonds.

(b) Section 317 of this bill adds the housing project repair fund to the list of funds in section 47-e of the private housing finance law eligible for bonding in the housing bonding program.

(c) Section 318 makes certain appropriations and reappropriations of chapters 53 and 54 of the laws of 1991 eligible for bonding and increases the cap for the housing bonding program from $525 million to $740 million.

(d) Section 319 establishes the Urban Initiatives Program in statute.

(e) Section 320 makes the Housing Trust Fund Corporation responsible for the Urban Initiatives Program.

(f) Sections 321 and 322 make the Housing Trust Fund Corporation responsible for the Rural Area Revitalization Program.

(g) Section 323 transfers all outstanding obligations of the Division of Housing and Community Renewal for the Rural Area Revitalization Program to the Housing Trust Fund Corporation.

(h) Section 324 delays the date for the reconciliation and repayment of the Infrastructure Trust Fund balances to March 31, 1994.

2. Significant issues:

Sections 303 through 308 may have technical problems relative to IRS regulations. Bond counsel advises us that it is not sufficient for the lease of the premises to cover only the life of the bonds, as the legislation requires. In order to bond improvements on leased facilities, the term of the lease would have to be at least as long as the useful life of the improvements, approximately 40 years. Leases are rarely longer than ten years and 40-year leases are nonexistent. As a result, the projects are not expected to be bondable.

Sections 317 through 324 of the revenue bill accomplish many of the objectives of Article VII Bill # 110, with the following exceptions:

(a) This bill maintains the Rural Area Revitalization (RARP) and Urban Initiatives (UI) as separate programs; the Article VII bill would have merged them with programs of the Housing Trust Fund.

(b) This bill does not authorize bonding the administrative costs to run the program; the Article VII bill did.

(c) This bill increases the cap for the bonding program from $525 million to $740 million. The new cap does not cover all of the new appropriations in Chapters 53 and 54 that are eligible for bonding. Most notably, the cap has not been increased to accommodate the bonding of the Housing Project Repair Fund. It has been the practice with this program for authorization levels to coincide with appropriation levels.

3. Fiscal impact:

The Legislature is undoubtedly carrying a financial plan savings against the MCFFA bonding proposal. However, bond counsel's opinion that leased space cannot practicably be bonded would negate that savings.

The majority of the provisions of Sections 317 through 324 were already incorporated in the fiscal plan. The addition of the Housing Project Repair Fund will provide an additional $12 million in fiscal relief.

Senate 6079 - Assembly 8491

Bill Sections: 311-316

Laws: Public Authorities Law

1. Summary of provisions:

   These provisions of the bill authorize the Environmental Facilities Corporation to issue service contract bonds to finance the State contribution to the State Revolving Fund (SRF) and the design, acquisition, construction, improvement and installation of Riverbank Park. The State is responsible for the payment of debt service on such bonds.

2. Significant issues:

   In contrast to this bill, the 1991-92 Executive Budget recommended that the proposed Environmental Infrastructure Fund (EIF) be used to finance the SRF on a pay-as-you-go basis. Disbursements for Riverbank Park would have been financed from the General Fund-supported Capital Projects Fund.

3. Fiscal impact:

   With the State not required to make debt service payments on EFC-issued bonds until 1992-93, the use of service contract bonds to finance the State contribution to the SRF and the Riverbank Park project will generate 1991-92 General Fund savings of approximately $28 million and $34 million, respectively.

Senate 6079 - Assembly 8491

Bill Sections: 325-336

Laws: Highway; Public Authorities; State Finance; Tax

1. Summary of provisions:

Section 325 amends subdivision 1 of section 10-a of the Highway Law to authorize additional associated capital costs be included in cooperative highway contractual agreements. Section 326 amends subdivision 10 of said section 10-a to include bridge painting as an additional eligible category of the reconditioning and preservation program.

Bill section 327 amends subdivision 2-a of section 376 of the Public Authorities Law to authorize the issuance of an additional $93 million of Emergency Highway Construction and Reconstruction bonds and notes. Section 328 amends subdivision 2-c of said section 376 to authorize the issuance of an additional $84 million of Emergency Highway Reconditioning and Preservation bonds and notes.

Bill section 329 amends subdivision 5 of section 376 of the Public Authorities Law to authorize the Thruway Authority to accept additional motor fuel taxes received after April 1, 1991 into the correct subaccount.

Bill sections 330 through 334 and 336 amend sections 282-b, 282-c, 284-a and 284-c of the Tax Law and sections 89(2) and 89-a(2) of the State Finance Law to earmark an additional one-half cent of the motor fuel and diesel motor fuel taxes (one-fourth cent each) to the Emergency Highway Construction and Reconstruction and Emergency Highway Reconditioning and Preservation funds, available for use to pay debt service on fund bonds and notes issued after April 1, 1991.

Bill section 335 amends subdivision 5 of State Finance Law section 89 to eliminate the need for a cash reserve as well as a bond-funded reserve for reconditioning and preservation bonds or notes issued after April 1, 1991.

2. Significant issues:

None.

3. Fiscal impact:

These sections will provide approximately $128 million in bond proceeds using an additional one-half of one cent of the existing motor fuel tax to finance planned Department of Transportation capital projects.

Senate 6079 - Assembly 8491

Bill Sections: 336-a - 336-k

Laws: Amends §2431 - §2434, §2436 - §2437, §2439, §2441, §2446, and §2449 of Public Authorities Law.

Adds new §2435-a of Public Authorities Law.

1. Summary of provisions:

- Reactivate the Municipal Bond Bank Agency for the purpose of bonding out the Hurd liabilities of the cities of Buffalo and Rochester.
- Allow the Bond Bank and the two cities to enter into "special program agreements" in order to effect the bond-out.

Provisions to be handled administratively:

- Allow for a bond issuance by the Bond Bank totalling approximately $63 million in principal and issuance costs ($25 million for Buffalo and $38 million for Rochester). Length of term is to be determined, with 25 years emerging as the most likely scenario;
- Eliminate Rochester's $35 million advance;
- Provide for a State aid intercept should either city fail to make its payment to the Bond Bank;
- Allow for an annual State contribution of $2.5 million toward the repayment agreement, with the cites receiving a proportional share based on the size of their liability;
- Create a 20-year phase-out (5 percent per year) of the advances to the seven Hurd school districts, including the Buffalo School district. This provision was removed from the rest of the bill and inserted in the Aid to Localities bill.
- Use of the Bond Bank does not affect the debt limit of the two cities. Further, this approach limits the State's obligation to $2.5 million annually.

2. Significant issues:

- The language of the bill is broad, with the specific provisions cited above being handled administratively. This approach could itself become an issue.

- o The Legislature struck a clause which addressed the indemnification of the Bond Bank officers. The Bond Bank will probably seek to insert language mirroring the indemnification of other public authorities' officers, e.g., UDC, via a technical amendment.

- o The original bill stated that the Bond Bank must conform with Public Authorities Law §2446 when developing investment strategies. The Legislature substituted language calling for conformance with State Finance Law §98, which limits the Bond Bank monies to investment strategies currently available to State funds. Once again, the Bond Bank will probably seek a technical amendment.

3. <u>Fiscal impact</u>:

- o Requires a $2.5 million appropriation, which represents approximately the amount that the State currently foregoes in lost interest on the advances to the seven school districts.

- o Beginning in SFY 1992-93, the twenty-year phase-out of the seven Hurd school districts will help offset the State's $2.5 million contribution.

Senate 6079 - Assembly 8491

Bill Sections: 337, 338, 339, 370, 371, 379

Laws: Vehicle and Traffic Law, §1809
Penal Law, §60.35
State Finance Law, §97-bb
Criminal Procedure Law, §420.35

1. Summary of provisions:

These sections relate to revenues supporting the Special Revenue-Other Criminal Justice Improvement Account and the programs supported on that Account. Specifically, effective immediately:

- §337 and §338 amend §1809 of the Vehicle and Traffic Law to establish a $15 mandatory surcharge on vehicle equipment violations, increase the surcharge on V & T felony and misdemeanors from $25 to $150 and $85 respectively, and impose the mandatory surcharge on a per infraction basis;

- §339 amends §1809 of the Vehicle & Traffic Law to establish an October 3, 1994 sunset for all V & T surcharges.

- §370 amends §60.35 of the Penal Law to increase the crime victims assistance fee from $2 to $5;

- §371 amends §97-bb of the State Finance Law, the statutory basis for the Criminal Justice Improvement Account, to expand both the list of revenues to be deposited in the Account as well as the programmatic purposes for which these funds may be used; and

- §379 amends §420.35 of the Criminal Procedure Law to strengthen the collection of both the mandatory surcharge and the crime victims assistance fee by requiring courts and administrative tribunals to state on the record the reasons for the disposition of these fees and surcharges.

2. Significant issues:

Each of the provisions generally reflect proposals made by the Executive, with the exception of the increased crime victims assistance fee, which is a legislative proposal. Also, the bill contains a $50 cap on mandatory surcharges assessed on non-felony and non-misdemeanor offenses which may make it difficult for DMV to administer.

3. Fiscal impact:

These provisions are expected to generate a total of $8.5 million in new revenue for the Criminal Justice Improvement Account, in support of various criminal justice activities. Specifically:

- Increased surcharge on felony and misdemeanor V & T violations ($3.0 million);

- Per infraction V & T surcharge ($3.2 million);

- $15 surcharge on equipment violations ($1.2 million);

- Reporting language for all surcharges ($1.0 million); and

- Increase crime victims assistance fee ($0.1 million).

Senate 6079 - Assembly 8491

Bill Sections: 340-344

Laws: Criminal Procedure, § 1.2, § 2.1
Executive, § 215, § 840

1. Summary of provisions:

Effective immediately, sections 340-344 add and amend various sections of the Criminal Procedure and Executive Laws to:

- grant peace officer powers to non-sworn State Police commercial vehicle enforcement officers to enable them to enforce the Vehicle and Traffic Law, Transportation Law and other laws while performing their special duties;

- authorize said peace officers to carry firearms while on duty;

- authorize the Superintendent to appoint such peace officers; and

- establish salary steps and annual increments.

2. Significant issues:

The Executive Budget includes a redeployment/civilianization initiative that includes the replacement of 56 troopers now assigned to commercial vehicle enforcement with civilian peace officers. This legislation allows for that action thus permitting redeployment of police to other critical assignments.

3. Fiscal impact:

The redeployment of members from various assignments allows the Division to staff high priority initiatives without incurring the additional cost of increased member strength.

Senate 6079 - Assembly 8491

Bill Sections: 345, 346

Laws: County Law, § 301

1. Summary of provisions:

Effective July 1, 1991, County Law is amended by adding two new subdivisions 9 & 10 to provide for a 70 cent per month surcharge on cellular telephones.

2. Significant issues:

In 1989, the Legislature established a funding mechanism to enable localities to finance enhanced emergency communication (E911) systems. Localities may charge land-based telephone customers up to 35 cents per month per line to cover the costs of implementing E911 systems. Although cellular telephone users also have the benefit of coordinated 911 services, they are not currently assessed the monthly fee charged to land-based telephone customers. This legislation eliminates this inequity.

3. Fiscal impact:

Revenues generated by this bill ($2.0 million in 1991-92 and $4.0 million in 1992-93) will be deposited in the Seized Assets Account and will be available for appropriation to the Division of State Police for costs related to operation of their cellular 911 emergency communications network.

Senate 6079 - Assembly 8491

Bill Sections: 347-354

Laws: State Finance, §175
General Business, §69
Correction, §170, 177, 184-187

1. Summary of provisions:

Effective immediately, these sections specifically provide that public authorities, commissions and public benefit corporations are included in the State Use Law, which requires that State agencies purchase goods through Corcraft.

2. Significant issues:

Corcraft manufactures a wide variety of products for sale to State agencies, local governments and not-for-profit corporations. The State Use Law requires that a release be obtained from the Commissioner of DOCS prior to purchasing from other sources any products manufactured by Corcraft. Many public corporations maintain that they are not subject to the State Use Law and regularly purchase products without obtaining appropriate waivers. These sections are essentially identical to provisions included in Article VII Bill #94.

3. Fiscal impact:

With State agencies and local governments reducing overall spending, Corcraft must be permitted to access all possible markets. While no specific revenue estimates are available, increased sales from public corporations could allow Corcraft to continue to provide work opportunities to inmates on a financially self-sustaining basis.

Senate 6079 - Assembly 8491

Bill Sections: 355-359

Laws: State Finance, §161
Public Health, §2803-a, 3305

1. Summary of provisions:

Effective July 1, 1991, these sections will permit the Department of Correctional Services (DOCS), the Office of Mental Retardation and Developmental Disabilities (OMRDD) and the Division of Alcoholism and Alcohol Abuse (DAAA) to purchase medical supplies and equipment through a purchasing consortia.

2. Significant issues:

Currently, DOCS, OMRDD and DAAA are restricted to competitive bidding requirements of the State Finance Law and may not participate in a purchasing consortia to obtain necessary medical equipment and supplies at possible savings. These sections are somewhat similar to Article VII Bill #56 with the following exceptions:

- DAAA was not included in Article VII #56;
- OMRDD gains authority to purchase not only medical items, but all types of equipment, materials and supplies which may be problematic;
- A sunset provision (June 30, 1993) is included in S.6079/A.8491; and
- This bill requires DOB to submit a report to the Governor and the Legislature by April 1, 1993 detailing potential and actual agency savings and the impact on minority and women owned business enterprises.

3. Fiscal impact:

It is estimated that DOCS could save $250,000 and OMRDD $1.0 million annually based on anticipated participation in hospital purchasing consortia.

Senate 6079 - Assembly 8491

Bill Section: 382

Laws: State Finance Law §200

1. Summary of provisions:

   Section 200 of the State Finance Law is amended by adding a new subdivision 2-b to require that commencing with the earliest administratively feasible payroll, salaries of all nonjudicial employees of the Judiciary will be withheld an additional five days.

2. Significant issues:

   This action is consistent with the 5-day salary withhold which was implemented for Executive branch agency employees during FY 1990-91.

3. Fiscal impact:

   It is estimated implementation of a lag payroll will save the Judiciary $10.7 million.

Senate 6079 - Assembly 8491

Bill Sections: 383

Law: General Municipal Law, §99-m

1. Summary of provisions:

   Effective immediately, this bill amends section 99-m of the General Municipal Law to authorize courts to retain three percent of bail moneys received. If the defendant is found guilty, the courts retain two percent of the fee and one percent is to be used to fund alternatives to incarceration service plans, approved pursuant to Article 13-A of the Executive Law.

2. Significant issues:

   This generates revenue for the Judiciary and provides localities with an additional tool to raise revenue. It also provides an additional funding source for local alternatives to incarceration, which are funded pursuant to the Classification/Alternatives Law.

3. Fiscal impact:

   It is estimated that these provisions will generate a total of $300,000 in revenues for the General Fund.

Senate 6079 - Assembly 8491

Bill Sections: § 384 and § 385

Laws: Judiciary Law, §519, 521

1. Summary of provisions:

   Effective June 17, 1991, section 519 of the Judiciary Law is amended to prohibit employers with ten or more employees from withholding the first $15 of a juror's daily wages during the first three days of jury service.

   Effective June 17, 1991, section 521 of the Judiciary Law is amended to provide that persons who are otherwise employed will not be compensated by the Judiciary for the first three days of jury service if the employer is prohibited from withholding $15 in daily wages, pursuant to Section 519.

2. Significant issues:

   Employers of more than ten employees may object to this legislation.

3. Fiscal implications:

   It is projected that enactment of this provision will save the Judiciary $9.6 million.

Senate 6079 - Assembly 8491

Bill Sections: 401-403

Laws: State Finance

1. **Summary of provisions**:

- Establishes short-term revolving loan fund to advance moneys to not-for-profit organizations.

- Sets time-frames for processing not-for-profit contracts by program agencies, Division of the Budget, State Comptroller, and Attorney General.

- Provides for interest payments to not-for-profit organizations under certain circumstances defined in the bill.

- Authorizes advances to not-for-profit organizations up to the complete value of the contract being negotiated under certain circumstances defined in the bill.

- Allows not-for-profit organizations to begin work prior to execution of a contract through a Written Directive from a State agency.

- Requires an extensive series of reports by State agencies and the Comptroller to the Governor and the Legislature on operations of the prompt contracting program.

2. **Significant Issues**:

- Authorizes expenditure of $2 million of State funds not provided for in the Financial Plan.

- Establishes a series of processing deadlines that may not be workable.

- Provides for interest payments more generous than the Prompt Payment Law.
- Allows not-for-profit organizations to begin work before a contract is executed.

- Requires State agencies to bear the cost of any interest payments even when delays are caused by other units of government or by the not-for-profit organizations themselves.

The Director of the Budget has already informed Governor's Counsel of his intention to recommend veto of an identical bill discussed previously with the Legislature (copy attached).

3. <u>Fiscal impact</u>:

An appropriation has been included in Aid to Localities - Miscellaneous (copy attached) to finance the revolving loan fund. It includes $2 million for the the fund and $6 million to appropriate its activity. The Fiscal Planning Unit has judged this appropriation to trigger $2 million in State expenditures in 1991-92.

Attachments

ATTACHMENT B:
SELECTED PROVISIONS OF SENATE 6079 - ASSEMBLY 8491

Senate 6079 - Assembly 8491

Bill Sections: 167

Laws: Chapter 935 of the Laws of 1990

1. Summary of provisions:

   Chapter 935 of the Laws of 1990 enacted a retirement incentive program for certain State employees and provided that the pension benefit costs of the program be entirely paid in fiscal year 1991-92. This section amends Chapter 935 to provide that such pension benefit costs shall be paid over a five-year period with annual installments beginning in 1991-92.

2. Significant issues:

   This action would enable the State to amortize the cost of the early retirement program over a five-year period and is similar to approach used in 1983-84.

3. Fiscal impact:

   Passage of this section is essential to capture $20 million in savings in 1991-92 which was included in the 50-day gap closing plan.

Senate 6079 - Assembly 8491

Bill Sections: 168 and 169

Laws: State Finance, Chapter 41 of the Laws of 1990

1. Summary of provisions:

   This bill authorizes the State Comptroller to transfer all State Fiscal Year 1991-92 receipts of the Hazardous Waste Remedial Fund, Industry Fee Transfer Account (IFTA) -- including those required to offset 50 percent of the costs of debt service on 1986 Environmental Quality Bond Act bonds issued for hazardous waste remediation purposes -- to the General Fund.

2. Significant issues:

   None.

3. Fiscal impact:

   The transfer of 1991-92 IFTA receipts, net of those required to meet debt service payments, is expected to yield $21 million and is necessary to implement the 1991-92 Budget.

Senate 6079 - Assembly 8491

Bill Sections: 170; 390-400

Laws: Public Health Law
Insurance Law
Chapter 938 of the Laws of 1990

1. Summary of provisions:

Effective immediately upon enactment, Section 170 of this bill authorizes the General Fund to borrow, until March 31, 1993, up to $20.0 million from funds which accumulate to secure financing of financially distressed hospitals' capital improvement projects.

Effective July 1, 1991 through June 31, 1992, Sections 390-400 of this bill:

- increase revenue to the pool which provides funding for uncompensated care payments to hospitals by imposing an additional add-on to Medicaid, Blue Cross and all other payor's reimbursement rates equivalent to 1.7 percent of each hospital's non-Medicare costs;

- mandate additional uncompensated care payments to each hospital, excluding financially distressed hospitals, equal to nine-tenths of one percent of cash receipts from all payors;

- increase the State's assessment on each hospital, excluding financially distressed hospitals, equal to nine-tenths of one percent of cash receipts from all payors;

- require the Superintendent of Insurance to annually determine the extent to which moneys paid to the medical malpractice insurance association (MMIA) to purchase excess medical malpractice insurance exceed expected liabilities -- are "surplus" surplus; and

- require transfer of "surplus" surplus moneys to the General Fund with certain restrictions as to their use.

2. Significant issues:

The Legislature's proposal to benefit the financial plan by generating additional Federal funding through Medicaid uncompensated care payments without increasing any hospital's net revenue is ill-advised. Under the Legislature's plan, Medicaid, Blue Cross and other insurers' hospital reimbursement rates will generate an additional

$101 million in SFY 91-92 to be pooled and distributed to hospitals as Medicaid payments for uncompensated care, thereby allowing a Federal drawdown of $50 million -- a net benefit to the State of $29 million after putting up $21 million to cover the cost of the add-on. In turn, the State recovers its $101 million in payments to hospitals by imposing an additional assessment on each hospital essentially equivalent to the amount it received in additional uncompensated care payments. Herein lies the problem, since the Federal government will very likely look behind these provisions and deny the $50 million in Federal financial participation anticipated by the Legislature on the grounds that a Medicaid expenditure is never actually made.

Reportedly, the Legislature's budget assumes a transfer of $82 million from MMIA to the General Fund. This exceeds the Superintendent's most recent "surplus" surplus determination by $27 million.

The requirement to repay the $20 million transferred from financially distressed hospital capital funds creates an unnecessary GAAP liability in fiscal year 1991-92. We believe funds are sufficient to make a transfer without repayment while ensuring no disruption to the program.

3. Fiscal impact:

While this bill by itself would generate $155 million in net benefit to the General Fund, when combined with the proposed legislative spending aginst these sources of revenue, the financial plan would be deficient by approximately $70 million if it were not for the Governor's veto of corresponding appropriations. A GAAP liability of $20 million in SFY 91-92 is created.

Senate 6079 - Assembly 8491

Bill Section: 171

Laws: Unconsolidated Session Law

1. Summary of provisions:

This section extends the period of applicability of the requirement that public benefit corporations rebate to the State certain pension actuarial savings.

Subdivision one extends the rebate of pension actuarial savings that result from the actuarial change imposed by chapter 210 of the Laws of 1990. The section incorporates the procedures established by section 29 of chapter 210, as amended by section 18 of chapter 947 of the Laws of 1990. Together, these chapters require public benefit corporations with three or more Governor-appointed members to rebate pension fund contribution savings that result from the actuarial change, as computed by the State Comptroller. The section takes effect immediately and expires after March 31, 1992.

This section differs from its predecessor (that was in effect only for 1990), and is consistent with the Article VII Bill submitted with the Executive Budget, by:

- adding language (subdivision 4) clearly authorizing the expenditure of public benefit corporation funds for the purpose of the section, and exculpating any member, officer or employee from any personal liability for causing such payment; and

- adding language (subdivision 5), in addition to a nonimpairment clause, clarifying that the savings rebate shall not be deemed a tax or fee on the property, revenue or operations of any public benefit corporation; and (subdivision 6) to the extent the payment of New York state or local retirement system contributions or benefits is the subject of interstate or international compact, conditioning the measure's applicability upon passage of companion legislation by the other party to such compact that has the same effect as this section.

2. Significant issues:

The change in actuarial method to compute the funding of the New York State and local retirement systems was accomplished by chapters 210 and 947 of the Laws of 1990. Currently, the provisions establishing the rebate of savings by certain public benefit corporations contemplated only one year's rebate, due on January 15, 1991.

The authorities affected by the existing measure have argued that the rebate of the savings does nothing to enhance the security of the retirement systems. Some have also argued that the measure cannot be applied to them; notably, the Port Authority claimed immunity because of its bi-state compact. Although we disagree that the bi-state compact is dispositive of this issue, timely collection of rebates relies heavily on authority concurrence with the rebate requirement.

3. Fiscal impact:

The savings resulting from the change in actuarial method will continue on a diminishing basis over time. For 1991-92, the level of savings realized by the public benefit corporations affected by the measure approximates $32 million which, after anticipated hardship and other exemptions, and nonpayments, is expected to generate $10 million in rebates or alternative revenue to the State.

Senate 6079 - Assembly 8491

Bill Sections: 198-216-a

Laws: Abandoned Property

1. Summary of provisions: These sections amend various sections of the Abandoned Property Law to:

   (a) extend the reach of the statute in a number of areas, including:

   - the definition of wages, to include certain fringe benefits;

   - the definition of unclaimed nonlife insurance benefits, to include instruments made out to more than one party;

   - the definition of miscellaneous abandoned property, to include gift certificates;

   (b) for the first time, define as abandoned property those shares physically held by individuals but that otherwise meet the criteria of abandoned property were they to be held by a broker;

   (c) with respect to claims for refunds of all securities turned over to the comptroller after November 1, 1991, require the Comptroller to return the market value of security as of the the date of approval of such claim;

   These provisions were not included in the Budget.

2. Significant issues: Many of these provisions reflect statutory changes sought by the Comptroller; however, OSC has claimed that, absent additional appropriations, the projected revenue yield from the proposals would be at risk. No such appropriations were specifically provided.

3. Fiscal impact: Estimates of the Comptroller for a fully effective set of changes substantially similar to those contained in these provisions approximated $19 million.

Senate 6079 - Assembly 8491

Bill Sections: 213, 309, and 409

Laws: Racing, Pari-Mutuel Wagering and Breeding Law

1. Summary of provisions:

The bill amends subdivision 1 of Section 213 of the Racing, Pari-Mutuel Wagering and Breeding Law to increase the licensing fee for an original owner in thoroughbred racing from fifty dollars to one hundred dollars, and to increase the fee for a renewal license from twenty dollars to fifty dollars.

Subdivision 1 of Section 309 of the Racing, Pari-Mutuel Wagering and Breeding Law is amended to increase the licensing fee for an original owner in harness racing from twenty dollars to one hundred dollars, and to increase the fee for a renewal license from twenty dollars to fifty dollars.

Subdivision 1 of Section 409 of the Racing, Pari-Mutuel Wagering and Breeding Law is amended to increase the licensing fee for an original owner in quarterhorse racing from ten dollars to one hundred dollars, and to increase the fee for a renewal license from ten dollars to fifty dollars.

The bill also makes technical changes to make the sections dealing with licenses for thoroughbred, harness and quarterhorse more uniform. In doing so, it would require racing individuals who currently possess multiple harness related licenses to pay for each specific license category, as is done in thoroughbred racing. It also seeks to clarify current language dealing with the costs of issuing identification cards for individuals licensed by the Board.

2. Significant issues:

None.

3. Fiscal impact:

There will be no additional cost to the Board in implementing this bill which will generate additional revenues of approximately $324,000. Enactment of this bill is necessary to implement the 1991-92 Executive Budget.

Senate 6079 - Assembly 8491

Bill Sections: 216-b through 225

Law: Vehicle and Traffic

1. Summary of provisions:

Bill section 216-b amends paragraph a of subdivision 3 of Section 401 of the Vehicle and Traffic Law to discontinue special plate refunds after the order has been placed for the plates.

Bill section 217 amends subdivision 6 of Section 415 of the Vehicle and Traffic law to set a $1 charge for the sale of MV-50's, documents used to keep track of transfers of car ownership between automobile dealers, or between a dealer and a customer.

Bill sections 218, 219 and 220 amend paragraph 1 of subdivision (a) of Section 605, subdivision (b) of Section 332 and subdivision (a) of Section 335 of the Vehicle and Traffic law to increase the minimum amount for reportable accidents from $600 to $1,000.

Bill section 221 amends paragraph (b) of subdivision 1-a of Section 318 of the Vehicle and Traffic law to increase the fee for insurance buy-back from $4 to $6 per day.

Bill section 222 amends paragraphs (b) and (c) of subdivision 2 of Section 202 of the Vehicle and Traffic Law to increase the fee for an abstract search from $3 to $4 for a direct entry request, and from $2 to $4 for a request by means of electronic medium.

Bill section 223 amends subdivisions (a) of Section 305 of the Vehicle and Traffic law to increase the fee that official inspection stations pay for certificates of inspection from $1.25 to $2.

Bill sections 224 and 225 add new subdivisions to Section 398-d of the Vehicle and Traffic law and amend Section 398-e of the Vehicle and Traffic law to require persons who estimate automobile collision damages to obtain a license from the Department of Motor Vehicles and pay an application fee of $25 a three year license fee of $150.

2. Significant issues:

The requirement in bill section 224 that individuals who estimate the cost of automobile collision damage obtain a license to be issued by the Department of Motor Vehicles duplicates the licensing of public and independent adjustors already required by the Insurance Department. This could result in an unclear division of responsibilities between DMV and the Insurance Department for the licensing and enforcement functions.

3. Fiscal impact:

These sections of this bill raise a total of $21.7 million for 1991-92 upon which the financial plan is dependent.

Senate 6079 - Assembly 8491

Bill Sections: 227-238

Laws: Environmental Conservation

1. Summary of provisions:

   This bill eliminates current mining permit application fees and establishes annual Mined Land Reclamation regulatory fees. The new fees will be graduated depending upon acreage affected and will be deposited to the Miscellaneous Special Revenue Fund, Environmental Enforcement Account.

2. Significant issues:

   None

3. Fiscal impact:

   Revenues generated by the imposition of regulatory fees on minimg permits will allow 10 existing General Fund positions to be transferred to special revenue financing, for a total General Fund savings of approximately $540,000 in 1991-92.

Senate 6079 - Assembly 8491

Bill Sections: 239, 241, 309, and 310

Laws: Public Authorities Law
Labor Law
Chapter 392 of the laws of 1973

1. Summary of provisions:

Effective immediately:

- Section 241 authorizes the Department of Health to assess fees on asbestos safety training program sponsors for each full course and refresher course completion certificate requested to be issued by the sponsor.

- Section 309 allows the Department of Health facilities to obtain equipment loans from the New York State Medical Care Facilities Finance Agency (MCFFA).

- Section 310 increases from $170 million to $205 million the aggregate project costs which the Dormitory Authority (DA) may finance and construct, reconstruct, rehabilitate or improve on behalf of the Department of Health.

Effective August 1, 1991:

- Section 239 authorizes the Department of Health to assess development fees for Article 28-B financings and refinancings obtained through the DA.

2. Significant issues:

The Department of Health's ability to undertake capital projects for the purpose of construction, reconstruction, rehabilitation or improvements during fiscal year 1991-92 is dependent upon the passage of this legislation. The State's financial plan does not include the $7.982 million necessary to fund the over thirty projects currently underway by the Department in addition to the Roswell Park Memorial Institute Major Modernization planning projects on schedule for 1991-92.

3. Fiscal impact:

This legislation would allow the Department to assess a fee of $20 for each completed full course certificate and $12 for each completed refresher course certificate issued by asbestos safety training program sponsors. It is estimated that $400,000 in revenues will be generated on an annualized basis and will be sufficient to support all personal service and nonpersonal service costs associated with the Department's responsibilities for inspection and regulation of asbestos safety training programs. If enacted, this measure will preclude the layoff of four staff people from the Department of Health.

This legislation would also provide the Department of Health health care facilities with an alternative means of financing the acquisition of equipment and associated construction or rehabilitation measures. Currently, the two options available to the facilities are direct purchase or lease purchase through the certificate of participation program.

The six-month debt service reserve requirement maintained by the Comptroller in the Department of Health's Health Income Fund would increase by approximately $1.25 million, or $2.5 million per year to meet the increased interest payments resulting from the DA issuance of revenue bonds for all Departmental capital improvement projects. This would decrease the amount of patient care revenues transferred to the Health Services account, thereby effectuating a decreased offset to the General Fund for the operation of the three health care facilities. Additionally, the Public Authorities Law would have to be amended from time to time to increase the aggregate project costs which the DA may finance on behalf of the Department of Health to accommodate the Department's long-term capital improvement needs.

Currently, the Department of Health is authorized to collect development fees for the servicing of Article 28-A and Article 28-B mortgage loans financed through MCFFA. If enacted, this legislation would extend the fees to similar DA financed projects by authorizing the Department to assess fees of .09 percent and .05 percent of the mortgage value for financings and refinancings respectively. This would effectively increase the amount of revenues deposited into the Department of Health Miscellaneous Special Revenue - Hospital and Nursing Home Management Fund which is appropriated as an offset to the General Fund State Operations budget. The Legislative Budget, as enacted, reflects an anticipated increase of $1.35 million during fiscal year 1991-92 resulting from this measure. The additional revenues generated by this measure in succeeding fiscal years will vary dependent upon the number and value of such loans obtained by non-profit hospital and medical corporations through the DA.

Senate 6079 - Assembly 8491

Bill Section: 240

Laws: Section 2976(2) of the Public Authorities Law

1. Summary of provisions:

Effective August 1, 1991 the bill increases the schedule of issuance charges that apply to the issuance of bonds, notes or other obligations of public benefit corporations with three or more Governor-appointed members. Changes to the currently existing charges are:

Bond Issue Size	Current Issuance Charge	New Schedule
$1 million or less	.05%	.07%
to $5 million	.10%	.14%
to $10 million	.15%	.21%
to $20 million	.20%	.28%

In addition, a new bracket and charge are created as follows:

New Bracket	New Schedule
More than $20 million Principal amount issued	.35%

2. Significant issues:

Increasing the bond issuance charge puts added pressure on the 2 percent of issuance costs that may be financed on a tax exempt basis. In addition, since these charges are typically capitalized in bond issues, like any other bonded item they generate additional interest costs. State imposed charges begin to look onerous when the increased bond issuance charge is added to the 90 basis point Department of Health charge for Public Health Law Article 28 mortgage loans, or the 50 basis point charge for the refinancing of Article 28-A and 28-B mortgage loans. The State charges alone in these instances can now reach 125 basis points, or 1.25 percent of the affected financing. These costs are includable in hospital reimbursement rates and, together with applicable interest, will be borne by the reimbursement system over time.

3. Fiscal impact:

Although the volume of bond activity is not a constant, and varies with financing needs and market conditions, assuming 1990-91 as a model, the increases will produce $3.6 million additional revenue, for a total of $18.4 million in 1991-92, and an additional $10 million, for a total of $24.6 million, annually thereafter.

Senate 6079 - Assembly 8491

Bill Sections: 242-253

Laws: Labor

1. Summary of provisions:

   Bill sections 242 through 253 repeal existing legislative authorization for the State Labor Relations and Mediation Boards, and merge the responsibilities of these Boards into a new Employment Relations Board. Continuing responsibilities of the consolidated Board are to achieve voluntary settlement of actual or potential labor disputes, serve as an arbitor of grievences upon invitation by the parties to a collective bargaining agreement, and certify employee collective bargaining representation.

2. Significant issues:

   The bill is very similar to a proposed 1991 Governor's Program Bill which also would have consolidated the State Mediation and Labor Relations Boards. However, because of total reductions in funding available to the consolidated Board (see discussion below), it presently is unclear whether the Board will be able to discharge all of its statutory responsibilities in 1991-92.

3. Fiscal impact:

   Consolidation of the Boards should reduce State costs by decreasing the number of Board members and related support staff. However, the enacted Budget reduces Board funding by approximately $1.7 million, an amount that will require a staff reduction of about 50%. Accordingly, in the absence of further statutory restructuring of Board responsibilities, it may be necessary to significantly curtail Board operations.

Senate 6079 - Assembly 8491

Bill Sections: 254 through 260

Laws: Real Property Tax
State Finance

1. Summary of provisions:

Effective April 1, 1991 these sections:

-- Authorize the State Board of Equalization and Assessment to recover costs for services (a) from railroad companies for the preparation of ceilings on assessments of property used for transportation; (b) from oil and gas companies for the determination of unit of production values of oil and gas rights; (c) from utility companies for the provision of special franchise assessments; and (d) from local governments for technical support and assessment services; and

-- Establish two Miscellaneous Special Revenue Fund accounts to receive the proposed charges.

2. Significant issues:

These provisions will permit the State Board of Equalization and Assessment to continue to provide various assessment services and technical support to local governments and private industries, without cost to the State.

3. Fiscal Impact:

The proposed charges are expected to provide $3,162,200 in 1991-92 for the State Board of Equalization and Assessment.

Senate 6079 - Assembly 8491

Bill Sections: 261 through 264

Laws: State Finance
Real Property

1. Summary of provisions:

Sections 261 through 264 of this bill:

-- Require all counties and New York City to collect a $25 fee for every real estate transaction recorded on or after July 1, 1991 and to remit $22 of the proceeds to the State; and

-- Establish a Miscellaneous Special Revenue Fund account to receive the State's share of the property sales recording fee for use by the State Board of Equalization and Assessment (SBEA) to improve real property tax administration.

2. Significant issues:

These provisions establish a new revenue source for the State Board of Equalization and Assessment to continue assessor training and certification, equalization rate services, advisory appraisals, agricultural land assessments and the preparation of local tax shares borne by owners of different property classes.

3. Fiscal impact:

This proposal would generate $4,895,000 in 1991-92 and $7,530,000 annually thereafter.

Senate 6079 - Assembly 8491

Bill Sections: 270 to 274 and 276 to 286

Laws: Business Corporation Law (§104-A)
Not-for-Profit Corporation Law (§104-A)
Executive Law (§96) and (§141)
General Associations Law (§19)
General Business Law (§209-b), (§276), (§279), (§359-c), (§362), (§364), (§365), (§369-e), (§574)
Navigation Law (§48)
Vehicle and Traffic Law (§253)

1. Summary of provisions:

Effective immediately, sections 270 to 274 and sections 276 to 286 increase and standardize various fees for corporate services. Specifically, these sections would increase the following fees:

Business Corporation Law (§104-A)

-- Fee for the resignation of a registered agent from $20 to $60;

-- Fee for a certificate of incorporation from $100 to $125;

-- Filing fee for a certificate of amendment from $20 to $30;

-- Filing fee for a certificate of dissolution from $20 to $60;

-- Application fee for a foreign corporation to do business from $200 to $225;

-- Filing fee for a foreign corporation certificate of change from $20 to $30;

-- Filing fee for a certificate of incorporation for a professional service corporation from $100 to $125.

Not-for-Profit Corporation Law (§104-A)

-- Filing fee for a certificate of type of not-for-profit corporation from $10 to $30;

-- Fee for the registration of a registered agent from $10 to $30;

-- Fee for service of process from $20 to $40;

-- Filing fee for a certificate of incorporation from $50 to $75;

-- Filing fee for a certificate of change from $10 to $20;

-- Filing fee for a certificate of dissolution from $10 to $30;

-- Filing fee for a certificate of annulment from $10 to $30;

-- Application fee for a foreign corporation to do business from $110 to $135;

-- Filing fee for a certificate of change from $10 to $20.

Executive Law (§96) and (§141)

-- Filing fee for other certificates under official seal from $10 to $25;

-- Filing under General Associations Law or any Corporation Law, except Business Corporation and Not-for-Profit Corporation laws, from $100 to $125;

-- Filing fee for a duplicate certificate of voluntary dissolution from $20 to $60;

-- Filing fee for a designation of a foreign corporation from $200 to $225;

-- Filing fee for a change of address from $10 to $30;

-- Fee for special handling of requests made to the bureau of corporations from $10 to $25;

-- Filing, recording or registering any certificate where a fee is not otherwise prescribed from $10 to $25;

-- Fee for the appointment of a commissioner of deeds from $10 to $25;

-- Fee for a service of process against an association from $20 to $40.

General Associations Law (§19)

-- Fee for service of process against an association from $20 to $40.

General Business Law (§209-b), (§276), (§279), (§359-c), (§362), (§364), (§365), (§369-e), (§574)

-- Fee for filing petitions from $5 to $50;

-- Fee for filing a statement from $10 to $50;

-- Fee for filing a name, mark or device from $10 to $50;

-- Fee for filing and publishing a state notice from $50 to $75;

-- Fee for filing an application of registration from $20 to $50;

-- Renewal fee for a registered mark from $20 to $50;

-- Fee for assignment and registration of a mark from $20 to $50;

-- Fee for use of games of chance to sell commodities from $50 to $100;

-- Filing fee for trading stamp companies from $50 to $100.

Navigation Law (§48)

-- Fee for a service of a summons from $5 to $10.

Vehicle and Traffic Law (§253)

-- Fee for a service of a summons from $5 to $10.

2. Significant issues:

Sections 270 to 274 and 276 to 286 update and simplify corporate fees in order to promote equity, reduce confusion, and increase revenue. The last significant review of corporate fees occurred in 1981. Some fees, however, have not been amended since the sections which authorized their collections were enacted. Not-for-Profit fees date back to the 1960's.

In addition, the number and kind of corporate fillings have resulted in a crazy quilt fee structure scattered throughout the corporate laws. Fees vary without regard to the type of filing or service and fees vary for the same service. The fee for service of process on the Secretary of State ranges from $5.00 to $40.00 depending on the section pursuant to which process is served. This bill standardizes corporate and business fees.

3. Fiscal impact:

Sections 270 to 274 and 276 to 286 will standardize and increase various corporate service fees and will generate an estimated $4.4 million in additional revenue during 1991-92 and $5.5 million on a full annual basis.

Senate 6079 - Assembly 8491

Bill Section: 296

Law: Transportation

1. Summary of provisions:

-- Section 296 of this legislation adds a new Section 135 to the Transportation Law authorizing the Commissioner to assess all railroads operating in New York State for the Department's annual expenses related to monitoring rail safety pursuant to the Transportation and Railroad laws. An individual company's share of the total annual assessment will be based on railroad operating revenues, with payment due by September 1.

-- Section 296 also directs these revenues to the Rail Safety Inspection account within the miscellaneous special revenue fund, and requires annual reporting of fiscal information to the Legislature.

2. Significant issues:

None.

3. Fiscal impact:

Section 296 will provide $300,000 annually in funding to continue rail safety inspection activities of the Department of Transportation, as proposed in Article VII legislation (S. 2968; A. 4468) introduced by the Governor with the 1991-92 Executive Budget.

It should be noted that his legislation omits provisions contained in the Article VII bill which would have relieved the Department of Transportation of certain administrative responsibilities in the disposal of railroad properties pursuant to Section 18 of the Transportation Law. The amendments were necessary to effect a reduction of $79,000 in the Department's 1991-92 budget. Funding for these activities was NOT restored in the General Fund.

Senate 6079 - Assembly 8491

Bill Sections: 301-302

Laws: Section 2003 of the Surrogate's Court Procedure Act

1. Summary of provisions:

   Deletes the requirement that a representative of the State Tax Commission be present when a Surrogate Judge issues an ex-parte order directing that the opening of a safe deposit box believed to contain certain items relevant to the settlement of an estate.

2. Significant issues:

   None.

3. Fiscal impact:

   This bill is necessary to implement the Governor's 1991-92 Executive Budget and will generate $560,000 in savings.

Senate 6079 - Assembly 8491

Bill Sections: 162-164

Laws: Tax

1. Summary of provisions: These provisions amend sections 991(a) and 1007(a)(2) of, and add new sections 1007(a)(3) and (3) to, the Tax Law to require a 90 percent estimated payment of New York gift tax by January 15th of each year, and to increase the estate tax estimated payment requirement (which must be made within six months of date of death) from 80 percent to 90 percent.

2. Significant issues: None.

3. Fiscal impact: It is estimated that these provisions will add an estimated $43 million to 1991-92 General Fund receipts from estate and gift taxes.

Senate 6079 - Assembly 8491

Bill Sections: 192-194

Laws: Tax

1. Summary of provisions: These sections amend the corporation franchise, bank and insurance tax provisions of the Tax Law (section 210, 1456 and 1511, respectively), to provide that a certificate of eligibility for a job incentive credit should not be continued where the employment level maintained by the taxpayer is lower than the number of jobs to be retained as specified in the initial approval where such approval was based on such retention or less than 5 more than the number of jobs prior to commencement of the project for which approval was granted.

   These provisions were proposed in the Budget and contained in S.2982/A.4482.

2. Significant issues: None.

3. Fiscal impact: Adoption of these provisions will avert the need to pay substantial refunds, totalling an estimated $15 million, during the State's 1991-92 fiscal year.

Senate 6079 - Assembly 8491

Bill Sections: 196-197

Laws: Tax

1. Summary of provisions: These sections amend provisions of Article 27 of the Tax Law to provide that, in the case of an overpayment of corporate taxes, where the disposition of the overpayment is not specified (i.e., a refund is not specifically requested), the amount shall be credited against any subsequent liability of the taxpayer. Current law requires that, in such cases, any such overpayment be refunded.

   These provisions are identical to those proposed in the Budget and contained in S.2961/A4461.

2. Significant issues: None.

3. Budget implications: A net gain of $5 million during the State's 1991-92 fiscal year is expected from these provisions of the bill.

Senate 6079 - Assembly 8491

Bill Sections: 404

Laws: Unconsolidated law provision

1. Summary of provisions: Section 404 requires that the Commissioner of Taxation and Finance to report, by March 31, 1992, to legislative and executive leaders on collection experience with the revenue raisers contained in the bill.

NEW YORK STATE LEGISLATURE

June 4, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York

Dear Elizabeth:

Enclosed please find the official copy of Assembly bill A.8491. The bill passed the Assembly on June 3, 1991 and the Senate on June 3, 1991.

Very truly yours,

Angelo J. Mangia
Counsel to the Senate
Majority

Jay E. Adolf
Executive Counsel to
the Speaker

C00079

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

DAVID ROSADO
Assemblyman 73rd District
New York County

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DISTRICT OFFICE
34 East 149th Street
Suite 608
Bronx, New York 10455
(212) 292-2901

COMMITTEE ASSIGNMENTS
Higher Education
Housing
Mental Health
Real Property Taxation

October 28, 1991

ACTION: 11/15 M.D.R.E.
Info. Photo: GOVERNOR, Lt. Gov., Bulgaro, Conovitz, Crotty, Crowley, Dowling, Girdent, Gordon, Howe, Lewis, Moore, Somers, Tese, Wright, Zambelli
Bill JKT
Referred to:
DUE:

Honorable Maric Cuomo
Governor
State of New York
Executive Chamber
Capitol
Albany, N.Y. 12224

Re: A972-B

Dear Governor Cuomo:

Please regard this letter as one of appreciation for your postponement on the effectuation of the above-mentioned bill.

The community response (see enclosed) to this legislation has been overwhelmingly in opposition. I ask that you continue the postponement until we can further assess the effects this would have on our community.

As you know, our children are our most precious asset. We must re-evaluate both the short and long-term effects the legislation would have on them, if we are to consider relaxing the more stringent requirements of the current laws.

Thanking you in advance for your consideration of this matter, I remain,

Sincerely,

David Rosado
Member, 73rd A.D.

enc.

C00089

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

DAVID ROSADO
Assemblyman 73rd District
New York County

ALBANY OFFICE
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COMMITTEE ASSIGNMENTS
Higher Education
Housing
Mental Health
Real Property Taxation

October 28, 1991

Honorable Cesar A. Perales
Commissioner
Department of Social Services
40 N. Pearl St
Albany, N.Y. 12243

Re: A972-B
Family Day Care
Registration Bill

Dear Commissioner Perales:

Please regard this letter as one of cover for the enclosed copies of letters I have written, requesting continued postponement of the above-referred legislation.

I trust that you will join us in support of this postponement, in order to enable closer examination of the far-reaching effects this legislation will have on the children of New York.

Your consideration of this matter will be greatly appreciated.

Thanking you in advance, I remain,

Sincerely,

David Rosado
Member 73rd A.D.

Enc.

C3008

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

DAVID ROSADO
Assemblyman 73rd District
New York County

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Bronx, New York 10455
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COMMITTEE ASSIGNMENTS
Higher Education
Housing
Mental Health
Real Property Taxation

October 28, 1991

Honorable David Dinkins
Mayor
City of New York
Office of The Mayor
City Hall
New York, N.Y. 10007

Re: A972-B
Family Day Care
Registration Bill

Dear Mayor Dinkins:

Please regard this letter as one of appreciation for your efforts in achieving the postponement on the effectuation of the above-mentioned bill.

The community response (see enclosed) to this legislation has been overwhelmingly in opposition. I ask that you continue to support the postponement until we can further assess the effects this would have on our community.

As you know, our children are our most precious asset. We must re-evaluate both the short and long-term effects the legislation would have on them, if we are to consider relaxing the more stringent requirements of the current laws.

Thanking you in advance for your consideration of this matter, I remain,

Sincerely,

David Rosado
Member, 73rd A.D.

enc.

000084

C - 166

A-8491

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
ALBANY, NEW YORK
12236

Bill Jlt

EDWARD V. REGAN
STATE COMPTROLLER

GAIL HILL GORDON
COUNSEL

June 6, 1991

REPORT TO THE GOVERNOR ON LEGISLATION

TO: The Honorable Elizabeth D. Moore, Counsel to the Governor

RE: A. 8491

INTRODUCED BY: Assembly Committee on Rules

TITLE: AN ACT to amend the tax law, in relation to deduction or credit by a shareholder under the article 22 income tax for tax imposed under article 9-A of the tax law, or by another state or political subdivision thereof, on the income of an S corporation, and the administrative code of the city of New York, in relation to such deduction [and containing voluminous other provisions amending various laws and repealing certain provisions of existing law].

EFFECTIVE DATE: Immediately, except as expressly provided

RECOMMENDATION: No Recommendation

DISCUSSION:

I am writing to express some of the policy concerns which this Office has with respect to the above bill. Specifically, we are concerned about various revenue measures, and about provisions relating to the Abandoned Property Fund administered by the Office of the State Comptroller.

This bill would authorize substantial additional taxpayer supported debt without voter approval. The Comptroller has repeatedly stated that the State's ability to support constitutionally authorized, voter approved debt is diminished as the State's per capita debt burden increases due to legislatively approved appropriation backed financing.

C00084

Further, we note that some of the "backdoor financings" added to the Executive Budget by this bill not only constitute taxpayer supported debt, authorized without voter approval, but also were approved by the Legislature with essentially no notice to the taxpayers and no opportunity for public debate. Examples of such financings include the authorization contained in bill section 309 for MCFFA to make equipment loans to New York State Department of Health facilities and the authorization contained in sections 325-336 for the Thruway Authority to finance certain State highway improvements. We also note that the MCFFA financing is expressly designated as a "loan" and does not contain appropriation or executory language which is routinely included in such transactions to avoid the constitutional prohibition against borrowing without a voter referendum.

Some of these financing authorizations are also "one-shots". As the Comptroller has said on numerous occasions, the use of nonrecurring revenues to fund recurring expenditures exacerbates the State's structural deficit. In fact, the above-mentioned Thruway Authority authorization is so similar to one shots used in prior years that it is now almost in the nature of a "recurring one shot". It will allow the State to pay expenses traditionally paid out of current revenues with public authority bond proceeds.

Sections 311-316 of the bill would authorize the Environmental Facilities Corporation to finance the State's contribution to the water pollution control revolving fund and the construction of Riverbank Park in Manhattan. This is significant because the revolving fund contribution would have been funded pursuant to the Bond Act which was rejected by the voters in the last general election.

The Comptroller continues to believe that it is critical that the State's long-term borrowing practices be reformed. Legislation has been introduced at the Comptroller's request proposing a Constitutional Amendment which we believe would impose discipline on the State's long-term borrowing practices and restore greater accountability to the citizens of the State for taxpayer supported debt (S.2221; A.7091). We continue to urge your favorable consideration of that proposal.

In light of the fact that the various revenue measures and other provisions contained in this bill are not subject to separate disapproval (akin to line item veto) by the Governor, we make this report without recommendation. Nevertheless, we recommend that the Governor direct the Division of the Budget to formulate a financial plan which minimizes the use of both appropriation backed debt and "one shot revenues" by not planning on the implementation of some of the legislatively authorized programs.

The provisions of this bill which would amend the Abandoned Property Law to require delivery of unclaimed underlying shares to the State Comptroller as abandoned property are unacceptable because the bill does not explicitly provide a mechanism to allow the Comptroller to maintain an inventory of securities. The inventory concept provides a mechanism by which shares would be returned in kind in order to protect the rightful owner when a valid claim is made. This concept is a workable approach which is now in place in other states, most notably in California. It would protect the Abandoned Property Fund and the General Fund from claims which may be made many years after securities are sold. Further, the Budget does not provide this Office with the staff resources required to process the underlying shares which are to be delivered to this Office. Accordingly, the ability of this Office to realize the revenues projected based on these amendments is highly questionable.

EDWARD V. REGAN
State Comptroller

By Gail H. Gordon

Gail H. Gordon
Counsel to the Comptroller

GHG:HMF:dl

C00085

C 166 A 8491

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

CESAR A. PERALES
Commissioner

June 21, 1991

Re: Ten Day Bill
Assembly 8491

Dear Ms. Moore:

Your Office has requested this Department's comments on the above-referenced bill which is before the Governor for action.

Assembly 8491 would amend the State Finance Law (SFL) by adding a new Article XI-B - Prompt Contracting and Interest Payments for Not-for-Profit Organizations. Section 179-s of such Law would establish a 150 day timeframe for the development of agency requests for proposals (RFP) and the execution of contracts between State agencies and not-for-profit organizations. Section 179-v of such Law would require State agencies to make interest payments to not-for-profit corporations. Such payments would have to be made from non-personal service funds beginning on the date a program was to begin or the date the organization begins to provide services, whichever is later.

This Department is concerned with Section 171-s of the SFL because it establishes what this Department perceives as difficult timeframes which could increase administrative costs and could result in poorly planned programs. Requests for proposals and contracts are very complex legal documents which require precise drafting; the proposals received require extensive review. The 150 day timeframe could increase the Department's administrative costs in order to meet that timeframe. Further, the programs of this Department could suffer because there might be an insufficient amount of time under the legislation to define the policies of the Department and reflect those policies in the RFP. The Department, at least arguably, also could be placed in the position of having to pay interest to contractors who may have prevented the Department from complying with the required timeframe due to their own bad faith.

Because the provisions of Article XI-B of the SFL became effective April 1, 1991, it is possible that the Department is, or will shortly thereafter become, out of compliance with the provisions of that Article.

This Department supports Sections 318 through 320 of Assembly 8491 which would amend the Private Housing Finance Law by including Homeless Housing Assistance Program appropriations under the Capital Projects Budget instead of the Aid to Localities Budget and would increase the bonding level for housing programs from $525 million to $740 million to pay for housing programs. This Department has reservations about Section 239 of Assembly 8491 which would amend the Public Authorities Law by adding a new Section 1678 to create "additional capital costs" for which not-for-profit hospital corporations may be reimbursed. Such a provision may lead to increased Medical Assistance (MA) expenditures. Finally, this Department gives qualified support to Sections 390 through 398 of Assembly 8491 which would amend the Public Health Law by increasing hospital assessments and treat the medical malpractice add-on as a disproportionate share adjustment with the intent of increasing the base which is the subject to voluntary donations and eligible for federal dollars in order to increase the amount of federal reimbursement under the MA program. The addition of medical malpractice as a reimbursable cost under these Sections may be disallowed by the federal government.

Thank you for the opportunity to comment on this bill.

Sincerely,

Cesar A. Perales
Commissioner

Elizabeth D. Moore, Esq.
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York 12224

C00057

EMPIRE STATE
CONCRETE AND AGGREGATE PRODUCERS
ASSOCIATION, INC.

421 NEW KARNER ROAD, SUITE 10, ALBANY, N.Y. 12205 (518) 456-0036 FAX (518) 456-0644

June 7, 1991

Hon. Mario M. Cuomo
Governor
New York State
The Capital
Albany, NY 12224

Re: Bill S. 6079/A. 8491
Amendments to Mined Land Reclamation Law
ECL Article 23, Title 27

Dear Governor Cuomo:

The Empire State Concrete and Aggregate Producers Association ("ESCAPA") strongly recommends approval of Bill S. 6079/A. 8491, specifically Sections 227 through 238, which contains much needed clarifying amendments to the Mined Land Reclamation Law. (Environmental Conservation Law, Article 23, Title 27). ESCAPA is a state-wide non-profit trade organization representing mining interests throughout the State. Members include producers of concrete, sand and gravel, crushed stone and light-weight aggregate. ESCAPA also has associate members consisting of companies supplying equipment, products and services to mining operations. ESCAPA is committed to maintaining high standards of business practices, including environmentally conscious mining operations and, therefore, supports approval of Bill S. 6079/A. 8491.

In 1974, the Legislature enacted the first state regulation of the extractive mining industry, the Mined Land Reclamation Law ("MLRL") (ECL Article 23, Title 27). In enacting the MLRL the Legislature expressly recognized the essential nature and value of the State's aggregate resources and the need to "foster and encourage" the development of this non-renewable resource. (ECL § 23-2703[1]):

> The legislature hereby declares that it is the policy of this state to foster and encourage the development of an economically sound and stable mining and minerals industry, and the orderly development of domestic mineral resources and reserves necessary to assure satisfaction of economic needs compatible with sound environmental management practices. The legislature further declares it to be the policy of this state to provide for the wise and efficient use of the resources available for mining and to provide, in conjunction with such mining operations for reclamation of affected lands...

(ECL § 23-2703[1]).

A vital tool in ensuring an economically sound and stable State mining industry and providing for the proper use of the State's aggregate resources and reclamation of mined lands was the centralization of regulation within the Department of Environmental Conservation (the "Department" or "DEC"). Thus, the MLRL provided for the express preemption of all other State and local laws regulating the extractive mining industry.

In interpreting this preemption provision, the Court of Appeals noted that it was enacted "to eliminate '[r]egulation on a town by town basis [which] creates confusion for industry and results in unfair costs to the consumer'". (Citing, Memorandum of Department of Environmental Conservation in Support of Assembly Bill 10463-A, May 31, 1974, Governor's Bill Jacket L. 1974, ch. 1043). However, under the original MLRL, local governments were still allowed to impose "stricter reclamation standards".

During the sixteen or so years since the MLRL took effect on April 1, 1975, local governments have continually attempted to regulate the mining industry under the guise of reclamation laws, relying on the exclusion from the supersedure provision of local laws imposing "stricter reclamation standards". These so-called reclamation laws placed such severe restrictions on actual mining operations as to render mining physically impossible, if not economically prohibitive. (*i.e.*, prohibition of the continuation of mining without obtaining a "reclamation" permit, depth limitations, excessive setback distances, prohibition of processing and limits on hours of operation). Such attempts of local government regulation of the mining industry under "reclamation laws" resulted in costly litigation to protect the property rights of mine operators and the equally costly destabilization generated by conflicting court decisions. Additional confusion was created by the differing interpretation of the MLRL definitions and substantive provisions by the various Department administrations.

Thus, a combined effort began a little less than ten years ago to have the Legislature pass much needed amendments to the MLRL to ensure that its original policy goals would be achieved. After years of intense negotiations, these amendments emerged as Sections 227 through 238 of Bill S. 6079/A. 8491 and represent a compromise forged between the Department, the mining industry and the interests of local governments throughout the State. ESCAPA was intricately involved in negotiating these amendments and supports approval of Bill S. 6079/A. 8491.

SUPERSEDURE OF LOCAL LAWS

In order to fully replace the "patchwork system of [local] ordinances" with "standard and uniform restrictions and regulations", as was originally intended, (See, Memorandum of Department of Environmental Conservation in Support of Assembly Bill 10463-A, May 31, 1974, Governor's Bill Jacket, L 1974 ch. 1043) the Legislature in Bill S. 6079/A. 8491 has clarified the scope of supersedure. Under the new law, both the regulation of the mining operation itself, as well as the regulation of the reclamation of mined lands, are superseded, regardless of whether they directly or indirectly regulate mining and reclamation activities within the boundaries of the mining site and, thus, the new provisions alleviate the confusion created by the earlier proviso allowing local laws imposing "stricter reclamation standards". Changes made to the MLRL found in Bill S. 6079/A. 8491 limits the authority of local governments to:

> (a) enacting or enforcing local laws or ordinances of general applicability, except that such local laws or ordinances shall not regulate mining and/or reclamation activities regulated by state statute, regulation or permit.

Section 23-2703(2)(a).

Laws intended by this Bill not to be superseded are those which apply outside the boundaries of the mining site. On the other hand, what was previously interpreted as being laws of general applicability, such as soil disturbance laws, tree cutting ordinances, laws imposing setback distances and hours of operation (see, e.g., Section 23-2705[2][8][10] of Bill S. 6079/A. 8491) are, thus, preempted as are general permit requirements affecting the operation and reclamation of the mine.

Under the 1974 provisions of the MLRL, local governments attempted to limit the scope of the supersedure provision by regulating mining under claimed "laws of general applicability". Changes made to the MLRL in Bill S. 6079/A. 8491 clarifies that supersedure applies to laws of general applicability which impact activities on the mining site, for example, soil disturbance, setback distances, tree cutting ordinances and regulations on hours of operation. It is now express legislative intent that these are superseded by Bill S. 6079/A. 8491.

This vesting of exclusive regulation of the totality of mining operations with the Department also required substantially increasing the fees imposed on mining operations so that the Department could adequately meet its increased responsibilities.

The amended version of the MLRL does not disturb a local government's power to zone property. New Section 23-2703(b) also provides that local governments are not prohibited from:

> enacting or enforcing local zoning ordinances or laws which determine permissible uses in zoning districts.

In determining that zoning ordinances were not preempted, the Court of Appeals in *Matter of Frew Run Gravel Products, Inc. v. Town of Carroll, 71 N.Y.2d 126 (1987)* held that the preemption provision should not be interpreted to "preclude the town board from deciding whether a mining operation - like other uses covered by a zoning ordinance - should be permitted or prohibited in a particular zoning district." *Id.* at p. 133. Once the determination has been made that mining is a permissible use in a zoning district, all local regulation of the activity within the mine site, by mining or reclamation laws or laws of general applicability, is superseded by amended Section 23-2703. New Section 23-2703(b) further defines the limits on local governments' jurisdiction once mining is designated a permissible use:

> Where mining is designated a permissible use in a zoning district and allowed by special use permit, conditions placed on special use permits shall be limited to the following:
>
> (i) ingress and egress to public thoroughfares controlled by the local government;
> (ii) routing of mineral transport vehicles on roads controlled by local governments;

Thus, for local governments which designate mining as a specially permitted use, their jurisdiction is limited to review of two areas, ingress and egress and routing of transport vehicles on roads controlled by the local government. These provisions are consistent with the Bill's intent to ensure supersedure of all local regulation of activities within the mining site. Thus, the Bill explicitly limits special permit jurisdiction to two areas, (i) and (ii) above, both of which apply to activities outside the mining site.

Thus, the supersedure provision applies to all other types of zoning controls which go beyond merely designating permissible uses, or if designated as a specially permitted use, go beyond the specifically enumerated areas. Zoning controls, such as floating zones and aquifer and mining overlay districts, go beyond this limited local jurisdiction, as do other typical special use provisions, such as consideration of neighborhood character. Under the limited local jurisdiction, site plan review would also be superseded. This expressly limited local jurisdiction is necessary to achieve the Bill's goal to centralize regulation of mining with the Department.

The two other two subdivisions, (iii) and (iv), under this Section allow local governments to include in a special use permit, conditions which have been imposed by the DEC permit:

> (iii) requirements and conditions as specified in the permit issued by the Department under this title concerning

> setbacks from property boundaries and public thoroughfare rights of way, natural and man-made barriers to restrict access, if required, dust control and hours of operation, when requirements and conditions are established pursuant to subdivision (3) of Section 23-2711 of this title;
> (iv) enforcement of reclamation requirements contained in mined land reclamation permits issued by the state.

Section 23-2711 allows local governments to make recommendations to the Department within specified time frames on applications for new permits to mine lands never before permitted under the MLRL, (not for those mines previously permitted under the MLRL), with respect to (1) setbacks from property boundaries or public thoroughfare rights of way; (2) man-made or natural barriers designed to restrict access, if needed; (3) control of dust; and (4) hours of operation. The local government may recommend to the Department the imposition of conditions relating to the above four categories, but must supply supporting documentation to the Department for including the conditions in the DEC permit. The Department, if the conditions are found reasonable and necessary, may, in its discretion, incorporate these conditions into the DEC permit. It is only upon meeting these requirements, including the incorporation of the condition in the DEC permit, that local governments are allowed to include such conditions in a special permit. Additionally, Section 23-2711(3) sets forth specific time periods which must be adhered to, making clear that allowing local governments this option shall not interfere with the processing of an application by the Department.

With respect to Section 23-2703(2)(b)(iv), local governments may also include as special permit conditions those reclamation requirements contained in the DEC mined land reclamation permits, for enforcement purposes only. Thus, the reclamation conditions must be identical to those contained in the current DEC permit.

Further clarification of total preemption is found in new Section 23-2711(7). Section 23-2711 (former subdivision [10] now subdivision [7]) is clarified so that there is no question regarding supersedure of local laws. That Section now states:

> Nothing in this title shall be construed as exempting any person from the provisions of any other law or regulation not otherwise superseded by this title.

Specific delineation of local government's jurisdiction as provided in Bill S. 6079/A. 8491 should eliminate the confusion engendered by the original MLRL provisions and achieve the Legislature's stated policy to foster and encourage the extractive mining industry.

CLARIFYING AMENDMENTS TO THE DEPARTMENT'S REGULATORY SCHEME

In addition to superseding all local laws and regulations of mining operations, changes made in Sections 227 through 238 of Bill S. 6079/A. 8491 clarify other terms and provisions of the MLRL which have received differing interpretations under the Department's domain. The definitions listed under Section 23-2705 have been amended to eliminate confusion. A summary of the amended definitions follows.

1. "*Abandon*" (Section 23-2705[1]): The purpose of this definition is to ensure that the policy of reclaiming mined lands is accomplished. "Abandon" does not encompass normal stoppages due to weather, mechanical or operational problems, low market demand or the seasonal nature of the mining business. It is not synonymous with intent to continue mining, nor is it synonymous with abandonment for non-conforming use purposes under zoning law. It is merely a tool to accomplish the Department's goal to reclaim mined lands in a timely fashion.

2. "*Affected land*": This definition has been changed to reflect the current approach of the Department. A mining permit, once issued under Article 23, Title 27, is for all lands to be disturbed over the life of the mine; however, the "affected land" refers only to the land that has been disturbed since April 1, 1975, and will be disturbed by mining during the coming permit term and does not include all lands which will be disturbed by the operation over the life of the mine. The amount of "affected land" for the permit term determines the amount of financial security that the mine operator must provide to ensure reclamation, but does not limit the size of the operation permitted as described in the Mined Land Use Plan once prepared under the amended MLRL.

3. "*Haulageways*": The definition of haulageways has been broadened to include "all roads utilized for mining purposes, together with that area of land over which material is transported, that are located within the permitted area". The permitted area refers to the area permitted for the life of the mine.

4. "*Mine*": This definition has been expanded to include all haulageways and equipment on or below the surface of the ground used in connection with excavation and all lands included in the life of mine review by the Department. In implementing the MLRL in the late 1970's, the Department did not require an applicant to include the land on which processing equipment was located as part of the land within the mining area. However, the Department in the later 1980's deemed it advisable to include equipment as affected land under its jurisdiction. Thus, the definition of "mine" under this Bill expressly includes equipment and haulageways so that there is no question these are part of the mine reviewed, permitted and regulated by the Department. The new definition also incorporates the holding in *Matter of Atlantic Cement v. Williams*, *129 A.D.2d 84 (3d Dep't 1987)* by providing that upon a new

application, the entire "mine" is reviewed and permitted by the Department for the life of the mine.

5. "*Mined land use plan*": This definition has also been amended to clarify that the document required to be submitted on a new application, consists of a mining and reclamation plan. The definitions of both the mining plan and reclamation plan have also been revised. The Mined Land Use Plan must now detail the activities to be performed by the applicant "to reclaim the land to be mined over the life of the mine". In implementing the MLRL in the 1970's the Department did not require such long-range planning. *(See, Matter of Atlantic Cement v. Williams, supra)*. These revised definitions reflect the Department's desire that permit applications address reclamation of the entire mining operation, including land to be affected by mining over the life of the mine.

6. "*Mineral*": The definition of mineral has also been expanded to include any naturally formed inorganic solid material located on or below the surface of the earth, including peat and topsoil. This clarifies that any excavation of a "mineral" is regulated by the State statute.

7. "*Overburden*": The definition of "overburden" has been broadened to include all vegetation. It is now clear through the definitions of both "mining" and "overburden" that the stripping of any "vegetation or other material which lies above or along side a mineral deposit" and the excavation of any "mineral" is regulated by the Department under the MLRL.

8. "*Permittee*": The definition of permittee has been clarified as a person who holds a mining permit for the entire mining site. This, again, is in accordance with the Court's decision in *Matter of Atlantic Cement v. Williams* which held that the original permit issued upon the approval of a mined land use

plan is for the entire mining site.

9. Certain definitions were also excluded since they have been found to be inapplicable to mining sites.

Further, former Section 23-2709(1)(e) was deleted so that specific land use objectives for reclamation are no longer necessary, but mine operators are only required to reclaim the affected land so that the land can be put to productive use in the future. A new subdivision (e) to Section 23-2709(1) has been added allowing the Department to conduct research and demonstrations and collect information to achieve the policy goal of fostering and encouraging the State's extractive mining industry.

Section 23-2709(1)(j) is also new. In conjunction with the addition of the definition of "abandon", Section 23-2709(1)(j) provides for a notice and opportunity for a hearing prior to a determination being made that a mining operation has been abandoned.

The heart of the regulatory program has always been Section 23-2711 which requires a permit for mine operations. While Section 23-2711(1) has been revised to effect clarification of the scope of the permit requirement, as amended, it does not require existing, permitted mining operations to obtain a new permit. A new subdivision (11) was added to Section 23-2711 to continue the existing regulatory framework under which the permits issued by the Department are renewable. Permit terms now range from one to five years. As a review of Section 23-2711 indicates, a permit covers an entire mining site as discussed previously under the definition section, not just a portion of that site.

The definition of a "complete application" for a new mining permit was also clarified. A complete application for a new permit consists of "(a) completed application forms; (b) a mined land use plan; (c) a statement by the applicant that mining is not prohibited at that location; and (d) such additional information as the Department may require." *(See, Matter of Atlantic Cement v. Williams, 129 A.D.2d 84, supra).*

Section 23-2713 has also been amended to clarify the necessary elements of an applicant's mined land use plan and allows the applicant to submit a draft environmental impact statement prepared pursuant to ECL Article 8 in lieu of a mined land use plan in submitting an application for a new permit.

Additionally, a complete application for a renewal of a permit is also set forth:

> (a) completed application forms; (b) an updated mining plan map consistent with paragraph a of subdivision (1) of Section 23-2713 of this title and including an identification of the area to be mined during the proposed permit term; (c) a description of any changes to the mined land use plan; and (d) an identification of reclamation accomplished during the existing permit term.

This Section, together with the Section on establishing a complete application for a new permit, makes clear that the original application is for a permit for the entire area to be affected during the life of the mine and renewals thereafter merely require updated plans.

Subdivision (13) of this Section makes clear that the Uniform Procedure Act under ECL Article 70 governs "permit applications, renewals, modifications, suspensions and revocations under this title".

A new subdivision (d) of Section 23-2713 was added to provide for a situation where a person is mining without a permit (see, Section 23-2705 for definition of "person mining without a permit") and allows the Department, after notice and opportunity for a hearing, to impose a reclamation plan in this situation. Subdivision (2) of Section 23-2713 has also been amended and provides that if feasible, reclamation shall be concurrent with mining. This recognizes that concurrent reclamation is not always necessary and, in fact, not always possible. This Section also provides that reclamation be completed within two years after mining is terminated, but a longer period for reclamation is allowable. Subdivision (2) now provides time periods for which the Department must act in approving or disapproving the reclamation. The provision protects the permittee who has to continue to provide financial security for the reclamation until the Department has approved the final reclamation.

The standards for determining financial security for the reclamation operation are set forth in Section 23-2715 and must be related to the cost per acre for the reclamation. Additionally, the financial security only covers the land which has been affected since April 1, 1975, and which will be affected by mining during the permit term and is not required to cover the acreage which will be affected during the life of the mine.

In order to provide for the substantially higher, new regulatory program fees, a new Title 10 was added to Article 72. The increased fees are established to meet the increased budgetary needs of the Department due to its enlarged regulatory responsibility in being the exclusive regulator of mining operations and reclamation of mined lands. The increased regulatory fees must be paid on an annual basis by the permittee, and are calculated based on the "affected land" for the permit term. The fees are continued to be paid until the Department approves reclamation, but the payment of an annual fee shall be pro-rated to the date of approval of the reclamation by the Department.

CONCLUSION

A review of Sections 227 through 238 of Bill S. 6079/A. 8491 reveal the much needed amendments to the MLRL that provide express and total preemption of local regulation of mining and reclamation operations. Additionally, it clarifies language within the MLRL to conform with existing practice by the Department and settled case law. ESCAPA believes that passage of this Bill will further advance the State's policy to "foster and encourage the development of an economically sound and stable mining industry and the orderly development of domestic mineral resources and reserves necessary to assure satisfaction of economic needs compatible with sound environmental management practices." Therefore, ESCAPA urges approval of Bill S. 6079/A. 8491.

Respectfully,

EMPIRE STATE CONCRETE AND
AGGREGATE PRODUCERS ASSOCIATION

Thomas H. Barry

Mr. Thomas Barry
President

C0010

C-166

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November 14, 1991

Ms. Mary Fasoldt
Legislative Secretary to the Governor
Room 225 Capitol
Albany, New York

RE: Chapter 166 Laws of 1991 (S.6079/A.8491)

Dear Ms. Fasoldt:

I am enclosing a complete copy of the information we have sent to Elizabeth Moore on behalf of our client, the Empire State Concrete and Aggregate Producers Association (ESCAPA), regarding the inclusion of their comments in the Bill Jacket for Chapter 166 of the Laws of 1991 (S.6079/A.8491) commonly known as the F.Y. 1991-92 Omnibus Tax Bill.

I understand that you may be receiving this information from Elizabeth Moore, but I wanted to ensure your receipt of it, so I am, therefore, providing you with a separate copy. Inclusion of this information in the Bill Jacket is critical in order to ensure that the sections pertaining to this particular issue have been commented on as to their impact on the regulation of the State's mineral resources.

We would appreciate, if possible, a response from you indicating that this material will be included in the Bill Jacket for this Chapter. This will assist us in our tracking the history of this legislation, and would be most appreciated.

Sincerely,

Peter R. Crouse

Peter R. Crouse, Director
Government Relations

PRC:mp
Enc.

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November 13, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
Room 225
Executive Chamber
State Capitol
Albany, NY 12224

Dear Ms. Moore:

On behalf of our client, the Empire State Concrete and Aggregate Producers Association (ESCAPA), we are providing you with their final comments regarding S.6079/A.8491, commonly known as the F.Y. 1991-92 Omnibus Tax Bill. These comments specifically refer to Section 227-238 regarding amendments to the Mined Land Reclamation Law (Article 23, Title 27 of the Environmental Conservation Law). We request that these comments be included in the official bill jacket for S.6079/A.8491.

ESCAPA appreciates the support of the Governor and the support of the Department of Environmental Conservation regarding the amendments to the Mined Land Reclamation Law contained within S.6079/A.8491.

Sincerely,

Peter R. Crouse

Peter R. Crouse, Director
Government Relations

PRC:mm

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EMPIRE STATE
CONCRETE AND AGGREGATE PRODUCERS
ASSOCIATION, INC.

421 NEW KARNER ROAD, SUITE 10, ALBANY, N.Y. 12205 (518) 456-0036 FAX (518) 456-0644

June 7, 1991

Hon. Mario M. Cuomo
Governor
New York State
The Capital
Albany, NY 12224

Re: Bill S. 6079/A. 8491
Amendments to Mined Land Reclamation Law
ECL Article 23, Title 27

Dear Governor Cuomo:

The Empire State Concrete and Aggregate Producers Association ("ESCAPA") strongly recommends approval of Bill S. 6079/A. 8491, specifically Sections 227 through 238, which contains much needed clarifying amendments to the Mined Land Reclamation Law. (Environmental Conservation Law, Article 23, Title 27). ESCAPA is a state-wide non-profit trade organization representing mining interests throughout the State. Members include producers of concrete, sand and gravel, crushed stone and light-weight aggregate. ESCAPA also has associate members consisting of companies supplying equipment, products and services to mining operations. ESCAPA is committed to maintaining high standards of business practices, including environmentally conscious mining operations and, therefore, supports approval of Bill S. 6079/A. 8491.

In 1974, the Legislature enacted the first state regulation of the extractive mining industry, the Mined Land Reclamation Law ("MLRL") (ECL Article 23, Title 27). In enacting the MLRL the Legislature expressly recognized the essential nature and value of the State's aggregate resources and the need to "foster and encourage" the development of this non-renewable resource. (ECL § 23-2703[1]):

> The legislature hereby declares that it is the policy of this state to foster and encourage the development of an economically sound and stable mining and minerals industry, and the orderly development of domestic mineral resources and reserves necessary to assure satisfaction of economic needs compatible with sound environmental management practices. The legislature further declares it to be the policy of this state to provide for the wise and efficient use of the resources available for mining and to provide, in conjunction with such mining operations for reclamation of affected lands...

(ECL § 23-2703[1]).

A vital tool in ensuring an economically sound and stable State mining industry and providing for the proper use of the State's aggregate resources and reclamation of mined lands was the centralization of regulation within the Department of Environmental Conservation (the "Department" or "DEC"). Thus, the MLRL provided for the express preemption of all other State and local laws regulating the extractive mining industry.

In interpreting this preemption provision, the Court of Appeals noted that it was enacted "to eliminate '[r]egulation on a town by town basis [which] creates confusion for industry and results in unfair costs to the consumer'". (Citing, Memorandum of Department of Environmental Conservation in Support of Assembly Bill 10463-A, May 31, 1974, Governor's Bill Jacket L. 1974, ch. 1043). However, under the original MLRL, local governments were still allowed to impose "stricter reclamation standards".

During the sixteen or so years since the MLRL took effect on April 1, 1975, local governments have continually attempted to regulate the mining industry under the guise of reclamation laws, relying on the exclusion from the supersedure provision of local scope of supersedure. Under the new law, both the regulation of the mining operation itself, as well as the regulation of the reclamation of mined lands, are superseded, regardless of whether they directly or indirectly regulate mining and reclamation activities within the boundaries of the mining site and, thus, the new provisions alleviate the confusion created by the earlier proviso allowing local laws imposing "stricter reclamation standards". Changes made to the MLRL found in Bill S. 6079/A. 8491 limits the authority of local governments to:

> (a) enacting or enforcing local laws or ordinances of general applicability, except that such local laws or ordinances shall not regulate mining and/or reclamation activities regulated by state statute, regulation or permit.

Section 23-2703(2)(a).

Laws intended by this Bill not to be superseded are those which apply outside the boundaries of the mining site. On the other hand, what was previously interpreted as being laws of general applicability, such as soil disturbance laws, tree cutting ordinances, laws imposing setback distances and hours of operation (see, e.g., Section 23-2705[2][8][10] of Bill S. 6079/A. 8491) are, thus, preempted as are general permit requirements affecting the operation and reclamation of the mine.

Under the 1974 provisions of the MLRL, local governments attempted to limit the scope of the supersedure provision by regulating mining under claimed "laws of general applicability". Changes made to the MLRL in Bill S. 6079/A. 8491 clarifies that supersedure applies to laws of general applicability which impact activities on the mining site, for example, soil disturbance, setback distances, tree cutting ordinances and regulations on hours of operation. It is now express legislative intent that these are superseded by Bill S. 6079/A. 8491.

This vesting of exclusive regulation of the totality of mining operations with the Department also required substantially increasing the fees imposed on mining operations so that the Department could adequately meet its increased responsibilities.

The amended version of the MLRL does not disturb a local government's power to zone property. New Section 23-2703(b) also provides that local governments are not prohibited from:

> enacting or enforcing local zoning ordinances or laws which determine permissible uses in zoning districts.

In determining that zoning ordinances were not preempted, the Court of Appeals in *Matter of Frew Run Gravel Products, Inc. v. Town of Carroll, 71 N.Y.2d 126 (1987)* held that the preemption provision should not be interpreted to "preclude the town board from deciding whether a mining operation - like other uses covered by a zoning ordinance - should be permitted or prohibited in a particular zoning district." *Id.* at p. 133. Once the determination has been made that mining is a permissible use in a zoning district, all local regulation of the activity within the mine site, by mining or reclamation laws or laws of general applicability, is superseded by amended Section 23-2703. New Section 23-2703(b) further defines the limits on local governments' jurisdiction once mining is designated a permissible use:

> Where mining is designated a permissible use in a zoning district and allowed by special use permit, conditions placed on special use permits shall be limited to the following:
>
> (i) ingress and egress to public thoroughfares controlled by the local government;
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Thus, for local governments which designate mining as a specially permitted use, their jurisdiction is limited to review of two areas, ingress and egress and routing of transport vehicles on roads controlled by the local government. These provisions are consistent with the Bill's intent to ensure supersedure of all local regulation of activities within the mining site. Thus, the Bill explicitly limits special permit jurisdiction to two areas, (i) and (ii) above, both of which apply to activities outside the mining site.

Thus, the supersedure provision applies to all other types of zoning controls which go beyond merely designating permissible uses, or if designated as a specially permitted use, go beyond the specifically enumerated areas. Zoning controls, such as floating zones and aquifer and mining overlay districts, go beyond this limited local jurisdiction, as do other typical special use provisions, such as consideration of neighborhood character. Under the limited local jurisdiction, site plan review would also be superseded. This expressly limited local jurisdiction is necessary to achieve the Bill's goal to centralize regulation of mining with the Department.

The two other two subdivisions, (iii) and (iv), under this Section allow local governments to include in a special use permit, conditions which have been imposed by the DEC permit:

> (iii) requirements and conditions as specified in the permit issued by the Department under this title concerning

> setbacks from property boundaries and public thoroughfare rights of way, natural and man-made barriers to restrict access, if required, dust control and hours of operation, when requirements and conditions are established pursuant to subdivision (3) of Section 23-2711 of this title;
>
> (iv) enforcement of reclamation requirements contained in mined land reclamation permits issued by the state.

Section 23-2711 allows local governments to make recommendations to the Department within specified time frames on applications for new permits to mine lands never before permitted under the MLRL, (not for those mines previously permitted under the MLRL), with respect to (1) setbacks from property boundaries or public thoroughfare rights of way; (2) man-made or natural barriers designed to restrict access, if needed; (3) control of dust; and (4) hours of operation. The local government may recommend to the Department the imposition of conditions relating to the above four categories, but must supply supporting documentation to the Department for including the conditions in the DEC permit. The Department, if the conditions are found reasonable and necessary, may, in its discretion, incorporate these conditions into the DEC permit. It is only upon meeting these requirements, including the incorporation of the condition in the DEC permit, that local governments are allowed to include such conditions in a special permit. Additionally, Section 23-2711(3) sets forth specific time periods which must be adhered to, making clear that allowing local governments this option shall not interfere with the processing of an application by the Department.

With respect to Section 23-2703(2)(b)(iv), local governments may also include as special permit conditions those reclamation requirements contained in the DEC mined land reclamation permits, for enforcement purposes only. Thus, the reclamation conditions must be identical to those contained in the current DEC permit.

Further clarification of total preemption is found in new Section 23-2711(7). Section 23-2711 (former subdivision [10] now subdivision [7]) is clarified so that there is no question regarding supersedure of local laws. That Section now states:

> Nothing in this title shall be construed as exempting any person from the provisions of any other law or regulation <u>not otherwise superseded by this title</u>.

Specific delineation of local government's jurisdiction as provided in Bill S. 6079/A. 8491 should eliminate the confusion engendered by the original MLRL provisions and achieve the Legislature's stated policy to foster and encourage the extractive mining industry.

CLARIFYING AMENDMENTS TO THE DEPARTMENT'S REGULATORY SCHEME

In addition to superseding all local laws and regulations of mining operations, changes made in Sections 227 through 238 of Bill S. 6079/A. 8491 clarify other terms and provisions of the MLRL which have received differing interpretations under the Department's domain. The definitions listed under Section 23-2705 have been amended to eliminate confusion. A summary of the amended definitions follows.

1. "*Abandon*" (Section 23-2705[1]): The purpose of this definition is to ensure that the policy of reclaiming mined lands is accomplished. "Abandon" does not encompass normal stoppages due to weather, mechanical or operational problems, low market demand or the seasonal nature of the mining business. It is not synonymous with <u>intent</u> to continue mining, nor is it synonymous with abandonment for non-conforming use purposes under zoning law. It is merely a tool to accomplish the Department's goal to reclaim mined lands in a timely fashion.

laws imposing "stricter reclamation standards". These so-called reclamation laws placed such severe restrictions on actual mining operations as to render mining physically impossible, if not economically prohibitive. (i.e., prohibition of the continuation of mining without obtaining a "reclamation" permit, depth limitations, excessive setback distances, prohibition of processing and limits on hours of operation). Such attempts of local government regulation of the mining industry under "reclamation laws" resulted in costly litigation to protect the property rights of mine operators and the equally costly destabilization generated by conflicting court decisions. Additional confusion was created by the differing interpretation of the MLRL definitions and substantive provisions by the various Department administrations.

Thus, a combined effort began a little less than ten years ago to have the Legislature pass much needed amendments to the MLRL to ensure that its original policy goals would be achieved. After years of intense negotiations, these amendments emerged as Sections 227 through 238 of Bill S. 6079/A. 8491 and represent a compromise forged between the Department, the mining industry and the interests of local governments throughout the State. ESCAPA was intricately involved in negotiating these amendments and supports approval of Bill S. 6079/A. 8491.

SUPERSEDURE OF LOCAL LAWS

In order to fully replace the "patchwork system of [local] ordinances" with "standard and uniform restrictions and regulations", as was originally intended, (See, Memorandum of Department of Environmental Conservation in Support of Assembly Bill 10463-A, May 31, 1974, Governor's Bill Jacket, L 1974 ch. 1043) the Legislature in Bill S. 6079/A. 8491 has clarified the

2. "*Affected land*": This definition has been changed to reflect the current approach of the Department. A mining permit, once issued under Article 23, Title 27, is for all lands to be disturbed over the life of the mine; however, the "affected land" refers only to the land that has been disturbed since April 1, 1975, and will be disturbed by mining during the coming permit term and does not include all lands which will be disturbed by the operation over the life of the mine. The amount of "affected land" for the permit term determines the amount of financial security that the mine operator must provide to ensure reclamation, but does not limit the size of the operation permitted as described in the Mined Land Use Plan once prepared under the amended MLRL.

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application, the entire "mine" is reviewed and permitted by the Department for the life of the mine.

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6. "*Mineral*": The definition of mineral has also been expanded to include any naturally formed inorganic solid material located on or below the surface of the earth, including peat and topsoil. This clarifies that any excavation of a "mineral" is regulated by the State statute.

7. "*Overburden*": The definition of "overburden" has been broadened to include all vegetation. It is now clear through the definitions of both "mining" and "overburden" that the stripping of any "vegetation or other material which lies above or along side a mineral deposit" and the excavation of any "mineral" is regulated by the Department under the MLRL.

8. "*Permittee*": The definition of permittee has been clarified as a person who holds a mining permit for the entire mining site. This, again, is in accordance with the Court's decision in *Matter of Atlantic Cement v. Williams* which held that the original permit issued upon the approval of a mined land use

plan is for the entire mining site.

9. Certain definitions were also excluded since they have been found to be inapplicable to mining sites.

Further, former Section 23-2709(1)(e) was deleted so that specific land use objectives for reclamation are no longer necessary, but mine operators are only required to reclaim the affected land so that the land can be put to productive use in the future. A new subdivision (e) to Section 23-2709(1) has been added allowing the Department to conduct research and demonstrations and collect information to achieve the policy goal of fostering and encouraging the State's extractive mining industry.

Section 23-2709(1)(j) is also new. In conjunction with the addition of the definition of "abandon", Section 23-2709(1)(j) provides for a notice and opportunity for a hearing prior to a determination being made that a mining operation has been abandoned.

The heart of the regulatory program has always been Section 23-2711 which requires a permit for mine operations. While Section 23-2711(1) has been revised to effect clarification of the scope of the permit requirement, as amended, it does not require existing, permitted mining operations to obtain a <u>new</u> permit. A new subdivision (11) was added to Section 23-2711 to continue the existing regulatory framework under which the permits issued by the Department are renewable. Permit terms now range from one to five years. As a review of Section 23-2711 indicates, a permit covers an entire mining site as discussed previously under the definition section, not just a portion of that site.

The definition of a "complete application" for a <u>new</u> mining permit was also clarified. A complete application for a new permit consists of "(a) completed application forms; (b) a mined land use plan; (c) a statement by the applicant that mining is not prohibited at that location; and (d) such additional information as the Department may require." *(See, Matter of Atlantic Cement v. Williams, 129 A.D.2d 84, supra).*

Section 23-2713 has also been amended to clarify the necessary elements of an applicant's mined land use plan and allows the applicant to submit a draft environmental impact statement prepared pursuant to ECL Article 8 in lieu of a mined land use plan in submitting an application for a new permit.

Additionally, a complete application for a renewal of a permit is also set forth:

> (a) completed application forms; (b) an updated mining plan map consistent with paragraph a of subdivision (1) of Section 23-2713 of this title and including an identification of the area to be mined during the proposed permit term; (c) a description of any changes to the mined land use plan; and (d) an identification of reclamation accomplished during the existing permit term.

This Section, together with the Section on establishing a complete application for a new permit, makes clear that the original application is for a permit for the entire area to be affected during the life of the mine and renewals thereafter merely require updated plans.

Subdivision (13) of this Section makes clear that the Uniform Procedure Act under ECL Article 70 governs "permit applications, renewals, modifications, suspensions and revocations under this title".

A new subdivision (d) of Section 23-2713 was added to provide for a situation where a person is mining without a permit (see, Section 23-2705 for definition of "person mining without a permit") and allows the Department, after notice and opportunity for a hearing, to impose a reclamation plan in this situation. Subdivision (2) of Section 23-2713 has also been amended and provides that if feasible, reclamation shall be concurrent with mining. This recognizes that concurrent reclamation is not always necessary and, in fact, not always possible. This Section also provides that reclamation be completed within two years after mining is terminated, but a longer period for reclamation is allowable. Subdivision (2) now provides time periods for which the Department must act in approving or disapproving the reclamation. The provision protects the permittee who has to continue to provide financial security for the reclamation until the Department has approved the final reclamation.

The standards for determining financial security for the reclamation operation are set forth in Section 23-2715 and must be related to the cost per acre for the reclamation. Additionally, the financial security only covers the land which has been affected since April 1, 1975, and which will be affected by mining during the permit term and is not required to cover the acreage which will be affected during the life of the mine.

In order to provide for the substantially higher, new regulatory program fees, a new Title 10 was added to Article 72. The increased fees are established to meet the increased budgetary needs of the Department due to its enlarged regulatory responsibility in being the exclusive regulator of mining operations and reclamation of mined lands. The increased regulatory fees must be paid on an annual basis by the permittee, and are calculated based on the "affected land" for the permit term. The fees are continued to be paid until the Department approves reclamation, but the payment of an annual fee shall be pro-rated to the date of approval of the reclamation by the Department.

CONCLUSION

A review of Sections 227 through 238 of Bill S. 6079/A. 8491 reveal the much needed amendments to the MLRL that provide express and total preemption of local regulation of mining and reclamation operations. Additionally, it clarifies language within the MLRL to conform with existing practice by the Department and settled case law. ESCAPA believes that passage of this Bill will further advance the State's policy to "foster and encourage the development of an economically sound and stable mining industry and the orderly development of domestic mineral resources and reserves necessary to assure satisfaction of economic needs compatible with sound environmental management practices." Therefore, ESCAPA urges approval of Bill S. 6079/A. 8491.

Respectfully,

EMPIRE STATE CONCRETE AND
AGGREGATE PRODUCERS ASSOCIATION

Thomas H. Barry

Mr. Thomas Barry
President

LHB C:\WP50\DOCS\ENVTL\ESCAPA\CUOMO.LTR

C00127

October 8, 1991

The Honorable David Rosado
384 E. 149th St. Room 608
Bronx, NY 10451

Dear Mr. Rosado:

As a parent with a child in the Cardinal McCloskey Family Day Care Program, I strongly protest the new Registration Bill and the planned method of carrying it out in the City of New York.

I now have the security of knowing that my child is in a licensed, monitored day care home. The home is closely supervised by agency staff to make sure that it is safe, clean and appropriate for my childs needs. I also have the security of knowing that the day care home has been pre-screened, the Provider has been fingerprinted and that medicals have been submitted. Registration will eliminate this security and would possible place my child in jeopardy.

The program also offers counseling referrals and assistance when I need it. The program helps to provide reliable, stable care. In emergencies, program staff are able to locate substitute day care services for me. Under the Registration system, I would be solely responsible for locating, monitoring and maintaining the day care placement for my child. Registration will eliminate all of the support that helps me.

I NEED SAFE, RELIABLE, STABLE MONITORED DAY CARE FOR MY CHILD. Please keep the community-based Family Day Care programs and restore on-going supervision of the day care homes.

Name Mercedes Crespo
Address 890 Elsmere Pl

C0012?

C - 16.6

Charles Miller
5 Howard Drive
Coram, New York 11727
June 7, 1991

Bill Jkt.

Elizabeth D. Moore
Counsel to the Governor
State Capitol, Executive Chamber
Albany, New York 12224

Re: Early retirement bill no. 8478A

Dear Ms. Moore:

I am led to believe that both the State Assembly and the State Senate have passed an early retirement bill and that the bill now awaits the Governors signature.

I am writing this to bring to your attention that I would be in favor of the Governor signing this bill.

In light of the economy, I could retire and perhaps open a job position for a younger person.

Thank you for taking the time to read this and I hope things move forward favorably.

Yours truly,

Charles M. Miller

Charles M. Miller

11-24-11

BILLS

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BILL POLIAN
General Manager and
Vice President-Administration

ACTION:
Info Photo:
GOVERNOR
Lt. Gov.
Conovitz
Crotty
R. Crotty
Crowley
Dulles
Forsythe
Glaser
Gordon
Heath
Moore
Palomino
Pohlamba
Somers
Tese
Wright
Zambelli:
Bill Jeff
Referred to:
OTD:
DOE:

May 29, 1991

Honorable Mario M. Cuomo
Governor
State of New York
Office of The Governor
The Capitol
Albany, New York 12224

Honorable Ralph J. Marino
Majority Leader
New York State Senate
The Capitol - Room 330
Albany, New York 12247

Honorable Melvin H. Miller
Speaker
New York State Assembly
The Capitol - Room 349
Albany, New York 12248

All Other Members of the Western New York Legislative Delegation

Dear Sirs:

It has come to my attention that the proposed budget package includes authorization for a sports pool based on Buffalo Bills, New York Giants and New York Jets games. I, and every member of the Bills Organization, urge you to oppose and defeat this authorization.

No matter how it is constructed, government sponsored, sanctioned and promoted, betting is a blight on our sport. Government promoted betting on games in any form, turns the contest from wholesome entertainment by the world's best athletes into a vehicle who's sole purpose is gambling. This, of course, undermines public confidence in the integrity of the game and those who play, coach and administer it. More over, these kinds of state sponsored and sanctioned games usually appeal to those least able to afford them. Additionally, this authorization will promote gambling among young people at a time when the addictive nature of gambling has been well documented in this country. The Buffalo Bills and the N.F.L. are concerned about the millions of young fans who follow our game. We would much prefer that they follow pro football via trading cards not betting slips. There is no revenue projection, however inflated, that can justify the social cost of this plan.

1990 AFC CHAMPIONS
SUPER BOWL XXV

1980 1988 *AFC Eastern Division Champions* 1989 1990

C00130

Two of the teams involved in this proposal, the Giants and Bills, met last January in what many experts termed "the greatest Super Bowl ever played". The courage, skill, effort and heart displayed by these great athletes thrilled millions of N.F.L. fans in New York State, our country and around the world. I find it ironic and tragic that their efforts and those of their counterparts in the N.F.L. should be dragged into the mire of legalized gambling by this legislation.

