

ABA SECTION ON TAXATION - YOUNG LAWYERS FORUM
2008 LAW STUDENT TAX CHALLENGE PROBLEM

You are a first-year Tax Associate in a multinational law firm headquartered in Washington, D.C. It's 7:00 p.m. on the first Friday in November, and you've been hard at work since early in the morning. You've billed 12 hours just today wrapping up a complex tax syndication project you were assigned last Monday, and you are now confirming the completion of your research and findings in an email to Susan Olson, your exacting Senior Tax Partner. Exhaling a big sigh of relief, and--with a work-free weekend ahead--you close out of Outlook and log on to your Facebook profile... "Sa-weet!," you think to yourself, "It looks like my old law school friends are coming into town this weekend for a reuni...

RING... RING... RING...

You glance over to the display on your office phone: "12FL – BOARD RM." "Hmm," you wonder, "who would be calling me from *there*?" Thinking that it's probably someone dialing the wrong extension, you pick up the phone on the fourth ring.

"Hello, Associate!" chimes Olson over the din of cocktail chatter and wine glass clinking, "I'm *so glad* I caught you." "Would you come up to the 12th floor? I have some *very exciting* news to share with you!"

"Wow," you think, "maybe I *have* made my mark here after all!" As you hop into the elevator and press the button for the firm's top floor, the thoughts of your possible change of fortune coupled with a weekend hanging out with your law school classmates are almost too much to take in. As the elevator doors swing open, you swipe a shrimp cocktail from a passing tray. In the next moment, you find Olson guiding you into a darkened conference room.

"Associate," sighs Olson "I am so glad that you were still here! I have a very exciting project for you!" "You see," says Olson, flipping on the light-switch and gesturing out to the cocktail scene, "we are in the process of welcoming Mr. Gump--a major new client--to the firm. Surely you've heard of Mr. Bufford "Bubba" Gump? He's not only the owner of the nation's oldest and most successful shrimp boat company but he is a good friend of our dear client, Ronald Frump. Frump was so impressed with your colleagues' work on his Vegas deal last winter that he has recommended Gump to our firm with the highest praise. I just know that you will dive into this; right, Associate?" You nod--a little shaky. "Good, and remember, just like your predecessors, your work on this project could really set you apart from the other Associates in your class."

Turning to leave, Olson adds, "Oh, and one more thing... I did manage to catch another associate, so you won't have to go it alone. I would ask that you and your colleague do whatever is necessary to ensure that we have identified all of the potential Federal tax issues and resolved Gump's questions by Monday morning at 9:00 a.m., sharp! You'll find more details at the end of the file. Specifically, I want you to prepare a memorandum no longer than ten (10) pages, along with a client letter for Gump no longer than four (4) pages. That letter should summarize your recommendations and, of course, your memorandum

should contain your analysis of relevant issues and should cite to the authorities you have relied on. You may be asked to appear before the other Senior Tax Partners--and maybe even Gump--to explain your findings and recommendations. Do you understand?"

Resigned to the task before you (and in mourning for your lost weekend), you nod and trudge over to the conference table littered with loose papers and piled-high with stuffed file folders.

CLIENT FILE

CLIENT NO. 1108-2008 (Bufford "Bubba" Gump/Bubba Gump Shrimp Co.)
MATTER NO. 01-2008 (Legal Advice; RE: New Orleans redevelopment)

A. CLIENT BACKGROUND

Bufford "Bubba" Gump/Bubba Gump Shrimp Co., Inc.

Bufford "Bubba" Gump IV is the owner and majority shareholder of Bubba Gump Shrimp Co. (BGSC), the oldest and most successful seafood harvesting and processing outfit in the United States. Started in New Orleans in 1881 by Bubba's great-grandfather, BGSC has weathered every economic downturn and natural disaster to hit the Gulf Coast region, including the catastrophic devastation caused by Hurricane Katrina in 2005. Undeterred by the effects of the storm, Bubba Gump has been a stalwart supporter and leader in the rebirth and redevelopment of New Orleans and its surrounding parishes. Despite his commitment to the resurrection of his hometown, and the goodwill that has inured to BGSC due to his endeavors, the BGSC Board of Directors recently approached Gump with their concerns about the escalating costs of his new projects in New Orleans. Undeterred by the Board, yet cognizant of its fiscal concerns, Gump would like to engage in projects that offer more of a "win-win" result. To wit, he wants BGSC to invest in projects that will rebuild the infrastructure of New Orleans while affording BGSC a strong capital return and that will reduce the company's Federal corporate income tax burden.

