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

TSB-M-78(9)C
Corporation Tax
Instructions and Interpretations Section
June 23, 1978

Opinion of Counsel
Trusts

May 23, 1978

Dear

This is in response to your letter of April 5, 1978 and to a ruling request submitted, together with a draft of a Trust Indenture and Agreement, by , dated September 22, 1978, on behalf of the (the "Trustee"), relating to the New York State tax consequences of the creation and operation of the Insured Municipals-Income Trust (the "Fund"). Previous series of the Fund were designated "The Trust." I issued opinions regarding those series of the Fund on March 24, 1976, January 31, 1977 and on February 16, 1977.

I understand that the arrangements establishing the Fund will be substantially the same as the trust arrangements with respect to which my opinions above referred to were issued. The major differences are set forth below.

Unlike the first three series of the Fund, the Fund will consist of only a single insured trust, as opposed to an insured trust and an uninsured "income" trust. The insurance will protect the Fund and the certificateholders thereof against nonpayment of principal and interest, when due, on any bond, except for pre-insured bonds and existing units (certificates representing ownership interest in a previous series of the Fund).

Further, certificateholders of a Fund which holds units, or certificates of ownership, of previous series of the Fund will not be allowed to elect the automatic reinvestment option.

The most important distinction, however, between the proposed Fund arrangement and that of the previous series, is that the Fund will hold units from prior series in the trust corpus, as well as Federally tax exempt obligations. The following criteria will be applicable to the inclusion of units from prior series in future series of the Fund:

(1) The aggregate value of the prior units included in the future series will not constitute more than 10 percent of the face amount of the portfolio of the future series;

(2) The aggregate value of those prior units from a particular prior series which are included in the future series will not constitute more than five percent of the face amount of the portfolio of the future series;

(3) Those bonds, included in the portfolio of a prior series which, on the date of deposit of the future series, do not meet the investment criteria established for the future series will not exceed .5 percent of the face amount of the portfolio of the future series; and

(4) None of the bonds included in the portfolio of a prior series will mature at a time earlier than 10 years after the date of creation of the future series.

In order to maintain a secondary market for the units, the Depositor (, Inc.) may purchase any unit tendered for redemption from the tendering unitholder by providing appropriate notice to the Trustee. Although the Depositor may redeem the units so purchased at any time, it is not permitted to receive on redemption an amount in excess of the amount for which it purchased such units.

The purchase of units by the Depositor in the secondary market is one of the ways in which the Depositor could acquire units from prior series which might be deposited in a future series of the Fund. Units acquired by the Depositor upon the creation of a prior series and not resold to the public would also be available to be contributed to the corpus of the future series.

My prior opinions regarding the New York State tax consequences of the formation and operation of the Fund were based in part on Federal income tax rulings regarding the Insured Trust and the Income Trust issued by letters dated December 17, 1975 and January 9, 1976, to the effect that, for Federal income tax purposes, each trust would be treated as a trust rather than as an association taxable as a corporation, and that each certificateholder would be treated as the owner of that portion of the Trust represented by his certificates and would be required to take into account his pro-rata share of the net income of the Trust in computing his Federal taxable income.

The basis of my rulings regarding the franchise tax imposed by Article 9-A of the Tax Law and the personal income tax imposed by Article 22 of the Tax Law was the conclusion that the trusts were not doing business. That conclusion stemmed from the fact that the Trusts' only function was to collect and distribute income from certain property, that the Trustee had no power to reinvest the proceeds of bond sales, and the Trustee's power to sell the bonds held in trust was strictly limited.

Although no rulings have as yet been issued by the Internal Revenue Service with respect to the proposed changes, in my opinion, the proposed transactions will not alter the nature of the Fund, nor will they grant to the Trustee greater power to sell the bonds held by the Fund, nor will the Trustee be empowered to reinvest the proceeds of such sales. The Fund will retain its status as a "grantor" trust under section 676(a) of the Internal Revenue Code, and under section 671 of the Code, all items of income, gain or loss accruing to the Fund will be treated as if paid or accrued to the certificateholders.

Assuming the Fund is operated in accordance with the provisions of the Trust Indenture and Agreement, as amended, I reaffirm my opinions regarding the Fund, as set forth in my letter of March 24, 1976, to the effect that:

(1) the Fund will not be doing business within the meaning of section 208.1 of the Tax Law, and accordingly will not be subject to the franchise tax imposed by Article 9-A thereof (20 NYCRR 1-2.3(b)(2), 1-3.4(b)(8));

(2) the Fund will not be subject to the unincorporated business income tax imposed by Article 23 of the Tax Law;

(3) for purposes of the personal income tax imposed by Article 22 of the Tax Law, Unitholders who are residents of the State of New York will be required to include in their New York adjusted gross income, the Federally tax-exempt income of the Fund derived from obligations of states other than New York, or political subdivisions thereof, less the amount of any amortizable bond premium thereon (Tax Law, §§ 612(c) (10), 615(d)(3));

(4) income or gains from the property of the Fund received by Unitholders who are not residents of the State of New York will not be required to be included in their New York adjusted gross income, unless such Units are property employed in a business, trade, profession or occupation carried on in New York (Tax Law, § 632(b)(3)); and

(5) in accordance with section 270.8(a) of the Tax Law, the transfer of certificates of the Fund will be exempt from the stock transfer tax imposed by section 270 thereof.

However, should the Internal Revenue Service issue a ruling letter regarding the proposed changes in the Fund's operation which are inconsistent with its rulings contained in the letter of December 17, 1975, my opinions expressed above will be subject to review.

I would appreciate your sending me a copy of any ruling received from the Internal Revenue Service regarding this matter, so that I may confirm or modify the opinions expressed in this letter and so that we may keep our files on this matter current.

Very truly yours,

PETER CROTTY
Deputy Commissioner and Counsel