I urge you to protect the integrity of sports in this State and country by opposing this legislation.

Sincerely,

W.P. Polian

William P. Polian
General Manager and
Vice President - Administration

WPP:lat

M. R. WEISER & Co.
CERTIFIED PUBLIC ACCOUNTANTS

99 Wood Avenue South
Iselin, NJ 08830 2701
(908) 549 2800
Fax (908) 549 2898

535 Fifth Avenue
New York, NY 10017-3697
(212) 972-2500
Fax (212) 503 2267

May 21, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capital
Albany, NY 12224

RE: PROPOSED NEW YORK STATE LEGISLATION

Dear Ms. Moore:

I recently reviewed Governor Cuomo's recently proposed legislation in the corporate tax area to adopt the "throwout" concept. I firmly believe this will significantly increase the tax imposed on New York manufacturers which ship their products to customers in other states.

This is totally contrary to legislation enacted in prior years to attract business, in particular legislation that changed the law so as to permit businesses to apportion their income even though they do not have a place of business in New York.

Under current law, a corporation that ships products out of state is permitted to take this into account in determining the amount of income taxable to New York. The shipment to customers in other states reduced the income taxable in New York. This aspect of the tax law serves to make doing business more palatable and provides jobs in New York state.

Under Gov. Cuomo's proposed legislation, sales shipped to customers in states where the selling corporation is not subject to taxation would be disregarded in determining the amount of income taxable in New York. That would significantly increase the tax imposed on corporations engaged in manufacturing in New York. The impact is especially severe as sales are double-counted in the calculation determining income taxable in New York.

While the proposed legislation may increase taxes and help narrow the budged deficit in the short run, its long-range effect will be to drive out business, especially businesses that manufacture goods in new York and sell to customers located outside New York.

As you are aware, what is clear is that the cost of doing business, including the cost of state and local taxes has a significant impact of whether or not a business relocates to for from the State of New York.

I am strongly dissatisfied with respect to the proposed legislation and would recommend that this legislation be reversed or abated immediately.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Ralph J. Anderson, Jr.
Certified Public Accountant

RJA:cr
RJA188

M. R. WEISER & CO.
CERTIFIED PUBLIC ACCOUNTANTS

Chenango County Chamber of Commerce

29 [illegible] Avenue
[illegible] New York 13815
[illegible]
[illegible] (607) 336 6963

June 28, 1991

The Honorable Mario M. Cuomo
Executive Chamber
State Capitol
Albany, NY 12224

RECEIVED AFTER ACTION BY GOVERNOR

RE: S.6079/A.8491 - Business Tax on Natural Gas Sales

Dear Governor Cuomo:

Senate Bill 6079 and Assembly Bill 8491 will levy a tax of 51 cents per Mcf (1000 cubic feet) on all utility commercial and industrial natural gas customers. The legislation exempts residential customers and school district customers as well as Federal, State and local governments. It is also our understanding that cogeneration type facilities will receive special consideration under the proposed legislation.

The Chenango County Chamber of Commerce strongly opposes the imposition of this additional tax on utility business customers using natural gas (and ultimately all State consumers) because it directly opposes New York State energy policy. In effect, it legislatively mandates an approximate 10 percent rate increase on all industrial and commercial natural gas customers. When gross receipts and sales tax are added, this "legislative rate increase" exceeds 10 percent, and will impose an additional tax burden on businesses operating in the State.

In addition, this type of tax will have a severe and adverse impact on economic development efforts, making the cost of the State's goods and services even less competitive than at present. Such unfavorable tax signals discourage businesses and industry from expanding or locating in New York State, and could even drive out manufacturing businesses, with attendant job losses.

I am enclosing a copy of a letter I received from Norwich Aero Products, Inc. which indicates their concern.

Very truly yours,

Marylou

Marylou Stewart
President

MLS:sld
Attachment

000124

CC: The Honorable Clarence D. Rappleyea

NORWICH
AERO PRODUCTS, INC.
P.O. Box 109, 10 Gladding Lane
Norwich, New York 13815 USA

JUN 27 1991

June 24, 1991

Chenango County Chamber of Commerce
29 Lackawanna Ave.
Norwich, New York 13815

Attn: Ms. Marylou Stewart, President

Dear Marylou:

This letter will reaffirm my feelings regarding the new energy tax imposed in this year's budget fiasco.

What this State needs is more taxes. These taxes are required to pay for the over-regulation.

Earlier, I wrote to commissioner Tese protesting the new taxes levied on our Foreign Sales Corporation. I asked which signal I should pay attention to: our Governor's Award in 1990 for export, The Global New York Award or the elimination of tax benefits for exporters which the IRS created. I fear, from the answer I received from the Commissioner, that he doesn't have any idea what I was talking about.

Now we have additional taxes on industrial energy use. This is probably to pay for transporting cheap upstate power to New York City. We have tried to purchase goods and services from within the state. In spite of higher transportation costs, it will be cheaper to buy energy intensive products from outside New York State under the new regulations.

The politicians know that industries do not vote. They continue to make the same short sighted mistake: industry will vote with its jobs.

. . .

000125

TELEX 82-0242 Telephone (607) 336-7636 FAX 607-336-2610

Industry will take these jobs elsewhere. As large businesses move to other states or even out of the country, those of us who remain must accept their share of the burden. How can we continue to bear this burden and remain loyal?

So much for loyalty.

Sincerely yours,

Norwich Aero Products, Inc.

William G. Ballard, President

WGB:sf

A&S C-166

June 24, 1991

RECEIVED AFTER ACTION BY GOVERNOR

The Hon. Mario Cuomo
Governor
State of New York
Executive Chambers
Albany, NY 12224

Dear Governor:

It was reassuring to hear you say last night on your monthly program on CBS-radio with that renaissance type, Art Athens, who covers everything under the sun, that you would welcome a meeting with Messrs Miller and Marino to discuss alternatives to the state budget as it stands. That is an excellent idea.

Here is why:

> There is what you termed a "lemon" which must be removed from the budget: the Petroleum Business Tax (S.6079/A.8491).
>
> That tax threatens to throttle that very engine, the private sector, which is being counted on to eventually again produce the revenues to finance all of the government programs which make New York State such a magnificent caring place for all of its people.
>
> When the Petroleum Business Tax increase was announced, we were first deeply concerned because of its impact on business in general, on economic development, employment and on private sector investments which business organizations along with local and state government are trying to attract.
>
> Then, we ran some projections as to what the impact of the increased tax would be on A&S's own energy bill. We were stunned to find that taxes would increase by almost a half million dollars on our company's energy bills for stores in New York State.
>
> The increased tax would wipe out all of the cost advantages gained by an aggressive A&S program of energy reduction and add a staggering tax burden on our company which is struggling valiantly to emerge from Chapter 11.

I appreciate that you recognize the consequences of this flight by others from your proposed 10 cent-a-gallon gasoline tax. The petroleum pass-through tax is hardly a straight forward way to gain revenues while wittingly or unwittingly giving a coup de grace to the private sector which has had its share of tax increases in the last three years.

In looking for alternatives, are there non-revenue parts of the personal income tax program, such as narrowing the amount of exemptions, which could be considered?

And regarding the PIT, would it not be fairer to recommend a temporary increase in the personal income tax. I know that you wish to adhere to your advocacy of "no broad-based taxes."

However, increase in the PIT, with a sunset provision, would generate the $600 million or so now anticipated from the Petroleum Business Tax.

It would be levied on a progressive basis on all residents of the state and deductible from their Federal Income Tax. There would be considerably less resentment from taxpayers about the slight increase in their taxes than there would be from employees whose companies closed down or moved out-of-state.

New York State has lost 359,000 private sector jobs between May 1990 and January 1991. More than 3,284 companies have closed in the last year and a half, according to Dun & Bradstreet.

The private sector, not always the most gentle group of people in this state's history, have historically contributed significantly to the State's economic growth and wealth.

It is time for the State's leadership to move wisely and dispassionately in resolving those ways of increasing the necessary revenues without further depressing the State's private sector's capabilities for staging a comeback while maintaining the difficult yet heroic cost reductions which you have occasioned in the government sector.

We are all reaping the bitter harvest of the excesses of the 1980's. Let us act more sagely now in resolving the crises created by those excesses and not bring additional economic hardships by other intemperate actions.

With warm personal regards.

Sincerely,

Francesco Cantarella
Senior Vice President

Chap. 166 H 3491

Greens

Orange Plaza, Route 211 East, Middletown, New York 10940, (914) 342-5484

May 30, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, NY 12224

Dear Ms. Moore:

I am writing to you to express my opposition to Governor Cuomo's proposed budget bill which contains tax legislation which increases the amount of income tax in New York State for those companies which ship their products to other cities and states where they do not have a place of business.

I sincerely feel that while the proposed legislation may increase taxes and help narrow the budget deficit in the short run, its long-range effect will be to drive out business, especially businesses that manufacture goods in New York and sell to customers located outside New York.

Sincerely,

Donald Green
President

DG/kp

C001[illegible]

C-166

GOLDMAN

FREDERICK GOLDMAN, INC./154 WEST 14TH STREET, NEW YORK, NY 10011/(212) 924-6767/800-221-3232/NY STATE 800-421-3232

June 19, 1991

Ms. Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, New York 12224

Dear Ms. Moore:

I am aware that Governor Cuomo's budget bill contains proposed tax legislation which increases the amount of income taxable in New York State for those companies which ship their products to other cities and states where they do not have a place of business.

Companies need to be cost competitive to survive. This tax legislation will force companies, perhaps my own company, to leave New York State. It is relatively easy to relocate.

New York State looses by every company which relocates, and so does every remaining company as they must bear a heavier burden until they are either forced to relocate or liquidate.

Frederick Goldman, Inc. and its 400 employees strongly urge you to reject this aspect of the proposed tax legislation. You must reduce our costs, not increase them!

Sincerely,

FREDERICK GOLDMAN, INC.

Michael S. Goldman
C.F.O. - V.P. Fin & Admin

MSG:jtm

cc: Jonathan Goldman, Chairman
Richard Goldman, President

C004

MANUFACTURERS OF FINE JEWELRY

C-166

USA/NY

UTILITY SHAREHOLDERS ASSOCIATION/NEW YORK, INC.

427 Kenwood Avenue, Delmar, NY 12054 (518) 439-0981

Curtiss B. Matterson, CAE
Executive Director

June 13, 1991

The Honorable Elizabeth D. Moore
Council to the Governor
Executive Chamber
New York State Capital
Albany, NY 12224

Dear Miss Moore:

Re: Assembly Bill 8491 and 305-C

On behalf of the Board of Directors of the Utility Shareholders Association of New York, Inc. I wish to share our vigorous opposition to the above legislation. In our following of the budget crisis in New York, we have repeatedly heard of the governor's opposition to broadbase taxes, including the personal income tax and sales taxes. We can only ask what is more broadbased than energy taxes? In total, according to our estimates, over six hundred million dollars is projected from taxes on energy. The brunt of approximately four hundred million of this annual rate increases caused by new petroleum and natural gas taxes imposed by this legislation will be initially borne by commercial, industrial, non-profit and public customers.

We also have heard the governor express concern for costs to the poor, and yet additional taxes on residential electric bills are especially hard on the elderly poor throughout the state who spend a larger portion of their income on electricity than do the more affluent. For a number of years the state has encouraged and utilities have pursued energy saving programs. Many are in effect while others are being analyzed daily. The state energy policy is clear in its resolve to reduce the use of petroleum and to increase the use of both natural gas and clean coal. If these taxes bear heavily on natural gas being counterproductive to the state's policy.

If our calculations are correct, this legislation will increase the price of natural gas to businesses by approximately ten percent. In our current distressed economy, businesses are failing daily and others are suffering through increased taxes from the past years in addition to those being mandated in 1991. New York's business base is in jeopardy. New taxes for media revenue are short-sighted in terms of long term tax problems in New York.

We respectfully urge the governor and the legislature to seriously reconsider the implementation of this tax legislation as it relates to long term prospects for New York.

Sincerely,

Curtiss B. Matterson, CAE
Executive Director

CBM:gv

cc: Governor Mario M. Cuomo
Gerald C. Cropey
Dahl W. Forsythe
Peter A. Bradford
William D. Kotter

A-8491

55

NATIONAL BASKETBALL ASSOCIATION

OLYMPIC TOWER • 645 FIFTH AVENUE • NEW YORK, N. Y. 10022 • 212-826-7000

DAVID J. STERN
COMMISSIONER

May 30, 1991

The Honorable Mario M. Cuomo
Governor, State of New York
Office of the Governor
The Capitol
Albany, New York 12224

Dear Governor Cuomo:

We have learned that the draft budget bill presented by the legislature includes revenues from a new lottery game to be based upon the scores of NFL games. I urge you to take a strong stand against this authorization.

New York's legalization and encouragement of sports gambling would seriously undermine the unique relationships that sports leagues, teams and players have developed with their fans over many years. And even though the proposed budget bill contemplates only wagering on professional football games at this time, it is but a short, easily taken step to extend wagering to NBA games and, for that matter, even to college sports.

The proposed lottery game would signify a serious and harmful step toward promoting sports betting in this State. It would change the interest and perspective of our spectators from that of home team fans to that of bettors who are first and foremost interested in a specific game score, regardless of which team wins the game. Such a lottery game would suggest to the children of New York that sports heroes are performing in a game to which gambling is an acceptable and encouraged adjunct. In addition, the proposed game raises significant constitutional questions, and could give rise to claims of misappropriation of the NFL's valuable property rights in its games, as well as infringement of its trademarks.

ACTION: 5/31
MOORE
Info Ihotos:
GOVERNOR
Lt. Gov.
Conavian
Crotty
M. Crotty
Crowley
Dulles
Forsythe
Glaser
Gordon
Heath
Moore
Palomino
Pokiemse
Somers
Tese
Wright
Zambelli
B. SMITH X
BAL JKT
Referred to:
OUT:
DUE:

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I respectfully urge you immediately to reject this proposal and consider alternatives to a sports lottery of this kind. If I can be of any assistance or provide any additional information, please do not hesitate to contact me or Gary Bettman, our Senior Vice President and General Counsel.

Sincerely,

David J. Stern
Commissioner

DJS:jf

BY FEDERAL EXPRESS

C0013

55

H- 8491

NASPL

North American Association
of State
& Provincial Lotteries

1726 M Street, NW
Washington, DC 20036
(202) 223-4223
FAX: (202) 833-1577

June 2, 1991

Honorable Mario M. Cuomo
Governor
State of New York
Office of the Governor
The Capitol
Albany, N.Y. 12224

Honorable Ralph J. Marino
Majority Leader
New York State Senate
The Capitol - Room 330
Albany, N.Y. 12247

Honorable Melvin H. Miller
Speaker
New York State Assembly
The Capitol - Room 349
Albany, N.Y. 12248

Dear Governor, Majority Leader and Speaker:

I write on behalf of the North American Association of State and Provincial Lotteries ("NASPL") to express our strong support for New York's proposed new lottery game based on the scores of professional football games, and to set the record straight concerning the arguments raised in opposition by the National Football League.

NASPL is a voluntary association of Lottery commissioners, directors and senior employees representing all the government-authorized lotteries in North America. Currently 33 states and the District of Columbia conduct lotteries in the United States.

ACTION: MoRC
Info Photo:
Referred to:
DATE:
DUE:

The proposed new sports game for New York is a pure chance lottery game that is projected to raise at least 15 million dollars in new non-tax revenue for the state to fund critical education programs. The position of the National Football League in opposition to this game, as set forth in Commissioner Tagliabue's letter to you of May 29, 1991, is blatantly hypocritical. As a New York Times article suggested, the NFL's complaint about state sponsored sports pool lotteries "smacks of the protestations of the Claude Rains character in 'Casablanca', who professes to be shocked at the gambling in Rick's Cafe, even as he collects his winnings." New York Times, July 23, 1989, p. E5. The NFL has long been aware of extensive wagering on its games, has taken virtually no action to prevent such activity, has frequently acquiesced in such activity, and, in fact, has benefited from such activity.

Over 1.5 billion dollars per year is wagered in state-licensed gambling casinos in Nevada alone, the vast majority being head-to-head wagers on individual sporting events. Over 700 "tout" services operate around the country. Virtually every major newspaper, including the New York Times, the Daily News, the New York Post and Newsday, routinely carries point spreads, injury reports and other wagering information. The NFL has done nothing to prohibit these activities. Indeed, until only a few years ago Jimmy "the Greek" Snyder and Pete Axhelm offered wagering advice on NFL pregame shows on CBS and NBC. Moreover, the NFL cannot even police its own. The President, Chairman and CEO of Hilton Hotels Corporation, which operates several sports books in Nevada, is also one of the owners of the NFL's San Diego Chargers.

For decades, the professional sports leagues have reaped the benefits of the interest in sports created by wagering. Now that their monopoly position is secure and they can move teams from New York to New Jersey without regard to the interests of the citizens of New York, they seek to prevent New York from instituting a pure chance lottery game that would replace some of the millions of tax dollars lost by the state as a result of the departure of the Jets and the Giants.

At the same time, the NFL is sponsoring Federal legislation that would expressly "grandfather" sports wagering in Nevada, Delaware and Oregon. If sports wagering is so detrimental to the interest of professional sports, why is the NFL not seeking to prohibit all sports wagering and related activity in every state?

As the states increasingly look to lotteries as a non-tax source to reduce budget deficits, lotteries need to design creative and imaginative ways to raise revenues. The NFL itself has estimated that over $50 billion dollars per year is wagered on NFL games. As the New York State Lottery has shown, state lotteries can design exciting new lottery games to capture some of this money for important state programs.

New York's proposed pure chance lottery game will not undermine the integrity of professional sports, lead to fixes or corrupt youth. As the court stated in National Football League v. Governor of Delaware, 435 F.Supp 1372, 1378 (D. Del. 1977), "[t]he record shows that extensive gambling on NFL games has existed for many years and that this fact of common public knowledge has not injured plaintiffs or their reputations." Moreover, as the Commission on the Review of the National Policy Toward Gambling concluded, sports pool lotteries "should be an easy game for a state to operate, control and regulate." Gambling in America, at 408 (October 15, 1976).

I urge you not to succumb to the pressure of monopolistic special interests to the detriment of the citizens of your state.

Sincerely,

James E. Hosker

James E. Hosker
President

000137

11 5-9-91

The Corporate Printing Company, Inc.

225 Varick Street New York, New York 10014 (212) 620-5600

Ricoh 212-242-2574
Ricoh 212-929-5199
Ricoh 212-243-7282

Harold A Cooney
President

May 17, 1991

Ms. Elizabeth Moore
Counsel to the Governor
The Capitol
Albany, NY 12224

Dear Ms. Moore:

The proposal by Governor Cuomo to implement a tax on sales out of state is a devastating blow if implemented.

At present we have numerous clients across the country and overseas who would be adversely affected by the imposition of this burdensome tax. Our business is extremely competitive and always requires shipments and mailings to out of state addresses. Presently, New York City and State are the highest cost areas to operate a manufacturing company. In fact, four (4) New York based competitors have liquidated during 1990. The added burden of higher tax will drive our clientele to seek other sources for their needs. Presently, numerous clients just deduct the existing tax before paying our invoices and refuse statements for further payment. This tax will clearly cost our company more.

We have 217 employees in New York versus a total of 303 employees in our entire corporation. We would like to keep our New York operations and continue our various contributions to the community.

Governor Cuomo's proposal gives us pause.

Please think carefully and kill his proposal.

Very truly yours,

HC:lg

C-166

DAVIDOFF & MALITO

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
GOVERNMENT RELATIONS
150 STATE STREET
ALBANY, N.Y. 12207

(518) 465-8230
FAX (518) 465-8650

NEW YORK
605 THIRD AVENUE, 34TH FLOOR
NEW YORK, NY 10158
(212) 557-7200
FAX (212) 286 1884

WASHINGTON, D.C.
444 NORTH CAPITOL STREET, N.W.
WASHINGTON, D.C. 20001
(202) 347-1117
FAX (202) 638-6784

November 13, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
Room 225
Executive Chamber
State Capitol
Albany, NY 12224

Dear Ms. Moore:

On behalf of our client, the Empire State Concrete and Aggregate Producers Association (ESCAPA), we are providing you with their final comments regarding S.6079/A.8491, commonly known as the F.Y. 1991-92 Omnibus Tax Bill. These comments specifically refer to Section 227-238 regarding amendments to the Mined Land Reclamation Law (Article 23, Title 27 of the Environmental Conservation Law). We request that these comments be included in the official bill jacket for S.6079/A.8491.

ESCAPA appreciates the support of the Governor and the support of the Department of Environmental Conservation regarding the amendments to the Mined Land Reclamation Law contained within S.6079/A.8491.

Sincerely,

Peter R. Crouse

Peter R. Crouse, Director
Government Relations

PRC:mm

C002...

R 7-2-11

The Corporate Printing Company, Inc.

225 Varick Street New York, New York 10014 (212) 620-5600

Fax: 212-243-7282
212-645-8729
212-929-5199
212-242-2574

John H. Leatherbee, Jr.
President
Corporate Printing International

May 17, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, NY 12224

Dear Ms. Moore,

The proposal by Governor Cuomo to implement a tax on sales shipped out of state is a devastating blow if implemented.

At present we have numerous clients across the country and overseas who would be adversely affected by the imposition of this burdensome tax. Our business is extremely competitive and always requires shipment and mailings to out of state addresses. Presently, New York City and State are the highest cost areas to operate a manufacturing company. The added burden of higher tax will drive our clientele to seek other sources for their needs. Presently, numerous clients just deduct the existing tax before paying our invoices and refuse statements for further payment. This tax will clearly cost our company more.

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Very truly yours,

John H. Leatherbee Jr.

John H. Leatherbee, Jr.

A 9411

CPC
The Corporate Printing Company, Inc.
225 Varick Street New York, New York 10014 (212) 620-5600 Fax: 212-645-1564

Steven D. Schindler
Vice President
Chief Financial Officer

May 16, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, New York 12224

Dear Ms. Moore:

The proposal by Governor Cuomo to implement a tax on sales shipped out of state is a devastating blow if implemented.

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Steven Schindler

F-2

The Corporate Printing Company, Inc.

225 Varick Street New York, New York 10014 (212) 620-5600

Ricoh 212-242-2574
Ricoh 212-929-5199
Ricoh 212-243-7282

John H Doherty
Vice Chairman of the Board

May 17, 1991

Ms. Elizabeth Moore
Counsel to the Governor
The Capitol
Albany, NY 12224

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Very truly yours,

John H Doherty

HC:lg

New York • Baltimore • Washington, D.C. • London

The Corporate Printing Company, Inc.
225 Varick Street New York, New York 10014 (212) 620-5600

Panafax 212-242-2574
Xerox 212-929-5199
Rapicom 212-243-7282

George D. Shifrin
Chairman of the Board

May 16, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, New York 12224

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Please think carefully and kill his proposal.

Very truly yours,

George Shifrin

A.8491

The Corporate Printing Company, Inc.
225 Varick Street New York, New York 10014 (212) 620-5600
Panafax 212-242-2574
Xerox 212-929-5199
Rapicom 212-243-7282

Joel E. Glick
Executive Vice President

May 21, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, NY 12224

Dear Ms. Moore:

The proposal by Governor Cuomo to implement a tax on sales shipped out of state is a devastating blow if implemented.

At present we have numerous clients across the country and overseas who would be adversely affected by the imposition of this burdensome tax. Our business is extremely competitive and always requires shipments and mailing to out of state addresses. Presently, New York City and State are the highest cost areas to operate a manufacturing company. In fact, four (4) New York based competitors have liquidated during 1990. the added burden of Higher tax will drive our clientele to seek other sources for their needs. Presently, numerous clients just deduct the existing tax before paying our invoices and refuse statement for further payment. This tax will clearly cost our company more.

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Governor Cuomo's proposal gives us pause.

Please think carefully and kill his proposal.

Very truly yours,

Joel E. Glick
Executive Vice President

C003..

JS

1C 3441

LOOP-LOC LTD.
100 Engineers Road, Hauppauge, New York 11788
516-567-7777
800-562-LOOP
FAX 516-582-2636

May 29, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, NY 12224

Dear Ms. Moore:

I am outraged after having read a letter entitled "The Cost of Doing Business" written by Joseph Unger which I came across in a recent issue of Crain's New York Business regarding Governor Cuomo's proposed tax legislation increasing the income tax payable to companies who ship their products to other states outside of their place of business.

LOOP-LOC, LTD., (located on Long Island) is a manufacturer of Safety Swimming Pool Covers . Our entire industry was particularly hard hit in 1990, and we are doing our utmost to recoup our losses and go forward into 1991 without staff reductions. LOOP-LOC, LTD. employs approximately 100 - 125 employees, and we hope to continue to endure the poor economic conditions of the times and the high cost of conducting business in the state of New York.

We promote our product, and generate sales, throughout the entire country. To further impose upon small and medium sized businesses, and inflict upon their already declining profit margins is potentially detrimental. I emphatically oppose this proposed tax legislation and sincerely hope that Governor Cuomo and the legislative body will come to their senses and dismiss this proposal at once.

Sincerely,

LOOP-LOC, LTD.

Bill Donaton

William S. Donaton
President

LOOP-LOC

C001..

POOL COVER CORP

From : HANNON PH: 518 425 6816 Jun.06.1991 11:59 AM P01

55

A-8491

FRANKLIN COUNTY

Association of Town Supervisors/Mayors

o/o Joanne Hannon
Supervisor,
Town of Bellmont
Star Route
Merrill, NY 12955

Ph: 518-425-6816

Moore
Bill Jkt.

Honorable Mario Cuomo
Governor, New York State
Executive Chamber
Albany, N.Y. 12224

Dear Governor Cuomo:

Our member towns ask you to not veto CHIPs and the Revenue Sharing monies as presently before you.

Towns have no means other than property tax to fund our basic necessities, such as winter plowing, fire protection, and road maintenance. If we had the means to tax income, or if we received some of the county sales tax,....but we don't.

Very truly yours,

Joanne Hannon

Joanne Hannon

C0013

Capital District Automobile Dealers Association, Inc.

125 Wolf Road, Suite 501 Albany, NY 12205 518/438-0584

Memorandum in Support

Department of Motor Vehicle's proposed rule to raise from $10 to $20 the fee a dealer may charge for an application for a title or registration.

The Capital District Automobile Dealers Association, Inc., **strongly supports** the proposed Department of Motor Vehicle rule to increase the "documentation fee" from $10 to $20. The Association represents 70 new car dealers in New York State's Capital District.

The Association supports the increase in the documentation fee for five major reasons. First, the original rate of $10 was set in 1972 and has not been adjusted since then, even though there has been significant inflation during the 19 year period from 1972-1991.

Second, the proposed bill does not mandate that consumers use the services of a dealer in filing titles or registrations. It preserves consumers' rights to file Department of Motor Vehicle titles and registrations at their own expense.

Third, it permits dealers to charge a fee less than $20, or waive the fee altogether, in the interest of customer goodwill.

Fourth, the proposed bill requires dealers to inform consumers in writing, or on the invoice or bill of sale, of their right to use the services of a dealer or file title and registration paperwork on their own. This preserves consumers' freedom of choice.

And fifth, the bill permits dealers to use their supply of current invoices by typing in disclosure requirements on invoices and bills of sale, or by attaching a disclosure statement to invoices and bills of sale. This provision enables dealers to use their existing supply of invoices and bills of sale without incurring the immediate expense of destroying current stocks of these forms and ordering new ones.

In summary, our Association supports the bill because it: (1) permits dealers to recoup some of their actual costs of processing motor vehicle paperwork, (2) retains consumers' rights to file motor vehicle paperwork on their own, (3) permits dealers to promote consumer goodwill, by reducing the documentation fee, (4) increases consumer awareness of their rights, and (5) decreases dealer costs of complying with the new rule.

H- 8491

AMERICAN INSURANCE ASSOCIATION

1130 Connecticut Avenue N.W.
Suite 1000
Washington, D.C. 20036
(202) 828-7100
(202) 293-1219 FAX

MEMORANDUM IN OPPOSITION

May 22, 1991

The Honorable Mario M. Cuomo
Governor State of New York
Executive Chamber
The Capitol
Albany, New York 12224

The Honorable Melvin H. Miller
Speaker of the Assembly
Room 932 - LOB
Albany, New York 12248

The Honorable Ralph J. Marino
Temporary President and Majority Leader
New York State Senate
Room 330 - Capitol
Albany, New York 12247

RE: AN ACT to amend the tax law, in relation to tax to be withheld on motor vehicle damage insurance awards
(LAFAYETTE, KOPPELL)

Gentlemen:

The American Insurance Association (AIA) is a national trade association representing 240 property/casualty insurers nationwide. AIA member companies write more than 38% of all the property/casualty insurance in New York State. **AIA OPPOSES THE ABOVE CAPTIONED PROPOSAL.**

There are several issues which shall be addressed. Not the least of which is whether a taxable transaction occurs when an insurer makes payment to a policyholder for automobile physical damages. AIA contends that no taxable event has occurred during this transaction. The State is entitled to sales tax only if the policyholder uses the damage payment to make a purchase subject to the Sales and Use Tax.

This proposal would create Article 15 of the Tax Law which would impose a tax on the transfer of certain insurance awards. Under existing law, The New York Sales and Use Tax ("Sales Tax Act") Art. 28 §§1101-1148, is a transactional tax. The tax applies to commodities and certain enumerated services (e.g. dry cleaning, parking, entertainment, food and drink, etc.). Insurance services are not listed as a taxable service and are not subject to sales tax.

This Proposal assumes that the State is entitled to receive the sales tax portion of any damage award at the time the award is paid to the policyholder and that these tax revenues are not being received.

A taxable transaction will occur only if and when the policyholder spends some or all of the damage award. This transaction may be the repair of the damaged auto, the purchase of a new auto, or the purchase of some other item or taxable service. At the time this taxable transaction occurs, the vendor involved (automobile dealer, auto repair shop, or other retail merchant) is responsible under the Sales Tax Act for collecting sales tax and remitting it to the State.

Acknowledging that there may in fact, not be a taxable event, this proposal circumvents existing law and creates a "Compensating Use Tax." In this manner, the State seizes the tax portion of the damage award even if the consumer does not elect to repair his vehicle. The consumer is punished!

This proposal penalizes consumers who elect not to repair or replace the vehicle but utilize the damage award for other retail purchases. The State would receive NOT ONE TAX PAYMENT BUT MULTIPLE TAX PAYMENTS (the payment withheld by the insurer plus any sales tax normally remitted by the merchant or merchants).

Assuming the consumer elects to deposit the award in a savings account and not make any retail purchases, the State benefits twice. The first benefit comes when the insurer withholds/remits the tax and, a second time on the tax generated by the interest earned on the money. Again, the consumer is the loser.

This proposal, also works against the individual who elects to repair the vehicle himself or herself. These "credit vouchers" apparently cannot be used for multiple vendors. Thus, when the consumer makes his/her first purchase they must utilize the "credit voucher." What happens if the "credit voucher" is in excess of the appropriate tax calculated for a particular purchase? The consumer is "shorted" again.

In a zealous, but miss-guided effort, to help the revenue starved State, the proponents have made outlandish revenue estimates without empirical data. These revenue estimates are bloated and have been inflated every year this proposal has been circulated. This proposal is not new. In fact its genesis is more than a decade old.

Eleven years ago, the counsel for the Assembly Insurance Committee, advised the sponsor that this idea had little or no merit. Today, it is basically the same proposal, and it has neither mellowed nor improved with age. Last session, a similar proposal was being discussed which the property/casualty insurance industry, and its agents and brokers unanimously opposed.

This proposal, if adopted, would create a tremendous administrative burden on insurers; add expense and complications to the claims processing system which will adversely impact auto costs and rates; and will probably infuriate, aggravate and frustrate consumers.

There is a benefit, however, to a certain segment of the population. **Counterfeiters!** Counterfeiters may see an economic windfall due to the printing and circulating of these "credit vouchers."

All in all, this proposal lacks merit and is a bad idea. The premise that the State will benefit is illusory. Consumers place damage awards into the stream of commerce and the State receives the appropriate amount of sales tax.

For all the aforementioned reasons, **AIA OPPOSES THIS TAX PROPOSAL AND URGES YOU TO REJECT IT**.

Respectfully submitted,

Robert A. Gaines

Robert A. Gaines, Vice President
New York/New Jersey Region

CC: Assemblyman Ivan C. Lafayette
Assemblyman G. Oliver Koppell
Chairman Saul Weprin, Assembly Ways & Means Committee
Chairman Tarky J. Lombardi, Senate Finance Committee
Patrick E. Brown, Esq.
Jay Adolf, Esq.
Paul Macielak, Esq.
Angelo Mangia, Esq.
Mr. Don Boyd, Division of the Budget
William S. Lifton, Esq.
Kenneth L. Shapiro, Esq.
James J. Ryan, Esq.

RAG:kw

C001[illegible]

A 8491

S 6079

LABELON

SPECIALIST IN THE MANUFACTURE OF COMMUNICATION SUPPLIES

The Honorable Mario Cuomo
New York State Governor
Executive Chamber
State Capitol
Albany, NY 12224

June 4, 1991

RE: Senate Bill S-6079 and Assembly Bill A-8491

Dear Governor Cuomo:

As a manufacturer of thermal facsimile papers and overhead film transparency products, Labelon consumes a substantial amount of natural gas in the drying cycle of our manufacturing process. Any additional taxes that Assembly Bill A-8491 and Senate Bill S-6079 would add to the cost of natural gas would seriously impact our ability to manufacture a quality product at a competitive price.

We are currently experiencing a severe decline in our profitability due to the Japanese practice of "dumping" facsimile products in the United States. Within the past year alone, we have had to reduce the selling price of many of our products by upwards of 50% in order to hold on to a share of the market that we had previously held. At the same time, we have been faced with increased costs for our materials. It is clear to us that the newly proposed Natural Gas Tax will place an additional and unreasonable financial burden on us when we can least afford it. To institute this tax will simply make it harder for us to continue to compete with off shore interests.

Beyond the threat created by the off shore manufacturers, the new tax will make it less attractive for those industries that are trying to increase the pipeline capacity to New York State. In our particular situation, we have been forced to purchase natural gas at a much higher cost than we had been paying, solely because the current lines that bring the Gulf coast gas north are at capacity. Again, this added cost has helped to create an uncompetitive situation.

Please consider the damage that will be created to our company and many others in New York State if these bills pass. I urge you to veto Assembly Bill A-8491 and Senate Bill S-6079.

Thank you for your consideration.

Sincerely,

Warren Hookway

Warren A. Hookway
Executive Vice President

WH/sh

a:gasveto.wh6491.mnw.sh

LABELON CORPORATION, 10 CHAPIN STREET, CANANDAIGUA, NY 14424-1589
TOLL FREE: 800-428-5566 • TOLL: 716-394-6220 • FAX GIII/II: 716-394-3154 • EASYLINK TELEX 888295

A- 8491

National Association of Independent Insurers

2600 RIVER ROAD, DES PLAINES, ILLINOIS 60018

312/297-7800

BY HAND

May 22, 1991

Hon. Saul Weprin
Chairman, Assembly Ways
& Means Committee
Legislative Office Building
Room 923
Albany, NY 12248

Hon. Dall Forsythe
Director, Division of Budget
State Capitol
Albany, NY

Hon. Tarky J. Lombardi
Chairman, Senate Finance
Committee
Legislative Office Building
Room 913
Albany, NY 12247

Re: Proposed Sales Tax on Automobile Physical
Damage Payments

Gentlemen:

The NAII has been informed that a revenue proposal is under consideration which would require automobile insurers settling physical damage claims to pay the amount of damages to the insured and write a separate check to the State for sales taxes attributable to the cost of the repair. The NAII is a trade association representing over 570 insurers, approximately 130 of which are licensed to do business in New York. Together, NAII's members write approximately 29% of the automobile insurance in force in New York. NAII strongly opposes enactment of this legislation.

We are informed that those who are encouraging adoption of the legislation have estimated that its enactment would result in additional annual tax revenues of $25 million. We believe that this estimate is grossly overstated and that implementation of the legislation would result in limited additional tax collections, while imposing horrendous administrative difficulties and costs on our industry.

New York State Insurance Department Regulation 64 requires that insurers paying physical damage claims add the appropriate sales tax amount to the agreed upon price of repairing the damage. Most insurers make their settlement check out to the lienholder and the insured. The entity which gets the check at the end of the process is generally a repair shop, and it is assumed that these entities remit the appropriate sales taxes; there would appear to be no empirical evidence that motor vehicle repair shops are engaging in wholesale sales tax fraud.

There is no legal requirement that an insured must repair a damaged vehicle, but if an insured chooses not to repair the vehicle then no taxable event occurs and the State is not entitled to collect sales taxes, even thought the insurer is obligated by Regulation 64 to pay the projected sales tax to the insured.

While we have not seen the text of the proposed legislation, it would appear that where an insurer now issues one check to settle a physical damage claim it would have to issue two checks, should this scheme be adopted. Additionally, it is our understanding that the legislation would require the filing of at least one and perhaps more forms with the Tax Department. These requirements would add substantial administrative costs to the insurance product, which would ultimately be paid by the insuring public. GEICO Insurance Company, a NAII member which writes approximately 4% of the private passenger automobile insurance in force in New York State, estimates that the bill would add $1 million to its costs in the first year in which it was effective and $250,000 to $350,000 in each subsequent year.

NAII strongly urges that this proposal be rejected.

Very truly yours,

William P. Maloney
Legislative Representative
132 State Street
Albany, NY 12207
(518) 465-8710

WPM/bb
cc: Hon. Mario M. Cuomo
Hon. Ralph J. Marino
Hon. Melvin H. Miller

C00153

H-8491

State Farm Insurance Companies

STATE FARM INSURANCE

One State Farm Plaza
Bloomington, Illinois 61710-000

James R. Tuite
Counsel
Phone: (309) 766-2127

May 29, 1991

The Honorable Mario M. Cuomo
Governor of New York
State Capitol
Albany, NY 12224

The Honorable Mel Miller
Speaker
New York State Assembly
Room 349, State Capitol
Albany, NY 12248

The Honorable Ralph J. Marino
Temporary President & Majority Leader
New York State Senate
Room 330, State Capitol
Albany, NY 12247

RE: Proposed New York Sales Tax on Physical Damage Claims (AB 8439) (Lafayette/Koppell)

Dear Sirs:

The prospect of an excise or sales tax to be imposed on physical damage claims at the point of claim settlement strikes State Farm Mutual Automobile Insurance Company, a major auto insurer in New York state, as being both impractical and unduly burdensome and costly to motorists in New York State.

State Farm believes the net revenue benefit to New York from payment of additional "sales tax" revenue from physical damage coverage loss adjustments will be insignificant, while we believe the cost and inconvenience to our policyholders will be significant.

Sales tax is currently being paid on auto repair and replacement losses. Where the insured decides not to repair or replace a damaged vehicle, we believe to reduce an indemnity payment by excluding the "sales tax" part of the loss would be to deny our insured's the full measure of recovery for the loss experienced. There is, in fact, no taxable event where our policyholder retains the loss proceeds and does not use the indemnity dollars to replace or repair the vehicle.

C00154

Under the Unfair Claims Settlement Practices and Claim Cost Control Measure-Regulation 64 of the New York Department of Insurance (11 NYCRR 216), State Farm is obligated to provide today by "mail or hand deliver(y) its payment to the insured within five business days after the insured has accepted the insurer's offer, or three business days after the receipt of a completed proof of loss." In practice this means a State Farm insured can drive into a claim service center or contact a State Farm agent and receive a claim draft made payable to the insured or to a designated repair facility.

Under this revenue measure insurers would be required to issue a two party check to the claimant and the repair facility or "replacement vendor designated by the claimant."

A regulation designed to provide maximum ease of settlement for the New York policyholder and repair facility would be ignored. The cost of check reissue would be significant to State Farm. The administrative burden on the policyholder in repairing a damaged car would increase. All this would be for a transfer tax on indemnity dollars where revenue is not significant.

Under Article 15 of the Tax Law, insureds who are today compensated fully for loss are compelled to repair or replace a vehicle in order to receive full indemnification. Today a total loss settlement requires the insurer to include a factor for sales tax which would allow the insured to purchase a new or used vehicle and be made whole. Under this revenue measure multiple transactions occur. The insured would receive only a partial payment and could then decide whether he would replace the vehicle or not. If the insured decides not to replace a vehicle he has lost an element of recovery, that portion of the loss allocated to the sales tax. If he does elect to replace the vehicle his or her insurer must upon proof of replacement provide such sales tax recompose, and allocate the transaction cost for such a reimbursement system.

This leads to the second cost of this revenue proposal as it impacts all New York auto policyholders--the transactions of paying sales tax and reopening claim files to factor in repairs (parts) or replacement vehicles and the extent to which such repairs or replacements have been made by insureds. For State Farm in New York State we had in excess of 301,000 comprehensive, property damage or collision reported claims in 1990. Each of these claims is likely under this revenue proposal to have a minimum of three transactions or record keeping events associated with the claim and reconciling the new sales tax procedure. We estimate conservatively that this will cost State Farm in excess of $1 million in administrative cost. This is a cost that will ultimately be reflected in our total financial needs from New York policyholders and will be reflected in rate filing.

Implicit in this revenue proposal is the premise that the Department of Taxation and Finance is remiss in collecting sales tax revenue from repair facilities. We have no indication that repair facilities are not discharging their obligations to remit sales tax to the State of New York. Also implicit in this is the presumption in this revenue measure that it is reasonable to penalize New York motorists who have paid a premium for coverage, who have experienced a loss and for financial reasons or personal reasons have decided not to repair or replace a damaged vehicle. We disagree with such unfounded premises. We believe in excess of 70% of policyholders repair or replace their damaged vehicles.

State Farm would urge that this revenue proposal be rejected.

It imposes an unnecessary intrusion as to the claim settlement process and takes benefits away from New Yorkers who do not desire to repair or replace damaged vehicles.

It disrupts an efficient claim handling mechanism by requiring joint payees to effect a claim settlement.

It imposes millions of dollars of transaction costs (ultimately being paid by our New York customers) to develop a remittance and credit transaction schedule.

It operates on the presumption that sales tax revenue is not being paid by repair facilities and others.

It denies our New York customers an opportunity to effect a free choice of repair or replace without suffering a loss in claim settlement.

It (in balancing the additional revenue gained by New York State and the transaction cost of such a law) produces a negative return to the people of New York, because today our New York policyholders do repair or replace damaged vehicles and in doing so, pay a sales tax.

We urge your rejection of such revenue proposal.

Very truly yours,

James R. Tuite
Counsel

/kjs

cc: Dall W. Forsythe, Director, Division of the Budget
Patrick Brown, First Assistant to the Governor
Honorable Saul Weprin, Chairman, Ways and Means Committee
Carl Carlucci, Secretary, Assembly Ways and Means Committee
Jay Adolf, Esquire, Executive Counsel to the Speaker
James Yates, Assistant Counsel to the Speaker
Honorable Howard Lasher, Chairman, Assembly Insurance Committee
Honorable Tarky Lombardi, Jr., Chairman Senate Finance Committee
Eugene K. Tyksinski, Secretary to Finance Committee
Paul Macielak, Counsel to the Senate Majority
Angelo Mangia, Counsel to the Senate Majority
Honorable Guy J. Velella, Chairman, Senate Insurance Committee

C-166

NEW YORK STATE CATHOLIC CONFERENCE

119 WASHINGTON AVENUE, ALBANY, NEW YORK 12210 • TELEPHONE (518) 434-6195

June 24, 1991

J. ALAN DAVITT
EXECUTIVE DIRECTOR

Honorable Members
New York State Legislature
State Capitol
Albany, N.Y. 12224

Honorable Members:

The state budget recently approved by the Legislature and signed into law by the Governor includes a hidden tax on churches and religious institutions that will substantially increase their energy costs.

The so-called "Energy Business Tax" (EBT) will result in a price hike of about 10 percent on the natural gas used by religious institutions. The tax is purportedly on gas consumed by commercial and industrial customers, but that category includes not-for-profit organizations, churches, and church-related establishments such as schools and hospitals. Gas used in homes and government buildings, including public schools, is not subject to this tax. Utility companies will pass on the cost of this tax directly to the particular customers involved. A tax-rate change on petroleum products under the "Petroleum Business Tax" (PBT) was imposed last year and has already resulted in oil cost increases of 9 percent for churches.

The New York State Catholic Conference contends that the natural gas and petroleum tax on energy used by churches amounts to a dangerous erosion of the time-honored practice of exempting such institutions from taxation. For the public good, houses of worship and other nor-for-profit institutions have been rightly exempted from sales tax and real property tax as a matter of unquestioned practice. We think it disastrously wrong to try to salvage the state budget through a tax that would weaken the very institutions which so well serve society's most fundamental needs.

We strongly urge that before you leave Albany in July you enact legislation which would exempt religious and other not-for-profit organizations from all sections of the Energy Business Tax and the Petroleum Business Tax.

Respectfully submitted,

J. Alan Davitt

R. 141

HOWARD SHAPIRO

the energy association of n.y.state

May 30, 1991

MEMORANDUM IN OPPOSITION TO
PROPOSED PETROLEUM AND NATURAL GAS TAXES

The Energy Association of New York State, comprised of the seven shareholder owned combination utilities which deliver nearly all of the electricity and over half the natural gas used in New York, **strongly opposes a current proposal to impose $400 million in additional taxes to be borne annually by utility customers throughout the State.**

These taxes will raise the gas rates paid by our non-residential customers in excess of 10% and by all of our electric customers in excess of 2.6% on average, with electric customers, from the Mid-Hudson and south, facing annual legislatively imposed electric rate increases in excess of three and four percent. Despite the serious impacts of this substantial tax, which is intended to meet a temporary shortfall in State revenues, no indication has even been given that it will contain a sunset clause to be effective at the end of fiscal 1991-92.

Rate increases of these magnitudes, are directly contrary to long-standing efforts by utilities and State and local governments to stabilize energy costs, foster a healthy economic climate in New York and to create jobs. Where they directly affect residential customers, as increased electric rates will do, they are regressive, taking a larger portion of the income of the poor, and especially the elderly poor, than of other people.

This very substantial rate increase for commercial and industrial gas customers flies in the face of recent actions by the State and federal governments to substitute the use of natural gas for other fossil fuels as an important means of improving air quality in New York and the nation.

Recognizing the severe, broadly-based, and regressive impacts the imposition of the additional petroleum business tax and the new natural gas tax will have on residential as well as business customers throughout the State, we urge you, on their behalf, to reject this proposal.

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OPPOSE MEMORANDUM

New York State AFL-CIO

UNITY

Edward J. Cleary, ***President***
Paul F. Cole, ***Secretary-Treasurer***

Ed Donnelly
Legislative Director

<u>OPPOSE</u>

1991

PETROLEUM TAX

The New York State AFL-CIO, representing 2 1/2 million organized workers in the State of New York, strongly opposes the above captioned tax.

The tax on petroleum is a replacement for the Governor's proposal to tax gasoline at the pump. His poorly presented plan would have ultimately resulted in a dedicated fund for highway and bridge related construction. It is a shame that such a dedicated fund could not be realized within the scope of the current budget negotiations. The alternative, which is the petroleum tax, is more damaging to the economic condition of the state than the gasoline tax could have been. The informed taxpayers of the State are not fooled by the petroleum tax. We urge the Legislature to consider posting the price at the pump and taking the heat before posting the price in a wholesale delivery bill or utility surcharge . Moreover, we refer all concerned to our previous communications on tax policy "Taxes We Can Live With". We strongly urge reconsideration of broad based, progressive taxation.

This memo has been prompted, in part, by the many calls this organization has received from leaders of the business community and their legislative spokespeople. Having boxed themselves in with their irresponsible "no taxation" policy, these business leaders now realize that their bottom line will be affected by the tax proposals currently before the Legislature. These business leaders know that expansion and construction will be adversely affected. They know that vital services will be curtailed. They know that economic viability will suffer regardless of selection from the menu of taxation currently under consideration. In fact these business leaders, although unable to come forward personally, have tacitly agreed with the proposals which this Federation has espoused from the beginning of the current situation i.e. broad based taxation is the only long term solution which will work, fairly.

We therefore urge your reconsideration and rejection of the petroleum tax.

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For further information, contact Ed Donnelly at (518) 436-8516

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New York State AFL-CIO, 100 South Swan Street, Albany, New York 12210 (518) 436-8516
48 East 21st Street, New York City, New York 10010 (212) 777-6040

A. 9491

Capital District Automobile Dealers Association, Inc.

125 Wolf Road, Suite 501 Albany, NY 12205 518/438-0584

Memorandum in Opposition

Governor Cuomo's budget bill proposal for a ten cent a gallon increase in the motor fuel tax.

The Capital District Automobile Dealers Association, Inc. **strongly opposes** Governor Cuomo's proposed ten cent a gallon increase in the excise tax on gasoline and diesel fuel. Our Association represents 70 new car dealers in New York State's Capital District.

We oppose this proposed tax for three major reasons. First, gasoline is already heavily taxed in New York State. If the proposed tax on gasoline and diesel fuels passes, it would bring the State taxes to 34.33 cents, making New York State's gas tax eight cents more than the highest ranked state, Nebraska, which currently taxes motorists 26.4 cents per gallon. Combined with the federal excise tax, motorists would be paying almost 50 cents per gallon in taxes. New York State would be taxing their motorists more than any other state in the country --- not something we can be very proud of!

Second, the gas tax would have a negative impact on the work force. Approximately 75% of all workers use passenger cars as a means of transportation to their workplace. Although some workers will opt to use alternative transportation such as mass transit, the workers in the suburban and rural areas with little or no access to transport systems will have no choice but to pay the excessive tax. Because the states bordering New York have state gasoline taxes grossly lower than ours (e.g., New Jersey 13.5 cents, Vermont 16 cents, Pennsylvania 18.2 cents, Massachusetts 21 cents, Connecticut 22 cents) this will force certain motorists to drive across the border to purchase gas, potentially cutting off our funds, not adding to them.

And third, the Governor claims the additional $500 million expected to be generated from this gasoline tax will be used exclusively for highway repair and maintenance. What he hides is the fact that the income will be used to replace the already existing highway repair and maintenance fund, which will in turn be raided and used elsewhere to balance the budget. Raising the gasoline tax to support further general spending is hypocritical, especially in hard economic times such as these when a more conservative approach to spending is called for.

The proposed tax increase on gasoline and diesel fuels could have a devastating effect on the motoring public, who have already suffered enough by the current recession. The State should be looking for ways to conserve spending and lessen the recession's burden on motorists, and should not punish them for the State's fiscal crisis.

C-166

GREATER MASSENA CHAMBER OF COMMERCE

June 7, 1991

The Honorable Mario Cuomo, Governor
The State of New York
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Cuomo

The Greater Massena Chamber of Commerce wishes to register its opposition to the energy consumption tax, and particularly to the magnitude of such tax, included as a proposal in the joint legislative approach to the 1991-92 state budget.

This new tax is almost certain to create major dislocations for industry in New York State. Up to seventy-five percent of the natural gas sold by our local natural gas company, St. Lawrence Gas, goes to industrial customers. The majority of that gas is used by plants that are part of national and international companies. YOU CAN BE SURE THAT PRODUCTION WILL BE SHIFTED FROM NEW YORK PLANTS TO OTHER STATES.

The energy consumption tax will add, in one case, more than one million dollars per year to the costs of operating in St. Lawrence County. Depending upon class of service, the increased cost of using natural gas in a production process ranges from 12% to 21%.

For one local industry, natural gas represents approximately 60% to 70% of its input costs. This company is already operating at a reduced rate, having shifted production to other states and even out of the country. This industry will not survive in New York State if it has to bear this increased tax burden.

If these companies are forced to shift production elsewhere it will not only devastate the North Country, it will also remove the contribution that these production jobs make to the state and local economy through state, local and sales taxes not to mention spendable income.

Town Hall, P.O. Box 387, Massena, N.Y. 13662, 315-769-3525

The climate for business in New York State is already acknowledged to be considerably less than friendly. These newly proposed taxes will simply increase the perceived hostility of that climate.

The Greater Massena Chamber of Commerce urges you to veto the imposition of these new taxes upon businesses which are already struggling with economic recession. Let's not make New York less competitive, in comparison to its neighbors, than it already is!

Sincerely,

R. Shawn Gray
Executive Director

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Capital District Automobile Dealers Association, Inc.

125 Wolf Road, Suite 501 Albany, NY 12205 518/438-0584

Memorandum in Opposition

Governor Cuomo's budget bill proposal to require a $5.00 deposit on every tire.

The Capital District Automobile Dealers Association, Inc., **strongly opposes** Governor Cuomo's budget bill proposal which would require consumers to pay a $5.00 deposit on the sale of every new tire, including those equipped on a new vehicle. The Association represents 70 new car dealers in New York State's Capital District.

The Association opposes the proposed bill for three major reasons. First, it will decrease new car sales because this bill will increase new car costs by $25 per car, at a time when new car costs are, for the most part, increasing every year.

Second, the proposal would depress an already soft market for automobiles due to their increased costs. As sales decline, so too does employment in dealerships and New York State industries manufacturing vehicles and automotive parts.

And third, the proposal unfairly discriminates against upstaters, for whom a vehicle is not a luxury, but a necessity, due to limited mass transit.

In summary, our Association opposes the bill because it would: (1) increase consumers' costs of purchasing vehicles, (2) decrease employment, and (3) unfairly discriminate against upstaters.

Capital District Automobile Dealers Association, Inc.

125 Wolf Road, Suite 501 Albany, NY 12205 518/438-0584

Memorandum in Opposition

Governor Cuomo's budget bill proposal for mandatory window glass etching.

The Capital District Automobile Dealers Association, Inc., **strongly opposes** Governor Cuomo's budget bill proposal which requires franchised dealers to etch the VIN number on *each* new and used vehicle sold in New York State. The Association represents 70 new car dealers in New York State's Capital District.

The Association opposes the proposed bill for three major reasons. First, it places an unreasonable burden on consumers by requiring them to pay a $50 fee for the etching. Of this $50, the dealer would return $25 to the State and retain $25 for their labor. The Governor bills this as a "significant anti-auto theft measure" reducing auto crimes. The real crime is the Governor's smoke and mirrors attempt to raise revenue for the State, under the guise of fighting auto theft.

Second, the proposal would not be an effective means of curtailing auto theft because a car thief could easily discard etched windows and replace them with other glass, or remove etched numbers by sandblasting. The proposal would not deter thieves who transport stolen vehicles out of the country.

And third, consumers' insurance costs would increase because new glass, which is more expensive than replacement glass, would have to be used for all insurance repairs.

In summary, our Association opposes the bill because it would: (1) place an unreasonable financial burden on consumers, (2) fail to achieve its intended goal of reducing auto theft, and (3) increase consumers' insurance costs.

Capital District Automobile Dealers Association, Inc.

125 Wolf Road, Suite 501 Albany, NY 12205 518/438-0584

Memorandum in Opposition

Governor Cuomo's budget bill proposal to tax used car trade-ins.

The Capital District Automobile Dealers Association, Inc., **strongly opposes** Governor Cuomo's budget bill proposal to tax the *full* price of a vehicle, without taking into account the value of a consumer's trade-in. The Association represents 70 new car dealers in New York State's Capital District.

The Association opposes the proposed bill for three major reasons. First, the sales tax proposal would have an adverse effect on consumers by increasing their cost of purchasing a vehicle by hundreds of dollars, on average.

Second, the proposal would depress an already soft market for automobiles due to their increased costs. As sales decline, so too does employment in dealerships and New York State industries manufacturing vehicles and automotive parts.

And third, the proposal unfairly discriminates against upstaters, for whom a vehicle is not a luxury, but a necessity, due to limited mass transit.

In summary, our Association opposes the bill because it would: (1) increase consumers' costs of purchasing vehicles, (2) decrease employment, and (3) unfairly discriminate against upstaters.

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NYSEG

6079

James A. Carrigg
Chairman, President and
Chief Executive Officer

A. 8491

June 7, 1991

The Honorable Mario M. Cuomo
Executive Chamber
State Capitol
Albany, NY 12224

RE: S.6079/A.8491 - Business Tax on Natural Gas Sales

Dear Governor Cuomo:

Senate Bill 6079 and Assembly Bill 8491 will levy a tax of 51 cents per Mcf (1000 cubic feet) on all utility commercial and industrial natural gas customers. The legislation exempts residential customers and school district customers as well as Federal, State and local governments. It is also our understanding that cogeneration type facilities will receive special consideration under the proposed legislation.

New York State Electric & Gas Corporation (NYSEG) strongly opposes the imposition of this additional tax on utility business customers using natural gas (and ultimately all State consumers) because it directly opposes New York State energy policy. In effect, it legislatively mandates an approximate 10 percent rate increase on all industrial and commercial natural gas customers. When gross receipts and sales tax are added, this "legislative rate increase" exceeds 10 percent, and will impose an additional tax burden on businesses operating in the State.

State energy policy is clear in its resolve to reduce the use of petroleum and to increase the use of both natural gas and clean coal. Hiking the costs of natural gas by 10 percent or more has the potential to reduce natural gas use in the State and is thus counterproductive. Nationally 55% of the foreign trade deficit is attributable to imported oil and should not be allowed to increase.

In addition, this type of tax will have a severe and adverse impact on economic development efforts, making the cost of the State's goods and services even less competitive than at present. Such unfavorable tax signals discourage businesses and industry from expanding or locating in New York State, and could even drive out manufacturing businesses, with attendant job losses.

Because imposing this additional tax unfairly burdens NYSEG's business ratepayers, and will accelerate the loss of industry from New York State, NYSEG opposes this legislation and urges you to withhold your approval.

Very truly yours,

James A. Carrigg

New York State Electric & Gas Corporation 4500 Vestal Parkway East P O Box 3607, Binghamton, New York 13902-3607 (607) 729-2551

Capital District Automobile Dealers Association, Inc.

125 Wolf Road, Suite 501 Albany, NY 12205 518/438-0584

Memorandum in Opposition

Governor Cuomo's budget bill proposal to set vehicle registration fees based on the vehicle's value.

The Capital District Automobile Dealers Association, Inc., **strongly opposes** Governor Cuomo's budget bill proposal which would change the current method of assessing registration fees based on a vehicle's weight to one based on a vehicle's value. The Association represents 70 new car dealers in New York State's Capital District.

The Association opposes the proposed bill for three major reasons. First, it will decrease new car sales, because potential purchases of new cars and luxury vehicles would pay higher fees than they pay under the current weight-based registration system.

Second, as the value (i.e. cost) of new vehicles increases, due to inflation, so too does consumers' cost of registering vehicles under the proposed bill.

And third, the bill eliminates the Department of Motor Vehicles' practice of giving cash refunds for the unused portion of a vehicle's two year registration. Certain consumers may prefer the cash refund, to the bill's proposal to offer them a Motor Vehicle "credit."

In summary, our Association opposes the bill because it would: (1) decrease car sales, (2) increase the cost of registering new vehicles, and (3) eliminate cash refunds for unused portions of registrations.

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

JAMES W WETZLER
COMMISSIONER OF TAXATION AND FINANCE

June 6, 1991

The Honorable Mario M. Cuomo
Governor
State of New York
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

Re: Assembly Bill No. 8491

You have asked for my comments on the above bill which is before you for executive action.

This bill seeks to raise the revenue needed to balance the State's 1991-92 fiscal plan. As such, it contains a myriad of provisions ranging from the imposition of taxes to the transfer of various funds. This letter will deal with those provisions of the bill directly related to the taxes and fees administered by the Commissioner of Taxation and Finance.

Sections 1 through 6 of the bill, the so-called "Baker" S corporation provisions, disallow a resident credit but allow a deduction to shareholders under the personal income tax for taxes imposed on the S corporation by states and their political subdivisions. (A deduction is not, however, allowed for the general business corporation franchise tax imposed by Article 9-A of the Tax Law.) These provisions are as proposed in the Executive Budget (S.2941/S.4441) except that the credit disallowance proposed there to be effective for 1990 tax years is, rather, made effective for tax years beginning after 1990.

Sections 7 through 16-c and 147 through 149-b of the bill amend provisions relating to Articles 13-A and 9, respectively, of the Tax Law regarding privilege taxes with respect to petroleum products and natural gas.

Section 7 amends section 186-a(4) of Article 9 of the Tax Law to eliminate reference to the utility credit which, under the bill, would no longer be allowed against the tax imposed by section 186-a.

Section 8 of the bill amends the Article 9 statewide surcharge provisions on the furnishing of utility services under Tax Law section 188(1) by providing that the surcharge shall be based on tax liability under section 186-a prior to the application of any utility tax credit authorized by Article 13-A of the Tax Law.

Sections 9 and 11 of the bill make technical corrections to make special provision for persons dealing in liquefied petroleum gas as a motor fuel.

Section 10 of the bill amends the heading of Article 13-A of the Tax Law to refer to the Energy Business Tax which would be added by the bill.

Section 12 adds a new section 301-b(f) to the Tax Law to provide that certain electric corporations are authorized to be direct payment permitees with respect to purchases which are to be used solely for the purpose of generating electricity and should not be subject to tax initially under sections 301-a and 301-g of the Tax Law with respect to such purchases. Section 13 of the bill amends section 301-d of the Tax Law regarding the utility credit to conform to the changes regarding direct pay permits and to limit the credit to product used to produce electricity for residential purposes.

Section 14 of the bill amends section 301-e(d) of the Tax Law to increase the rate of the tax relating to kero-jet fuel to the same rate applicable to motor fuel and automotive diesel motor fuel.

Section 15 amends section 301-g of the Tax Law to indicate the application of the surcharge to the new taxes imposed under Article 13-A. Section 301-g(b) provides a utility credit against the tax surcharge imposed on the petroleum business taxes. We understand that it was the Legislature's intention to provide that the utility credit not be applicable to the surcharge on the supplemental tax imposed by section 301-j. The overall context of the Article 13-A changes made by this bill may support that result; however, a clarification of the language of subdivision (b) of section 301-g by chapter amendment should be forthcoming so as to bolster this legislative intent.

Section 16 of the bill adds new sections 301-h, 301-i and 301-j of the Tax Law. Section 301-h would impose the tax with respect to carriers subject to the highway use tax along the lines suggested in the Executive budget bill (S. 2978/A. 4478). Section 301-i would impose an energy business tax measured by volume of natural gas imported into or produced in the state. Section 301-j would impose a supplemental petroleum and aviation fuel business tax at the rate of 4.5 cents per gallon.

Proposed section 301-i(d)(6) of the Tax Law, added by section 16 of the bill, would create an exemption from the new energy business tax on natural gas with respect to that portion of natural gas purchased by a co-generation facility which is used to generate electricity or produce steam for use by the thermal energy host (i.e. the purchaser which co-generates the electricity or steam). Aside from administrative concerns regarding determination of the portion of fuel used for such purpose, we have concerns regarding the potential of revenue erosion resulting from this exemption. Our information suggests that the next several years will see a proliferation of co-generation facilities, which will be further encouraged by this exemption. Accordingly, there will be a commensurate increase in the production of power by the use of natural gas which is not subject to the tax. Moreover, we note that the commercial customers of utilities will be at a distinct disadvantage as compared to large consumers which have the means to utilize the co-generation arrangement.

Sections 16-a and 16-b would amend sections 308 and 312 of the Tax Law to make technical changes to provisions regarding returns and disposition of the taxes, respectively.

Section 16-c would add a new section 66-h of the Public Service Law to allow certain energy businesses to recover an amount equal to the amount of the energy business tax on its sales of electricity to certain electric corporations.

Sections 147 and 148 of the bill add new sections 189, 189-a and 189-b of the Tax Law to impose a privilege tax, together with the Article 9 surcharges, on the importation of gas services for consumption. This new tax imposed by section 189 is measured by 3 3/4% of the consideration given or contracted to be given for the gas. In cases where the tax would apply to gas produced or extracted out-of-state by the importer, the measure of the tax is still the consideration given or contracted to be given on the purchase of gas even though the importer/user in this case did not purchase the gas, but extracted the gas itself. This oversight for natural gas imported by the producer should be corrected so as to provide that in such case the cost of production be used as the tax measure. Section 149 of the bill contains a severability provision relating to the section 189 tax.

Section 149-b directs the Public Service Commission to require certain electric corporations purchasing electricity from certain gas importers to pay an amount equal to the taxes imposed by sections 189, 189-a and 189-b of the Tax Law.

Sections 17 through 21 of the bill amend Articles 28 and 29 of the Tax Law to define "telephone answering service" and to impose State and local sales and compensating use taxes on such services.

A telephone answering service is defined in section 17 of the bill to be "[A] service that consists of taking messages by telephone and transmitting such messages to the purchaser of the service or at the purchaser's direction, but not including such service if it is merely an incidental element of a different or other service purchased by the customer." The foregoing provisions are changes added by the Legislature to the telephone answering service portions of a budget bill (S. 2946/A. 4446) presented by the Executive. The provisions of section 1105(b) of the Tax Law, which impose sales tax on sales, other than for resale, of utility services and telephone services, are amended by section 18 of the bill to also impose tax on sales, other than for resale, of a telephone answering service. Sections 19 through 21 make conforming amendments to provide for the imposition of State and local compensating use taxes on telephone answering services. Section 406(c) of the bill provides that sections 17 through 21 of the bill will take effect September 1, 1991.

It is our understanding from discussions with legislative staff that the Legislature intended to exclude from the definition of telephone answering service, the service consisting of taking purchase orders for a client over an "800" telephone line and forwarding such purchase orders to the client. It is unclear, however, from the statutory language where the line would be drawn between a taxable telephone answering service and a non-taxable interactive mass marketing service of the type described above. Presumably, the level of interaction between the provider of the service and persons placing purchase orders is critical. To the extent that a service provider goes beyond relaying purchase orders (for example, by answering customer inquiries about the availability of the specific product being sold and simultaneous inventory adjustment), the greater the likelihood that the telephone answering service being offered would be viewed as merely incidental to the provision of a different service.

Sections 22 through 37 of the bill amend existing law to make it clear that the exemption from taxes granted to income from bonds issued by various local water and sewer authorities does not, and never did, include an exemption from state and local indirect taxation, including franchise taxes and estate, gift and transfer taxation. The clarification is made by amending the relevant provisions of the Public Authorities Law with respect to local water and sewer authorities generally and 12 specific local authorities in particular. These provisions are derived from Executive Budget Bill S. 2974/A. 4474.

Section 22 of the bill is a statement of legislative intent that reaffirms and ratifies the original legislative intent with respect to the extent of these exemptions. This section notes that the exemption from franchise taxes in existing law granted only an exemption of the activities of the authorities from franchise tax.

In furtherance of this Legislative intent, the amendments to the Public Authorities Law take effect at the same time as the original section of law which is being amended took effect. Section 37 provides that the effective date of these bill sections will be the date the bill becomes law if the retroactive effective dates are ruled invalid.

Section 38 of the bill freezes the alternative minimum tax rate applicable under Article 9-A of the Tax Law at 5 percent for taxable years beginning in 1991 and 1992. The rate will then drop to 3 1/2 percent for tax years beginning after 1992. The provision to freeze the rate was contained in your Budget Bill S.2961/A.4461. That bill, however, in section 1, would have frozen the rate permanently at 5 percent, beginning for taxable years beginning in and after 1990.

Section 39, derived from the Executive Budget Bill (S. 2917/A. 4417), amends the Public Authorities Law to limit the amount deposited by the Commissioner of Taxation and Finance in the Long Island Power Authority Creation and Contingency Fund from certain payments under sections 186 and 186-a of the Tax Law to the amount appropriated to such Authority.

Bill sections 42 through 104 amend Articles 9, 9-A, 32 and 33 of the Tax Law to make the requirements concerning declarations of estimated tax and payments of estimated tax applicable to the Temporary Metropolitan Business Tax surcharges imposed by Tax Law sections 184-a, 186-b, 186-c, 209-B, 1455-B and 1505-a. These provisions are the same as provisions contained in your budget bill (S.2990/A.4490). However, the provisions in your budget bill which would have extended the Temporary Metropolitan Business Tax Surcharges for one year were deleted from this bill. Currently, the surcharges are applicable only to taxable periods ending before December 31, 1992. Your budget bill would have extended the surcharges to taxable periods ending before December 31, 1993.

As a result of the deletion of the extensions, taxpayers will be required to make estimated tax payments only for taxable periods ending before December 31, 1992. Thus, taxpayers which report on a calendar year basis will be required to make estimated tax payments for the period ending December 31, 1991 but will not be required to make any estimated payments, including the mandatory 25 percent first installment, for the period ending December 31, 1992. The result is similar for fiscal year taxpayers. They will be required to make estimated tax payments only for periods ending before December 31, 1992. For example, a taxpayer whose fiscal year ends January 30 will be required to make estimated tax payments for the taxable period ending January 30, 1992 but will not be required to make any estimated tax payments, including the mandatory 25 percent first installment, for the taxable period ending January 30, 1993. Accordingly, the viability of this estimated tax procedure as a funding mechanism for the Metropolitan Transportation Authority is limited.

Sections 109 through 126-a of the bill amend the Tax Law, the General City Law, the Administrative Code of the City of New York and the Codes and Ordinances of the City of Yonkers to consolidate and restructure the wage reporting and withholding tax systems. These sections generally take effect January 1, 1992 and apply to all taxes required to be deducted and withheld and all wages required to be reported on and after such date, and to all returns and reports required to be filed with respect to such taxes and wages.

While this bill differs substantially from your Executive Budget Bill (S. 2994/A. 4494), the Department of Taxation and Finance supports the program contained in this bill since it accomplishes many of the aims of your original proposal. The consolidation and restructuring would benefit both the State and employers by providing an efficient, and simplified, reporting and remittance system. This Department, by virtue of merged administration of the wage reporting and withholding systems, would ultimately realize enhanced programmatic capabilities through streamlined processing, paperwork reduction and employer submission of required returns on magnetic media.

In addition, a revenue gain would be realized by restructuring the way in which employers are required to remit withholding taxes. This restructuring would accelerate the existing revenue stream and provide continuing investment income on the earlier receipt of the revenue without increasing taxes or imposing undue processing and administrative difficulties on employers.

Bill section 135 adds a new Article 15 to the Tax Law to require insurers licensed to issue motor vehicle physical damage and property damage liability insurance to withhold the sales or compensating use tax component (the tax component of the award) from damage awards paid to claimants, to pay over the tax component to the State, and to issue credit vouchers to the claimants to apply against their sales or compensating use tax liability when they repair or replace their motor vehicles. It is our understanding of the bill that it contemplates insurers printing the vouchers and stubs which it requires them to issue to claimants. Certain refunds are available where the vehicle is repaired or replaced out of state, or where no repairs are made or replacement obtained, within one year from the date the damage award is paid. Bill sections 136 through 138-a make conforming and technical amendments to section 171-a of the Tax Law and the Sales Tax Law, relating to revenue disposition, collecting sales tax, vendor registration and record-keeping.

Bill section 138-b adds section 1816 to the Tax Law, imposing criminal penalties related to new Article 15. Bill section 138-c is a severability provision. Bill sections 138-d and 138-e require the Commissioner of Taxation and Finance to study and report on the efficiency and efficacy of the new Article 15 and general sales tax audit and compliance issues, respectively.

The purpose of the new Article 15 is to increase tax revenue by the amounts calculated by insurers to cover the sales tax due when a motor vehicle is repaired or replaced by requiring an insurer to pay this amount (i.e., the tax component of the award) directly to the Department of Taxation and Finance. A study of the Article 15 tax and sales tax issues is desirable to assess the effectiveness and efficiency of Article 15 in the context of general sales tax compliance.