As one of the most recognizable figures in New Orleans, Gump is highly respected by many prominent business people, politicians, and artists who share in his vision to rebuild New Orleans. Earlier this year, Gump approached his lifelong friend--Imreal Legassy (Legassy)--with the notion that BGSC and Legassy should form a partnership for the purpose of investing capital into the neighborhoods in New Orleans that are still mostly left untouched almost three years after Katrina. Legassy is known across the nation as the "Chef of New Orleans" from his popular Food Television show, "Legassy... Live!" Like Gump, Legassy experienced significant personal and economic loss as a result of Katrina. Although Legassy still makes a sizeable income via residuals from his television show, his cookbooks, and his line of New Orleans-inspired sauces and spices, the loss of his real estate holdings have severely reduced his personal net worth. A bistro restaurant occupying the first two floors of a twelve-story office building in the Central Business District was completely destroyed as a result of Katrina and has yet to be rebuilt. Legassy purchased the property for \$2,500,000 on January 4, 2001, and opened the bistro in March of that year. Legassy has claimed a depreciation deduction with respect to the property for each taxable year since its acquisition. The property is now valued at \$500,000 with an outstanding mortgage in the

amount of \$550,000.

Recently, a partnership of New Orleans-born jazz artists called Singing Saints, LP heard about Gump and Legassy's plan to finance the restoration of the most devastated areas of New Orleans. The Singing Saints are comprised of Barry Blonnick, Jr., "Cats" Domino, "Belly Roll" Morton, and Dewey Armstrong—all world-famous New Orleans jazz artists who formed their partnership in late 2007 for the purpose of harnessing capital to restore safe housing and community resources to New Orleans' Ninth Ward. The artists have contributed proceeds from the sales of their recordings to fund their partnership.

Singing Saints, LP was recently informed by the CDFI Fund that they have been awarded an allocation of credits in the most recent round of awards.

Community activists and grass-root level developers have approached Singing Saints, LP with several project proposals. Singing Saints, LP would like to fund all of the projects using funds derived from outside investors. Based on their knowledge of Gump and Legassy's intention to form a partnership with the purpose of providing capital for a restoration project in the Ninth Ward, they would like to join forces with the Gump-Legassy partnership. They recently approached the pair with the following proposals:

PROPOSAL ONE: NEW ORLEANS CHARTER SCHOOL FOR THE ARTS

Educators in the beleaguered Ninth Ward have developed a proposal for a unique charter school to be located in the lower Southeast quadrant of the Ninth Ward. New Orleans Charter School for the Arts (NOCSA) will provide students in levels K-8 with a year-round curriculum emphasizing the performance arts. The facility will be built on the former site of a local community college, with the educators co-renovating the property with help from the City. The school will be the first of its kind in greater New Orleans and will accommodate 1,500 students. The only open public school close to the proposed NOCSA site currently houses 3,000 students in half-day shifts, with many students attending class outdoors or in dilapidated FEMA trailers. Eighty percent of the middle school children in the district read at or below the fourth grade level. NOCSA is seeking a cash investment.

In addition to providing jobs for teachers, administrators, and support staff, the educators at the helm of NOCSA have a study projecting the creation of 100 new community jobs as a direct result of the school's construction and ongoing presence in the community. NOCSA intends to operate as a 501(c)(3) organization, and the founding members of Singing Saints, LP have promised to hold fundraising concerts for the school as well as to serve on its Board and faculty.

PROPOSAL TWO: REVITALIZATION VILLAGE

Revitalization Village (RV) is a certified green, planned, single-family home development to be located in the Northern section of the Ninth Ward. RV is the brainchild of Hollywood-celebrities-turned-part-time-New Orleans-residents, Chad Pitt and Angelica Foley, who were so struck by the conditions upon visiting the Ninth Ward that they built a 15,000 sq. ft. recreation facility complete with playgrounds, basketball courts, and a swimming pool in the center of the proposed site for RV. Through their foundation--the Foley-Pitt Trust--the couple will engage a leading eco-construction firm to design four styles of sustainable, environmentally efficient homes for low and low-middle income families to purchase. In

exchange for an investment in RV, investors will receive an ownership interest in property held by the Foley-Pitt Trust.

The Trust will also guide residents through the lending process and will work with a subsidiary entity to secure financing. Pitt and Foley recently met with world-famous author (and New Orleans native) Anne Nice to discuss RV. Nice was so inspired by the work of the Foley-Pitt Trust that she penned a new novel, “The Lives of the Not-So-Fair Witches,” and directed that all proceeds from the book sales be put in a fund managed by her organization, Nice for the Ninth, LLC. The fund will serve as the first-stop for financing for future homeowners of RV. Nice, who has long admired Gump for his financial savvy, has expressed her interest to Gump of having him “come on board” as the C.F.O. of Nice for the Ninth, LLC.

PROPOSAL THREE: BIG EASY BEIGNET AND BREW

Billed as New Orleans’ “grown-up” answer to Seattle’s Starbucks, Big Easy Beignet and Brew (BBB) is a retail shop and bar featuring two New Orleans specialties—homemade beignet pastries in the morning and ice-cold microbrews in the afternoon and evenings. The developers behind this concept, including famed local-born musician Timmy Buffet, opened the first BBB location in the heart of revitalized French Quarter in Q1 2007 to rave reviews. BBB has garnered a cornerstone on the rebuilding efforts in the city, becoming a top attraction for both locals and tourists. Since opening, BBB has donated 2% of its strong profits to rebuilding efforts throughout New Orleans. The developers want their first franchise to be located in the Ninth Ward. In addition, they would like to expand the on-site brewing facility in the new Ninth Ward location such that microbrews can be manufactured and shipped across the country from the Ninth Ward. In exchange for their investment, investors will receive a 20% profits interest in the BBB’s Ninth Ward profits, no franchise rights.

