

EXAMPLES OF SMALL AND MEDIUM-SIZED FOR-PROFIT BUSINESSES IN NEW YORK CITY NEGATIVELY AFFECTED BY THE SEPTEMBER 11TH TERRORIST ATTACKS ON THE WORLD TRADE CENTER THAT WOULD BENEFIT FROM CHARITABLE GRANTS

The following comments are presented on behalf of the Section of Taxation. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the Association.

These comments were prepared by members of the Committee on Exempt Organizations and the 9/11 Tax Task Force of the Section of Taxation. Principal responsibility was exercised by Victoria B. Bjorklund and Jennifer L. Franklin on behalf of the 9/11 Tax Task Force chaired by Michael Hirschfeld. Substantive contributions were made by Betsy Buchalter Adler, Catherine E. Livingston, Professor Jill Manny and Michael Hirschfeld, Chair, 9/11 Tax Task Force.

Although many members of the Section of Taxation who participated in preparing these comments have clients who would be affected or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

Contact Persons:

Victoria B. Bjorklund
Jennifer L. Franklin
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017
(212) 455-2000
v_bjorklund@stblaw.com
j_franklin@stblaw.com

EXAMPLES OF SMALL AND MEDIUM-SIZED FOR-PROFIT BUSINESSES IN NEW YORK CITY NEGATIVELY AFFECTED BY THE SEPTEMBER 11TH TERRORIST ATTACKS ON THE WORLD TRADE CENTER THAT WOULD BENEFIT FROM CHARITABLE GRANTS

The ABA Section of Taxation is making this submission at your request to supplement our prior request for confirmation from the Internal Revenue Service (the “Service”) that charitable loans and grants to for-profit businesses entities affected by the September 11th terrorist attacks are excludable from income as gifts within the meaning of section 102 of Internal Revenue Code of 1986, as amended (the “Code”), dated October 16, 2001. We provide below examples of small and medium-sized for-profit businesses that have been negatively affected by the September 11th terrorist attacks on the World Trade Center, and that would benefit from charitable grants. In addition, we discuss examples of procedures expected to be adopted and followed by charities in selecting which businesses are appropriate recipients of charitable grants.

In the wake of the September 11th terrorist attacks on the World Trade Center, the business operations and financial condition of thousands of small and medium-sized business entities, such as individual proprietorships, partnerships, LLCs and corporations, have been negatively affected. Many of these businesses were located in lower Manhattan in close proximity to the World Trade Center. All seek to continue business operations but are facing severe obstacles. For example, according to a survey by New Mark Realty, the September 11th terrorist attacks on the World Trade Center destroyed or impaired approximately 29 million square feet of office space, which represents the equivalent of all office space in the city of Indianapolis, Indiana, the twelfth largest city in the United States. Therefore, these businesses which were located in lower Manhattan in close proximity to the World Trade Center are seeking one-time charitable grants both to assist them in their ongoing business operations and, in many cases, to assist them in relocating to alternative office space.

Examples of Affected Businesses.

Examples of these small and medium-sized businesses that have been negatively affected by the September 11th terrorist attacks on the World Trade Center and that would benefit from charitable grants include the following:

- **Pushcart Operator:** A pushcart operator who sold food and beverages outside of the World Trade Center lost his pushcart as a result of the September 11th terrorist attacks on the World Trade Center. The pushcart was not insured. The pushcart operator is now seeking a charitable grant to provide him with the funds necessary to purchase a new pushcart and allow him to continue his business in another area of New York City. He supports a family of four.
- **Computer Servicing Company:** A computer servicing company located in downtown Manhattan lost half of its clients as a result of the September 11th terrorist attacks on the World Trade Center, as well as its office space and many

of its business records. The company is now seeking a charitable grant to assist it in relocating to new office space and in reconstructing its business records so that it can continue in business.

- **Downtown Gym:** A gym located in close proximity to the World Trade Center was closed for six weeks as a result of the September 11th attacks on the World Trade Center. The gym lost over \$30,000 in revenues and incurred payroll expenses of approximately \$35,000 during the time that the gym was closed. In addition, due to the destruction or impairment of office space in lower Manhattan and the subsequent relocation of employees to office space in other areas of New York City, the gym is experiencing a significant decrease in recruiting new memberships. The gym is now seeking a charitable grant to assist it in temporarily meeting its ongoing payroll and operational expenses until business rebounds in lower Manhattan.
- **Construction Consulting Company:** A construction consulting company that was receiving 45 to 60 proposals for consulting opportunities per month is now receiving approximately 9 proposals per month. In addition, the company's two major clients located in lower Manhattan in close proximity to the World Trade Center have told the company that they will have no new business for the company until early 2002. The company is now seeking a charitable grant to assist it in temporarily meeting its payroll and ongoing operational expenses until business rebounds in lower Manhattan.
- **Small Retail Brokerage Firm:** A 10-person retail brokerage firm located in the World Trade Center lost 7 employees, its office space and its business records as a result of the September 11th terrorist attacks on the World Trade Center. Although the firm is close to securing new office space in lower Manhattan and in recreating its business records, the firm will not receive any trading commissions until December 1 at the earliest. Therefore, the company is seeking a charitable grant to assist it in temporarily meeting its payroll and ongoing operational expenses until business rebounds in lower Manhattan.
- **Small Businesses Located in Chinatown:** Many small businesses located in the Chinatown area of lower Manhattan have experienced a significant loss of business due to the decrease in foot and tourist traffic in the wake of the September 11th terrorist attacks on the World Trade Center. These businesses do not have the sufficient resources to continue paying their employees. In addition, many of the employees of these businesses have poor English-language skills and would not be able to find comparable employment in other areas of the five boroughs of New York City. Therefore, these businesses are seeking charitable grants to temporarily subsidize their payroll expenses until business rebounds in Chinatown.
- **Women's Clothing Store:** A low-priced women's clothing store located less than two blocks from the World Trade Center has experienced a 75% decrease in

sales since the September 11th terrorist attacks on the World Trade Center and is fighting an eviction notice from its landlord. The store did not carry business-interruption insurance and the store's loan application with the Small Business Administration has been rejected. Therefore, the store is seeking a charitable grant to assist it in temporarily meeting its payroll, rent and ongoing operational expenses until business rebounds in lower Manhattan.

- **Hat Store:** A small hat store located two blocks from the World Trade Center lost \$25,000 worth of merchandise and was closed for two weeks as a result of the September 11th terrorist attacks on the World Trade Center. In addition, since reopening, the store experienced problems with its phone service and temporarily could not accept credit cards for payment. Furthermore, due to reduced foot and tourist traffic in downtown Manhattan, the store's sales have decreased by 30% since the September 11th terrorist attacks on the World Trade Center. Therefore, the store is seeking a charitable grant to assist it in temporarily meeting its payroll and ongoing operational expenses until business rebounds in lower Manhattan.

Examples of Grantmaking Procedures.

In making these one-time charitable grants, we expect that charities will adopt and follow certain procedures in selecting businesses to ensure that the grants will further charitable purposes. For example, we expect that charities will require businesses seeking charitable grants to complete detailed application forms containing questions such as the location of the business, both prior to and after September 11, 2001, the number of employees, both prior to and after September 11, 2001, the estimated annual revenues of the business, and the expected amount of insurance coverage or collateral source payments, if any, for losses suffered as a result of the September 11th terrorist attacks. In addition, we expect that charities will require these businesses to submit detailed explanations of the condition of the business, including supporting documentation and/or data such as loss of revenues, destruction of inventory, etc., as a result of the September 11th terrorist attacks, as well as detailed descriptions of the anticipated use of the grant funds.

Furthermore, we expect that charities will require, as a condition of accepting grant funds, that businesses enter into written grant agreements setting forth the terms and conditions of the charitable grants. For example, we expect that charities will require businesses, in these written grant agreements, to represent that they will use the grant funds solely in accordance with the statements regarding use of proceeds made in their grant application forms. In addition, we expect that charities will require businesses to agree to permit them open access to their financial records and offices to evaluate whether grant funds are being used for the charitable purposes for which they were intended.

In providing aid to businesses that, because they are located in downtown Manhattan in close proximity to the World Trade Center, have been negatively affected by the September 11th terrorist attacks, in the manner described above, charities will be furthering the charitable purposes of "relief of the poor and distressed or of the underprivileged" and

“combat[ing] community deterioration” within the meaning of Treasury Regulations section 1.501(c)(3)-1(d)(2).

We attach to this submission redacted copies of a grant-application form and a grant-award agreement that a charity located in New York City expects to use in administering its program of one-time charitable grants to small and medium-sized for-profit businesses located south of Chambers Street in downtown Manhattan. We also attach a recent article from The New York Times on this topic.

Attachments: Sample Grant-Application Form
Sample Grant-Award Agreement

XXX FUND of XXX

XXX Grant Application

(Please print or type.)

INFORMATION ABOUT YOUR BUSINESS

BUSINESS NAME: _____

PRE 9/11 BUSINESS STREET ADDRESS: _____

SOUTH OF CHAMBERS STREET: YES NO

NEW BUSINESS STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CURRENT BUSINESS CONTACT INFORMATION OF APPLICANT:

NAME OF CONTACT: _____ TITLE: _____

BUSINESS PHONE: _____ HOME PHONE: _____

E-MAIL ADDRESS: _____

TYPE OF BUSINESS: PROPRIETORSHIP PARTNERSHIP CORPORATION

NONPROFIT ORGANIZATION OTHER _____

BUSINESS PREMISES ARE:

OWNED RENTED/LEASED MONTHLY PAYMENT: \$ _____

NAME OF LANDLORD OR PROPERTY MANAGER: _____

TAX ID#: _____ DATE OPERATIONS BEGAN: _____

HEADQUARTERS OFFICE LOCATION: _____

TYPE OF INDUSTRY: _____

NUMBER OF CURRENT EMPLOYEES: FULL-TIME _____ PART-TIME _____

NUMBER OF EMPLOYEES PRE 9/11: FULL-TIME _____ PART-TIME _____

MOST RECENT FISCAL YEAR END OF YOUR BUSINESS: MONTH _____ YEAR _____

ANNUAL REVENUES: \$ _____

PLEASE ATTACH THREE YEARS OF FINANCIAL STATEMENTS/TAX FILINGS.

FINANCIALS PROVIDED THROUGH WHAT DATE? _____

IF FINANCIALS NOT AVAILABLE, PLEASE EXPLAIN: _____

NAME OF INSURANCE COMPANY: _____

DATE YOU EXPECT PAYMENT FROM INSURANCE COMPANY: _____

COMMENTS ON INSURANCE COVERAGE: _____

BANK RELATIONSHIPS OF BUSINESS (List all checking, savings, investment/retirement accounts and pension plans.)

BANK NAME	ACCOUNT TYPE	ACCOUNT NUMBER	CURRENT BALANCE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

PLEASE DESCRIBE THE GENERAL CONDITION OF YOUR BUSINESS (i.e. physical, customers, extraordinary costs, revenues, etc.)

TOTAL AMOUNT REQUESTED FROM THE FINANCIAL RECOVERY FUND: \$ _____

ATTACH DETAILED USE OF PROCEEDS AND A PARAGRAPH DESCRIBING THE STRATEGY YOU WILL PURSUE TO REESTABLISH THE COMPANY'S VIABILITY (ie. Working capital requirements, relocation requirements, relocation expenses, equipment replacement, and other incidental costs arising from the September 11th tragedy):

REFERENCES

NAME OF ACCOUNTING FIRM: _____ # OF YEARS: _____

PHONE NUMBER: _____ EMAIL: _____

NAME OF LAWYER: _____ # OF YEARS: _____

PHONE NUMBER: _____ EMAIL: _____

NAME OF BUSINESS REFERENCE*: _____ RELATIONSHIP: _____

WORK PHONE: _____ HOME PHONE: _____ EMAIL: _____

NAME OF PERSONAL (NON-RELATIVE) REFERENCE*: _____

RELATIONSHIP: _____

WORK PHONE: _____ HOME PHONE: _____ EMAIL: _____

*Business and personal references should be current or former vendors, clients, customers, suppliers, or other business associates.

ADDITIONAL INFORMATION

Is your business party to any claim or lawsuit? Yes No

Are there any judgments or liens against you or your business? Yes No

Have you ever owned a business that has declared bankruptcy? Yes No

If you answered "Yes" to any question above, please explain: _____

Are there any debts or obligations outstanding on your business? Yes No

If "Yes," please list: _____

Is your business an endorser or guarantor for any debts not listed on this application or on your financial statements?

Yes No

If "Yes," please list: _____

PLEASE LIST ALL OWNERS, OFFICERS AND PARTNERS. ATTACH SEPARATE SHEET IF NECESSARY.

PRIMARY OWNER/APPLICANT NAME _____ TITLE _____

PRIMARY OWNER'S DATE OF BIRTH: ___/___/_____

HOME ADDRESS _____

CITY: _____ STATE: _____ ZIP CODE: _____

SOCIAL SECURITY # _____ ANNUAL SALARY \$ _____ NET WORTH \$ _____

% OWNERSHIP _____ MONTHLY HOME MTG. PAYMENT \$ _____

OWNER/APPLICANT NAME _____ TITLE _____

HOME ADDRESS _____

CITY: _____ STATE: _____ ZIP CODE: _____

SOCIAL SECURITY # _____ ANNUAL SALARY \$ _____ NET _____
WORTH \$ _____

% OWNERSHIP _____ MONTHLY HOME MTG. PAYMENT \$ _____

OWNER/APPLICANT NAME _____ TITLE _____

HOME ADDRESS _____

CITY: _____ STATE: _____ ZIP CODE: _____

SOCIAL SECURITY # _____ ANNUAL SALARY \$ _____ NET _____
WORTH \$ _____

% OWNERSHIP _____ MONTHLY HOME MTG. PAYMENT \$ _____

SIGNATURES

I certify to the truth of my statements above and **authorize XXX (“XXX”) to obtain personal and/or business credit/legal/criminal reports and other public record of information in connection with this application, as well as any update, renewal, or extension thereof.** Additional information may be requested by XXX for further processing when I apply on this form. I also authorize XXX to verify with others information contained in this application. My signature is binding on me and the business named above.

BUSINESS NAME (Please print): _____

OWNER APPLICANT(S):

SIGNATURE _____

DATE _____

SIGNATURE _____

DATE _____

SIGNATURE _____

DATE _____

NON-OWNER APPLICANT:

SIGNATURE _____

DATE _____

Recoverable Grant Agreement

[DATE]

[Insert Name and Address of Grant Recipient]

Re: Recoverable Grant for [Insert Grant Recipient]

Dear [Insert Grant Recipient]:

In furtherance of the charitable purposes of XXX (“XXX”), we are pleased to inform you that the XXX Fund of XXX has approved a Recoverable Grant (the “Grant”) to [insert Grant Recipient] (referred to in this letter as “you” or “your”) solely for the purposes set forth in Paragraph 1 below. This Grant, in the amount of [insert dollar amount] is being made in response to, and reliance upon the accuracy of statements made in your grant application and subsequent submissions to XXX. All Grant funds that are repaid will be returned to XXX and will be available to be re-granted for other charitable and humanitarian purposes. The terms and conditions of the Grant are as follows:

1. Purpose and Conditions of the Grant. The Grant will be used (i) exclusively to pay for the operating costs and other expenses associated with your efforts to rebuild your business which was affected by the terrorist attacks of September 11th and (ii) solely in accordance with the statements made by you regarding use of proceeds in your XXX Fund Recoverable Grant Application. The Grant, as well as income earned from any investment of the Grant funds, will not be expended for any other purpose without XXX’s prior written approval. If any part of the Grant funds are expended or committed for any other purpose without XXX’s prior written approval, XXX will have the absolute right to demand repayment of the Grant funds, with interest if applicable, in accordance with Paragraph 2 below.
2. Repayment of the Grant Funds. To the extent you have sufficient funds to repay the Grant, repayment, in whole and without interest, shall occur no later than the fifth anniversary of the date first written above (the “Repayment Date”). You can prepay the Grant in-full or in-part, at any time, without penalty, prior to the Repayment Date. Any material violation of the conditions or terms herein will cause XXX to demand immediate repayment of the Grant. Such repayment will be without interest, except in the event of any material inaccurate representation or omission in your application or submission to XXX or in the event that your use of funds breaches the purpose of the Grant, in which case a default rate of 10% will be imposed. You agree to pay or reimburse XXX for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under this Grant

3. Disbursement of Grant Funds. XXX will make payment of the Grant in full after it receives the enclosed copy of this agreement countersigned by an authorized officer of [insert Grant Recipient] in accordance with Paragraph 10 below.

XXX retains the right, at its sole discretion, to revoke the Grant until disbursement is actually made. XXX shall not make any disbursements of the Grant unless, at the time of such disbursement, (a) you are in compliance with the terms and conditions of this agreement as well as with your application and submissions to the XXX Fund of XXX, and (b) the making of such disbursement of grant funds: (i) will not violate any provision of law, regulation, or administrative ruling to which XXX is subject; (ii) will not subject XXX to any tax, penalty, or fine; and (iii) will further the charitable purposes of XXX.

4. Reports and Accounting Records. Within 45 days of the quarter ending immediately after the first date written above, you will provide XXX with your unaudited consolidated balance sheet as of the end of such quarter and the related unaudited consolidated statements of income and retained earnings and of cash flows for such quarter. As soon as available but in no event more than one-hundred and twenty (120) days after the end of your fiscal year, you will provide XXX with a balance sheet as of the end of the fiscal year and the related statements of income and cash flow for the fiscal year, all in reasonable detail, audited, to the extent possible, by independent certified public accountants.

In addition, you will notify XXX within ten business days of any material changes in your application or submission to XXX or in your business operations while the Grant funds are outstanding.

5. Review of Operations. XXX may monitor and conduct an evaluation of your operations while the Grant funds are outstanding. Such an evaluation may include a visit from XXX personnel to observe your business, to discuss said business with your personnel, and to review financial and other records and materials relating to the activities financed or facilitated by the Grant.
6. Publicity. XXX may include information regarding the Grant in its private or public reports. XXX may also refer to the Grant in its press releases, in which case a copy of each such release will be sent to you. Until XXX issues a press release about the Grant, you shall not make any public announcement relating to the Grant without first consulting with the XXX contact referred to in Paragraph 7 below.
7. Principal Contact at XXX. Your principal contact in connection with the Grant described in this agreement shall be XXX Fund Director c/o XXX, XXX, NY, NY 10004. All correspondence concerning said Grant should be addressed to the above.
8. No Right of Assignment or Delegation. You may not assign or otherwise transfer your rights or delegate any of your obligations under this agreement.

9. Amendments. This agreement states the full terms and conditions of the Grant and shall be governed by the laws of the State of New York. The agreement can be amended only in writing and by mutual agreement.
10. Countersignature Required. If this letter correctly sets forth your understanding of the terms and conditions of the Grant, please indicate acceptance of and agreement to said terms and conditions by having the enclosed copy of this letter countersigned and dated by an authorized officer of [insert Grant Recipient] in the spaces provided below and returned to the XXX Fund Director no later than [insert date].
11. Indemnification. You and your agents, servants, employees and attorneys unconditionally and irrevocably agree to indemnify, release and hold harmless XXX and its directors, staff, agents, employees, accountants and attorneys, as well as any volunteers, including, but not limited to, Financial Mentors and Business Advocates, who advise you in connection with the Grant, against and from any and all losses, claims, damages, liabilities, suits, actions, proceedings, and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may arise from any of your activities funded by the Grant.

You may want to consult with your accountant and/or attorney regarding the accounting or tax consequences of accepting the Grant.

On behalf of XXX, we wish you great success in the reestablishment of the business activities this grant supports.

Sincerely,

XXX
President

ACCEPTED AND AGREED

By: _____

Title: _____

Date: _____