Sections 139 through 145 of the bill freeze the income tax rate structure in effect in 1990 for one additional year. Unlike the proposal in the Executive Budget (S.2943/A.4443), which made permanent the 1990 tax rates, standard deduction and household credit, these provisions freeze the structure in 1991 at 1990 levels, after which the tax cuts scheduled under existing law for 1992-94 will resume. The bill also extends the authority of the Tax Department to delay changes in withholding tables until October 1 of each year from 1992 to 1994.

Bill sections 154-159 amend various provisions of Article 28 of the Tax Law to include pre-written software in the definition of tangible personal property, thus rendering such software subject to the State and local sales and compensating use taxes imposed under such Article 28 and pursuant to the authority of Article 29 of the Tax Law. The definition of "sale" is amended to clarify that "license to use" includes merely the right to reproduce such software. "Pre-written software" is software other than software designed and developed to the specifications of a specific purchaser (commonly called "custom software").

An exemption is provided for sales and uses of otherwise taxable software by and between corporations which are members of certain affiliated groups of corporations, and certain partnerships controlled by such corporations, but only where the transfer between group members is not in pursuance of a plan having as its principal purpose the avoidance or evasion of tax under Article 28. This intra-group transfer exemption is a new concept in the Sales Tax Law. Authority to look behind the form of a transaction is also new to the Sales Tax Law, and we welcome it as exalting substance over form in an area where form has often prevailed.

Also exempt are all otherwise taxable services performed on or rendered with respect to any software. The exemption of such services will raise questions of implementation and interpretation. A compensating use tax is imposed on self-use of self-created pre-written software. The base for such use tax is the cost of the medium (disc or tape) on which the software is contained. A transition rule in the form of an exemption provides that software which did not constitute tangible personal property prior to September 1, 1991, and which was used prior to that date is exempt from use tax.

Bill section 406(j) provides that the software provisions take effect on September 1, 1991, and shall apply to all sales and uses made after that date, unless certain transition conditions are met.

Sections 160 and 161 are identical to the provisions in the Budget Bill which imposed sales and compensating use tax on certain charges for shipping and handling (see S.2988/A.4488, sections 1 and 5). Section 160-a amends section 1160(a)(2) (Special tax on passenger car rentals) to conform the language in that section relating to the consideration upon which the use tax is calculated to the amendment made to section 1110 by section 161 of this bill. The effective date of these sections is September 1, 1991 with a transitional provision for pre-existing contracts.

Section 162 of the bill amends Tax Law section 991(a) to require 90 percent of the estate tax, as finally determined, to be paid within six months of the decedent's date of death. If

90 percent of the tax is not paid within such period, interest is imposed on amounts of estate tax paid in the seventh month after the date of death and thereafter. Currently, the law requires 80 percent of the estate tax to be paid within six months of the date of death to avoid imposition of interest charges. This amendment is applicable to estates of decedents dying after the effective date of the act.

Section 163 of the bill amends section 1007(a)(2) of the Tax Law to make a technical correction to those provisions which limit the time for filing and paying gift tax where the donor died during the calendar year to the earlier of the due date of the estate tax return or April 15 of the next year. Unlike current law, this amendment would allow the gift tax return to be filed and the tax to be paid within the extension period, but not beyond April 15, where an extension of time to file the estate tax return is obtained. This amendment reflects the amendments by Chapter 190 of the Laws of 1990 requiring the filing of estate tax returns and conforms to Federal practice.

Section 164 of the bill adds a new paragraph (3) to section 1007 of the Tax Law to require an estimated payment of gift tax by January 15 for gifts made during the preceding calendar year. The general rule contained in current law requires that gift tax returns be filed and final payments be made in full by April 15 for gifts made during the preceding calendar year. Where 90 percent of the gift tax is not paid by January 15, there is added to the tax due an amount determined by applying the interest rate applicable to underpayments of estimated income tax to the underpayment of estimated gift tax. Exceptions to the imposition of the addition to tax are provided where the amount of tax due is under $100 or where the individual has died on or before the due date of the estimated payment. In addition, the Commissioner of Taxation and Finance would be authorized to waive the addition to tax in certain circumstances. Sections 163 and 164 apply with respect to gifts made in calendar years beginning on or after January 1, 1991.

Sections 192, 193 and 194 of the bill amend Articles 9-A, 32 and 33 of the Tax Law to clarify the requirement of former section 118(c) of the Commerce Law that a corporation, in order to qualify for the eligible business facility tax credit, must create or retain not less than five jobs. Continued eligibility for this credit has been conditioned on the maintenance of employment at the level that originally qualified the corporation for the program. This has been expressed broadly in statute and more precisely in regulation. This is consistent with the purpose of the now expired job incentive legislation, which was predicated on providing an incentive to create and maintain jobs in New York.

These provisions would nullify the effect of the Tax Appeals Tribunal decision in Columbian Mutual Life Insurance Company, which held that a taxpayer was eligible for the credit although the taxpayer actually experienced a decrease in employment, by clearly stating that corporations must maintain employment at qualifying levels in order to continue to be considered eligible business facilities. These provisions were included in a budget bill submitted by you, S.2982/A.4482, and have been enacted without change.

Sections 196 and 197 of the bill provide that corporate franchise tax refunds will be automatically credited to the following year, rather than automatically refunded as under existing law, where the corporation has not designated disposition of the refund on the tax return. A taxpayer may claim a refund of the automatic credit upon notification by the Tax Department, and interest will be paid on the refund if such notification is not made within the later of three months of filing the original return or three months of the due date of the return. These provisions are to be effective 30 days after enactment, and are as proposed in the Executive Budget (S.2961/A.4461).

Section 301 of the bill amends section 2003 of the Surrogate's Court Procedure Act to delete the provision requiring a representative of the Tax Department to be present at a safe deposit box opening which is being conducted pursuant to a will search order issued by a Surrogate's Court. Section 302 of the bill conforms section 983(e) of the Tax Law to the amendments made by section 301 of the bill by eliminating the duty of attending box openings from the list of duties which the Department's District Tax Attorneys and Appraisers may perform. These bill sections take effect immediately; thus, will search orders executed on or after the date the Governor approves the bill would not require Tax Department presence at the box openings. As such, the bill expresses the Legislature's intention that Surrogate's Courts not require Tax Department employees to be present at box openings. Similar provisions were contained in a budget bill (S. 2972/A. 4472) presented by the Executive.

Our experience has shown that sending Tax Department employees to box openings, whether pursuant to a will search order or otherwise, is not productive from a revenue raising point of view relative to other audit functions. In cases where the estate's representative wishes to remove items from the box, we have devised a procedure whereby the estate need only notify the Department that the decedent had a safe deposit box by filing an application for its release. The Department then issues a waiver and a representative of the estate inventories the box in the presence of a bank employee. A report of the inventory, also signed by the bank's representative, is sent to the Department. This application procedure is currently followed in cases where there is no will search order or where such an order does not require the presence of a Tax Department employee. Since this procedure has proven to be cost effective, we recommended that this provision be included in the Executive Budget and that it receive Executive approval so that these cost savings can be extended to all box openings.

While we have many concerns regarding this bill, under the circumstances I do not object to Executive approval of this bill.

Sincerely,

James W. Wetzler

James W. Wetzler
Commissioner

C-166

MENTAL HEALTH ASSOCIATION IN NEW YORK STATE, INC.

Leila N. Salmon, *Executive Director*

June 27, 1991

Governor Mario M. Cuomo
Executive Chambers
State Capitol
Albany, New York 12248

Dear Governor Cuomo,

As one of my final acts as executive director of the Mental Health Association in New York State, I want to express our appreciation of your timely signing of the prompt contracting bill, S.6079/A.8491.

The importance of this legislation will certainly be realized by many agencies throughout the state including those providing services for persons with mental illnesses. In the past many not-for-profit human service agencies with state contracts have had to reduce services to people in need simply because the State had not honored its contracting obligations were not met in a timely fashion. Enacting this legislation will assure that residents throughout the state will now continue to receive and benefit from the services they depend upon and need.

Again, thank you for your concern and timely signing of this legislation.

Sincerely,

Leila N Salmon

Leila Salmon
Executive Director

MCD/ehw

C00166

75 New Scotland Avenue • Albany, New York 12208 • 518-434-0439 • FAX: 518-427-8676

C-166

American Cyanamid Company
Lederle Laboratories Division
Wayne, NJ 07470 USA
(201) 831-4603

David R Bethune
President

May 31, 1991

The Honorable Mario M. Cuomo
Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Cuomo:

Lederle Laboratories, a division of American Cyanamid Company, is the largest employer in Rockland County. We provide jobs for more than 4,000 New York residents. In the last 10 years we have spent well over 100 million dollars expanding research and manufacturing facilities.

The proposed tax on non-residential users of natural gas will add over 2 1/2 million dollars to Lederle operating cost. We realize New York is facing serious economic times. The solution to New York's budget problems in our opinion is to encourage economic growth and expansion, resulting in more jobs and a stronger foundation for the state's economy. The proposed tax further complicates our ability to be a profitable business in New York. It forces us to look at alternative locations with a more favorable business climate.

Since 1906, Lederle has been providing jobs and expanding business in New York. We are proud of the contributions made to the state and especially Rockland County. New York will benefit more by taking steps to ensure economic growth by encouraging companies like Lederle.

I strongly urge you to consider alternatives to this proposal.

Sincerely,

DRBethune

DRB:RLJ:gt

C0015

C-166

GREAT LAKES CHEESE OF NEW YORK., INC.
23 Phelps Street • Adams, New York 13605
315/232-4511

June 21, 1991

The Honorable Mario Cuomo
New York State Governor
Executive Chamber
State Capitol
Albany, New York 12224

Dear Honorak Cuomo,

Great L..kes Cheese of N.Y., Inc. urges the legislature and the Governor to repeal the recently enacted petroleum and natural g.. tax which, if left intact will deal a serious blow to the economic and general we being of Great Lakes Cheese of New York.

The increased petro eum business tax (PBT), the new natural gas energy business tax (EBT) and the new natural gas importation tax (GIT) will cost Great Lakes Cheese of New York abo $70,000 per year.

..ch cost increases are incompatible with the crucial need to sta. competitive in a national market place.

.. urge you to reconsider and repeal these harmful energ.

..ger

C001..

H-8491

JUN 03 '91 09:04 AM FRONT OFFICE P.1/1

Keymark Corporation

FONDA, NEW YORK 12068 • PHONE 518-853-3421

May 31, 1991

The Honorable Mario Cuomo
New York State Governor
State Capitol
Executive Chamber
Albany, NY 12224

Dear Sir:

The massive tax increase on commercial users is unrealistic and will only further curtail any positive movement from our current economic dilemma. The tax increase amounts to more than $.51 per MMBTU.

This translates into a $150,000 increase in energy costs for our company in a time when sales are off 25%.

Keymark Corporation is in an area that averages 12-14% unemployment. Keymark employs over 600 people and is one of the larger employers in the Fulton-Montgomery county area.

If the tax on energy is approved, we are left with several choices:

- Increase unemployment lines.
- Close up.
- Relocate out of New York State.

I implore you to reject this bill. Strong, competitive companies will allow New York to solve it's budget problems. Not economic suffocation and suicide.

Sincerely,

Wm. L. Keller III
President

WLK:ec

C0018

R. 9-11

HOWARD SHAPIRO
Director and General Counsel

the energy association of n.y. state

May 20, 1991

MEMORANDUM IN OPPOSITION

To A Proposed Petroleum Business Tax

The Energy Association of New York State, comprised of the seven shareholder owned electric and gas utilities serving New York, strongly opposes any increase in the taxes on petroleum used to generate electricity. Any such increase would raise the bills of electric customers throughout the State, and most egregiously in the New York City Metropolitan and Long Island regions which are heavily dependent on petroleum to generate electricity.

Data published by the State Energy Office, reveals that each penny per gallon of additional petroleum business tax would directly raise about $150 million annually. About 20% (or $29 million for each penny per gallon) would be borne by electric utility customers with three quarters of that amount paid by electric customers on Long Island (about $8 million) and in New York City and Westchester County (about $13 million).

Unfortunately, electric customers will be required to pay much more than the additional $29 million. This is because State and local gross receipts taxes will tax the additional $29 million collected, and then a 17% MTA surcharge and a 15% State surcharge will tax the increased State gross receipts taxes. Finally, for many customers, State and local sales taxes will tax all of these other taxes. Taxes on taxes on taxes. For some electric customers, their share of the 1 cent per gallon tax will actually be 1.2 cents per gallon.

In terms of its broad and regressive impact, such a tax on utility fuel is no different than a sales tax.

This proposal to load electric bills with additional taxes is particularly egregious because, like the sales tax, it is broadly based (everyone uses electricity) and regressive. It disproportionately burdens the poor (especially the elderly poor) who spend a larger share of their limited income on electricity than do the more affluent. Even without this proposed tax increase, 20% of the average electric bill paid by all customers is now used to pay State and local taxes. The figure downstate is higher than 20%.

A proposal to increase the effective price of electricity is completely at odds with extensive efforts of the State and the utilities over the past decade to hold down the size of electric bills. Most notable, perhaps, is the Shoreham settlement which

CENTRAL HUDSON GAS & ELECTRIC CORPORATION · CONSOLIDATED EDISON COMPANY OF NEW YORK INC · LONG ISLAND LIGHTING COMPANY · NEW YORK STATE ELECTRIC & GAS CORPORATION · NIAGARA MOHAWK POWER CORPORATION · ORANGE AND ROCKLAND UTILITIES INC · ROCHESTER GAS AND ELECTRIC CORPORATION

C0015

established a ten year program of capped and targeted rate increases. The proposal would jeopardize the integrity of, and ratepayer expectations under, that settlement.

This proposed tax increase, 75% of which would be paid by customers in New York City, Westchester, Nassau and Suffolk Counties, also flies directly in the face of work by the State, the City and local governments as well as the electric utilities in stabilizing electric rates and other costs of doing business in order to keep jobs and attract new companies to the Metropolitan region.

In 1989, the Governor vetoed a similar proposal because:

> "This tax particularly impacts the ratepayers of oil dependent utilities such as LILCO and Con Edison. LILCO estimates that this tax would cost its ratepayers approximately $10 million a year which nearly equals the ratepayer savings under the utility gross receipts tax relief bill that I have submitted to the Legislature as part of my program to close Shoreham."

For the above and other reasons, the Energy Association strongly recommends that any proposed addition to taxes on the petroleum used to generate electricity in New York be rejected.

Legislative Memorandum
Consolidated Edison Company of New York, Inc.

MEMORANDUM IN OPPOSITION
TO
PROPOSED INCREASE IN THE PETROLEUM
BUSINESS TAX

The purpose of this memorandum is to emphasize the negative impact which any proposed increase in the tax on petroleum products under Article 13A of the Tax Law would have on utility customers. The tax burden on the Con Edison customer is already the highest in the nation. In 1990, 23.5 cents of every dollar paid by Con Edison customers went to state and local taxes. Not only would the proposed increase exacerbate that burden but it would do so in a discriminatory manner. The increase would fall largely on the downstate utilities, such as LILCO and Con Edison which are more dependent on petroleum products than are the upstate utilities. This increase would further widen the gap between upstate and downstate electric costs.

In Con Edison's case, in 1990 after allowance for credits for fuel used to produce electricity, the net cost of the petroleum business tax (PBT) to Con Edison on fuel purchased from instate vendors and imported fuel amount to $15.5 million. However, the cost of this tax to the electric and gas customer of the Company is much greater because of the layers of gross receipt taxes, sales taxes and tax surcharges which are placed on utility customers' bills. In the case of a commercial electric or steam customer in New York City, nine additional taxes would be compounded on top of the PBT to add 20.8% to the cost of this tax in the customer's bill.

If the PBT were to be increased by one cent per gallon, we have estimated that it would add an additional cost to the Company of $12.5 million. The cost to the customer would be much more considering the layers of other taxes which would be attracted by the additional PBT.

Con Edison and other petroleum using utilities became subject to the petroleum business gross receipts tax in 1984 when, by amendment to the Tax Law, they were classified as petroleum businesses for the purpose of the tax. The tax at that time was 2.75% of the sales price and was scheduled to be phased down to .75% in July 1985, however, legislation in that year made the 2.75% rate permanent.

4 Irving Place, Room 1635, New York, N.Y. 10003 (212) 460-3600
111 Washington Avenue, Room 601, Albany, N.Y. 12210 (518) 449-3440

In 1990, after a transition period during which the tax rates were greatly increased, the law was changed to impose, beginning September 1, 1990, a cents per gallon tax, plus a 15% surcharge. An indexing method was adopted to periodically adjust the rate to reflect recent changes in petroleum prices. The first index rate adjustment as of April 1, 1991 raised the tax rate, including the surcharge, on No. 6 residual oil from 4.6 cents a gallon to 5.52 cents a gallon and from 5.75 cents a gallon to 6.9 cents a gallon on No. 2 non-automotive diesel fuel.

In recognition of the discriminatory nature of the PBT on the downstate electric utilities using petroleum as a fuel to produce electricity, a special credit was introduced with the 1990 change in the law to provide some relief from the new increased tax rates. However, as indicated above, the tax burden of the PBT when considered together with the other taxes borne by the utilities and their customers, is still considerable.

The State and the downstate utilities have worked hard to convince residents and business that stability of electric costs should have a very high priority in the area's economic development plans. We believe that a proposal to further increase the PBT would be adverse to this goal and should be rejected.

Henry M. Doebler
Assistant to Senior
Vice President

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State Farm Insurance Companies

One State Farm Plaza
Bloomington, Illinois 61710-

James R. Tuite
Counsel
Phone: (309) 766-2127

June 7, 1991

Moore
Bill Jkt

The Honorable Mario Cuomo
Governor of New York
Executive Chamber
State Capitol
Albany, NY 12224

RE: Senate Bill 6079/Assembly Bill 4091: New Article 15 of the Tax Law

Dear Governor Cuomo:

State Farm Mutual Automobile Insurance Company and affiliated companies insuring well over a million private passenger automobiles in New York State, urge your reconsideration of a revenue measure that will add significant unncessary transaction costs to doing auto insurance business in the State of New York.

The measure I refer to involves the imposition of a transfer tax upon claim settlements involving auto physical damage claim payments for car repairs or car replacements.

It is our understanding that several reasons have been advanced for this new transfer in lieu of a sales tax. The first would be to reach those transactions where it is not clear whether the individual would actually initiate a repair or replacement of a vehicle. More generally, it is our understanding that the tax would be imposed upon insurers because their records would be accurate, readily audited, and correct in terms of assuring the State of New York that the correct amount of sales tax revenue is remitted. Conversely, there is an implication that New York auto repair facilities and some auto dealerships are not returning the correct sales tax to the State of New York and respective counties in New York.

State Farm believes that there are practical and workable resolutions available to this problem. And, it is a difficult matter for us because, not only is the auto insurer placed in the role of tax collector; but, Article 15 imposes an elaborate system of vouchers and verification of vouchers and numbered vouchers and audited sales tax reports which will increase our insurer claim transaction costs enormously.

We estimate conservatively that the property damage and comprehensive claim settlement transactions in New York State will be, at a minimum, in the range of a quarter of a million transactions. This estimate applies to a single transaction where the auto repair facility does not request a second or supplementary claim drafts because there are supplemental repairs necessary beyond those which were disclosed in the original estimate.

The start-up costs for such a system is in the hundreds of thousands of dollars; and the day-to-day transaction costs imposed under this sytem, even when automated, we estimate to be in the range of four to five dollars per transaction. State Farm is talking about the imposition of in excess of a million dollars in claim costs. Again, this does not include the initial data processing and systems changes necessary to establish the collection verification system.

Frankly, State Farm does not want to be placed in the role of tax collector; but if New York determined that this is the role we are assigned as a condition of doing business in New York, State Farm asks for a reasonable approach in assuming this role.

At a minimum, State Farm urges this measure to be amended to provide for quarterly payments of the transfer tax. Moreover, we think that the role of voucher verification is simply too costly and too burdensome. A claim draft from an insurer involving property or a physical damage settlement should, by itself, provide documentation as to whether or not the insured must pay the sales tax. Such insurer transfer tax payments, as a general rule, need only be exempt from the sales tax.

From the standpoint of integrity or auditing repair shops, we, today, provide a 1099 tax form to the federal government, evidencing payments in excess of $600 to each repair shop or auto dealership.

By simply requiring the insurers doing business in the state to provide an additional 1099 form, with respect to all auto repair and auto dealerships with which we do business, the process of verification and auditing of sales tax versus transfer tax receipts would be readily accomplished.

State Farm is requesting that this part of the budget package be reconsidered. We are asking that the provisions be made workable and that unnecessary costs in the collection process be eliminated. We think that the methodology of a simple quarterly transmission of the sales tax and transfer of tax revenues to the State of New York, by insurers involving auto physical damage claim settlements, and a report of 1099 payments to repair shops and auto dealerships would provide the Commissioner of Finance and Taxation with a sufficiency of information to audit such facilities and auto dealerships under this transfer tax.

State Farm, accordingly urges your veto of this portion of this bill for the reasons outlined.

Very truly yours,

James R. Tuite

James Tuite
Counsel

JT/am

cc: Jo Ann Jenkins, Assistant Counsel to the Governor
Patrick Brown, First Assistant Counsel to the Governor
Jay B. Martin, Esq.

Best Copy Available

GREAT L^KES CHEESE OF NEW YORK., INC.
. P elps Street • Adams, New York 13605
315/232-4511

June 21, 1991

The Honorable Mario Cuomo
New York State Governor
Executive Chamber
State Capitol
Albany, New York 12224

Honora' Cuomo,

Grea Cheese of N.Y., Inc ges the legis and the ernor epeal the recently ed petroleum ural x whi if left intac will be a serious bl he l general w eing of Great Lakes Ch of New

The increased petr m business tax (PB , the n atural g energy business t (EBT) and the new natural mportati tax (GIT) st Great Lakes Cheese of New York a $70,0 year

ncrea incompatible with the crucial need to tive in ional market place.

you to reconsider and al these h ul ener

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OF
CORRESPONDENCE FILMED

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A.8491

Lisa A. Gely
1678 64th Street
Brooklyn, NY 11204

May 20, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, NY 12224

Dear Ms. Moore:

The proposal by Governor Cuomo to implement a tax on sales shipped out of state is a devastating blow if implemented.

I am an employee of **The Corporate Printing Company, Inc.** It has numerous clients across the country and overseas who would be adversely affected by the imposition of this burdensome tax. Corporate Printing's business is extremely competitive and always requires shipments and mailings to out of state addresses. Presently, New York City and State are the highest cost areas to operate a manufacturing company. In fact, four (4) New York based competitors have liquidated during 1990. The added burden of higher tax will drive Corporate Printing's clientele to seek other sources for their needs. Presently, numerous clients just deduct the existing tax before paying our invoices and refuse statements for further payment. This tax will clearly cost Corporate Printing more.

The Corporate Printing Company, Inc. has 217 employees in New York, versus a total of 303 employees in our entire corporation. I would like The Corporate Printing Company, Inc. to keep its New York operations and to continue its various contributions to the community.

Governor Cuomo's proposal gives us pause.

Please think carefully and kill his proposal.

Very Truly Yours,

Lisa Gely

C00194

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Michael Andrade,
460 Anderson Avenue
Cliffside Park, NJ 07010

May 20, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, NY 12224

Dear Ms. Moore:

The proposal by Governor Cuomo to implement a tax on sales shipped out of state is a devastating blow if implemented.

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Governor Cuomo's proposal gives us pause.

Please think carefully and kill his proposal.

Very Truly Yours,

M Andrade

C00195

A. 8449

Frederick Jaffe
67 Lexington Avenue
Malverne, NY 11565

May 20, 1991

Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, NY 12224

Dear Ms. Moore:

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Governor Cuomo's proposal gives us pause.

Please think carefully and kill his proposal.

Very Truly Yours,

Frederick Jaffe

C00156