The developers estimate that the Ninth Ward location (with brewery) will employ no less than 75 people. Based on projections, the developers estimate that the Ninth Ward BBB location will be profitable in its first year of operations, and will spawn at least two more franchises in the Ninth Ward by Q4 2009.

B. CLIENT OBJECTIVES

Gump and Legassy have agreed to form a partnership for the purpose of raising and investing capital into projects aimed at New Orleans redevelopment. They have further agreed to contribute cash and non-cash assets to this new entity. Specifically, Gump--acting on behalf of BGSC--will contribute cash and BGCS stock, while Legassy will contribute his office building in downtown New Orleans and the current earnings on his line of New Orleans-inspired sauces and spices. The Gump-Legassy partnership would ideally convert any contributed stock and/or real property into cash to go into funding the selected project. The values of the aforementioned assets are as follows:

	<u>Cash</u>	<u>Stock</u> <u>FMV</u>	<u>¹A/B</u>	<u>Real Property</u> <u>FMV</u>	<u>A/B</u>	<u>Fut. Profits</u>
GUMP	\$1,600,000	\$500,000	\$250,000			
LEGASSY				\$500,000	² \$2,500,000	\$750,000

¹ Adjusted basis.

² Exclusive of depreciation.

After review of the Singing Saints, LP proposals, Gump and Legassy have agreed that they would like to fund one of the proposals. The parties anticipate that their available funds will be enough to fund one of the proposals. While they are unsure about which project they should select, they are clear that the only way that their partnership will work is if the pair picks a “successful enterprise that is both good for the community and New Orleans, *and* that will allow them to take advantage of every tax break on the books, as quickly as possible”. To this end, Gump has been clear that “because he is in a higher tax bracket than Legassy, he should get more of those tax breaks since he is ‘forking over’ more of the start-up money.” Legassy is generally amenable to Gump’s position on tax benefits. Even though Gump appears, at times, more motivated by the tax breaks, he is clear that the proposal selected must be in the best interests of the Ninth Ward community.

For their part, Singing Saints, LP would like the Gump-Legassy partnership to commit to an initial investment of at least \$2,000,000, with subsequent annual investments over the next 10 years of at least \$50,000 per year. In response to Gump’s concerns that the proposal selected be “successful for the rebirth of the New Orleans and Gump”, Singing Saints, LP has agreed that “it would not give *all* of the capital contribution to the proposed investment” but “retain some of it to ensure that the project is on-track.” Singing Saints, LP has also promised that it will not “let community members direct where or how the Gump-Legassy funds are spent”. Gump is very pleased with this “oversight philosophy”.

C. ASSIGNMENT

Before shaking on any deal with Legassy, Gump insists that the firm “ensure that he is going to do right by the citizens of New Orleans” and that “in return for his ‘altruism’, he will get every tax break that is ‘owed’ to him and BGCS”.

At the end of the file, you find the following memo:

NOVEMBER 7, 2008

TO: New Tax Associates
FROM: Susan Olson, Senior Tax Partner
RE: Bufford "Bubba" Gump (BGSC, Inc.); New Orleans redevelopment

In reference to our discussion earlier today, and the materials contained in the file, your memorandum and client should consider the following queries:

1. Acting on behalf of BGSC, Gump is clear that he wants to form a partnership with Legassy in order to invest in one of the three proposed projects. He is very concerned about taking full advantage of the various tax credits available to investors in New Orleans. Which of the three proposals should we recommend to Gump as the ideal target to maximize his ability to receive credits? What tax credits would BGCS/Gump/the deal be eligible for? What factors must we consider and what assumptions must we make (if any) in reaching our decision? What tax consequences must be considered when structuring Gump's investment in the target selected?
2. Are there any factors suggested from the file that might prohibit Mr. Gump from receiving maximum tax benefits in either this year or future years? If so, how should we advise Mr. Gump to avoid such a result?
3. Are there ways to structure the deal such that Mr. Gump will be able to maximize the tax credit benefits available to him? Are there any factors stemming from the Gump-Legassy partnership that would prohibit Mr. Gump from realizing the most tax beneficial result?

Remember, the Tax Partners and I are relying on both of you to identify and address for the most significant and salient issues presented. To that end, your colleagues in our Real Estate and Tax groups are tackling some of the other issues involved such as state laws, state and local tax issues, issues related to passive activity loss rules, and issues pertaining to zoning and property law, so please, do not tackle those. And *please*, remember to conform your client letter and memorandum to the attached Rules.

Thank you for all of your hard work on this important project and Good Luck!

S. Olson

END OF OFFICIAL PROBLEM