

**New York State Department of Taxation and Finance  
Taxpayer Services Division  
Technical Services Bureau**

TSB-H-80 (245)I  
Income Tax  
August 26, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

Petition #I800428A

On April 28, 1980, a Petition for Advisory Opinion was received from Municipal Fund for Temporary Investment, Inc., Suite 20#, Webster Building, 3411 Silverside Road, Wilmington, Delaware 19810.

The issue raised is the taxability under the Personal Income Tax and the Unincorporated Business Income Tax of exempt interest dividends received from a regulated investment company by holders of shares of common stock belonging to a series participating exclusively in the net income produced by investments in obligations issued by the State of New York or its political subdivision.

The Fund is a no-load, diversified, open-end investment company whose purpose is stated to be to provide institutional investors with as high a level of current interest income exempt from Federal income taxation as is consistent with relative stability of principal. It is intended that the Fund will conduct its operations in such a manner as to qualify as a regulated investment company under section 851 of the Internal Revenue Code, and that it will invest substantially all of its assets in Federally tax exempt obligations. At the present time the Board of Directors of the Fund is contemplating the establishment of special classes or series of Common Stock, one or more of which would be related exclusively to portfolios consisting solely of Federally tax-exempt obligations issued by a particular jurisdiction. Thus, the Fund is considering the issuance of a special class or series of Common Stock (the "New York Series") which will be entitled to participate exclusively in the net income produced by investments in obligations issued by the State of New York or its political subdivisions.

Exempt interest dividends issued by a regulated investment company are excluded from Federal gross income pursuant to sections 103(a)(1) and 852(b)(5)(b) of the Internal Revenue Code. Such income is therefore not included in Federal adjusted gross income, which is the starting point in computing taxable income under New York's Personal Income Tax. Section 612(b)(1) of the Tax Law requires an addition to Federal adjusted gross income, in computing New York adjusted gross income, of interest income from obligations of any state other than New York or of any political subdivisions of any such other state unless created by compact or agreement to which New York is a party. There is no such required addition of interest income from obligations of the State of New York or its political subdivisions. It should be noted that exempt interest dividends constitute interest for the purposes of the provision of the Tax Law here referred to.

Similar considerations apply with respect to the Unincorporated Business Income Tax. Unincorporated business gross income includes only items of income and gain includible in gross income for Federal purposes, and thus excludes exempt interest dividends. As in the case of the Personal Income Tax there is a required addition to such items includible in Federal gross income of interest income on obligations of any State other than New York or of certain political subdivisions of any such other state, as described above, but not of interest income from obligations of the State of New York or its political subdivisions.

Accordingly, exempt interest dividends derived exclusively from the proposed New York Series of shares of common stock, as described above, would not be subject to either the Personal Income Tax imposed, under Article 22 of the Tax Law, on the New York taxable income of individuals, estates and trusts, or the Unincorporated Business Income Tax, imposed under Article 23 of the Tax Law. No opinion is expressed as to the applicability of the Tax Law to any dividends except those exempt interest dividends which are derived exclusively from the proposed New York Series.

Dated: July 18, 1980

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau