STATUS UPDATE

TOWN OF UNION BUYOUT AND ACQUISITION FOR REDEVELOPMENT PROGRAMS

November 14, 2013

<u>Buyout/Acquisition For Redevelopment Progress Report</u>

The final signatures have been secured for the state portion of the FEMA buyout program.

There are two funding sources that will be used to pay for the town's acquisition costs. The town intends to use funding under the Community Development Block Grant-Disaster Recovery (CDBG-DR) program to fund the acquisition of certain parcels in the Westover, Fairmont Park, South Endwell, and West Corners neighborhoods in order to preserve future flood resilient redevelopment opportunities.

The town is now in a position to begin scheduling closings for both the FEMA and CDBG-DR acquisition programs. From the property owner's perspective, the closing process will be the same for both programs. Additional information regarding potential income tax implications is provided as part of this update. ***PRIOR TO CLOSING***, if you have further questions regarding tax treatment for any income generated by the sale of your property to the Town of Union please contact an accountant or tax professional.

If your buyout property is currently vacant and the utilities have already been turned off, please contact Steve Rafferty at 607-786-2903 to begin the process of scheduling a closing date.

If your property is not yet vacant please contact Mr. Rafferty by telephone or e-mail srafferty@townofunion.com to give him an estimate of when you feel that you will be in a position to close.

Gas, Electric, and Water Service Disconnections

The Town of Union is asking for your assistance in streamlining the demolition process once the closing on your property takes place.

Due to the number of demolitions that are planned in the Town of Union, as well as other areas in Broome County, it would be helpful to the Town, NYSEG, and the village water departments if services could be cut prior to the actual closings.

If gas, electric, and water services have not been restored since the flood and you have no longer need to have these services reconnected, it would be beneficial if you could contact these agencies to have the services removed.

New York State Electric and Gas has been kind enough to provide a phone number for you to call if gas and/or electric service can be cut. You can call the dedicated number at **1-800-453-1931** to request that service be cut. You should make it known that your property is in the buyout program and that the structure will be demolished.

For Village of Endicott Water customers, you can call 757-2445 and request that water service be removed. For Village of Johnson City water customers, you can call 797-2523.

This will assist all agencies involved in the demolition process. The sooner the structures are demolished, the sooner the neighborhoods will be on the final road to recovery. Once again, thank you for your continued cooperation and patience in this long process.

Federal Taxes Weekly Alert,

IRS explains tax treatment of grants to World Trade Center area businesses

Notice 2003-18, 2003-14 IRB

A new notice explains that grant payments the Empire State Development Corporation (ESDC), in coordination with the New York City Economic Development Corporation (EDC), will make to businesses under (1) the World Trade Center (WTC) Business Recovery Grant Program, (2) the WTC Small Firm Attraction and Retention Grant Program, and (3) the WTC Job Creation and Retention Program (collectively, the "WTC Grant Programs"), generally will be taxed to the recipients.

Background. ESDC is a New York State public benefit corporation and EDC is a non-profit corporation organized by New York City. ESDC will distribute a portion of $2.7 billion in Community Development Block Grants (CDBG) appropriated by Congress to enable New York City to make grants under the WTC Grant Programs. In general, the WTC Grant Programs are intended for businesses that were located in the WTC area (the "Eligible Area" as defined in the guidelines for the WTC Grant Programs) or that intend to relocate there, and had or have specified numbers of full-time permanent employees.

WTC Business Recovery Grant Program (BRGP) provides grants to compensate small businesses that were located in the Eligible Area as of Sept. 11, 2001, for losses resulting from the attacks on the WTC. Recipients must continue their business operations at the same location or intend to resume them within New York City. BRGP is intended to compensate qualified businesses for the net economic losses they incurred from Sept. 11, 2001, through Dec. 31, 2001, in connection with the WTC attacks. These losses include:

... damage to, or destruction of, real property and other tangible assets, including equipment, furniture and fixtures, supplies and inventory;

... financial losses due to business interruption, including reduced business activity;

... employee wages paid for work that was not performed and fees for contract services that were not performed;

... temporary or permanent relocation expenses; and

... debris removal and other clean up costs.

WTC Small Firm Attraction and Retention Grant Program (SFARG) generally is for businesses employing 200 or fewer full-time permanent employees at an eligible premises. It provides grants (1) to small businesses that are at risk of leaving downtown Manhattan that commit to remain in the Eligible Area for at least 5 years beyond their current commitment, and (2) to small businesses that were located in or near the WTC that commit to remain in New York City for at least 5 years. SFARG will also make grants to new businesses that commit to remain in the Eligible Area for at least 5 years.

WTC Job Creation and Retention Program (JCRP) includes grants to large businesses displaced from their workspace for at least one month as a result of the WTC attacks, and grants to other affected businesses, including those willing to create new jobs in lower Manhattan. This program generally is for businesses employing 200 or more permanent full-time employees. Businesses receiving JCRP grants must commit to remain in lower Manhattan for a minimum of 7 years and achieve certain employment goals. Businesses must use the grant proceeds exclusively for the following expenses incurred after Sept. 11, 2001: wages, payroll taxes, employee benefits, rent, and moveable equipment and furniture. A business need not have incurred property losses to receive a JCRP grant. ESDC may require a grant recipient to repay JCRP grant funds if a business does not meet its 7-year commitment.

Answers to tax questions about the grants. IRS has provided the following answers to questions about the Federal tax treatment of the grants:

> ... Payments made under the three WTC grant programs (BRGP, SFARG, and JCRP) generally are taxable under Code Sec. 61 and don't qualify for any exclusion from income, except that certain JCRP grants may qualify as a tax-free contribution to capital under Code Sec. 118, as explained below.
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> > RIA observation: IRS reminds grant recipients that the income from the grant may be offset by deductible business expenses, net operating losses, and other allowable deductions (for example, depreciation). Also, to the extent that a BRGP grant compensates for damaged or destroyed property, the recipient may offset it against its adjusted basis in the damaged or destroyed property, and defer recognition of the resulting gain under Code Sec. 1033, as explained below.
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> ... The grants don't qualify for the general welfare exclusion because it generally is limited to individuals who receive governmental payments to help them with their individual needs. (For guidance on the tax treatment of grants to individuals and families in the WTC area, see Notice 2002-76, 2002-48 IRB 917, discussed at Weekly Alert ¶ 611/21/2002).
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> ... The grants don't qualify for the Code Sec. 102 gift exclusion because the intent of the Federal, state, and local governments in making the payments is not a detached and disinterested generosity, but rather to promote economic recovery and revitalization.
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> ... The grants to businesses other than sole proprietors don't qualify for Code Sec. 139 because the exclusion that it provides for qualified disaster payments applies only to individuals. Sole proprietors don't qualify for this exclusion because the payments are not made for any of the purposes described in Code Sec. 139(b)(1), Code Sec. 139(b)(2), or Code Sec. 139(b)(4).
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> ... BRGP and SFARG payments aren't excluded from gross income as contributions to capital under Code Sec. 118. However, some JCRP payments qualify for this exclusion. IRS says that, to the extent a corporate recipient of a JCRP grant payment applies for, receives, and utilizes the grant to acquire furniture and equipment, the JCRP grant will be a nonshareholder contribution to capital under Code Sec. 118 and applicable case law. The basis of furniture and equipment will be reduced by the grant amount under Code Sec. 362(c). JCRP grants for other purposes, however, must be included in gross income.
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> ... Recipients of SFARG and JCRP payments need not reduce the amount of an allowable casualty loss deduction under Code Sec. 165 or include in gross income all or part of a casualty loss claimed in a prior year. However BRGP payments are treated as compensation received for losses under Code Sec. 165 to the extent they compensate businesses for their property losses. Thus, if a business deducted property losses resulting from the WTC attacks and is reimbursed for the loss by a BRGP grant in a later year, it must include the reimbursement in gross income on its return for the later year to the extent that its income tax liability for the prior year was reduced by the loss deduction. (Code Sec. 165(i)(1)) If no prior deduction was taken, a business must reduce any current year allowable deduction for property loss to the extent a BRGP grant compensates for the loss. If the amount of compensation exceeds the business' basis in the damaged or destroyed property, the excess (gain) generally must be included in gross income unless the business qualifies to defer gain

recognition under Code Sec. 1033, as discussed below.

... A business may defer, under Code Sec. 1033, recognition of gain realized on receipt of a BRGP grant. (This doesn't apply for SFARG and JCRP grants because they are not paid to compensate the business for losses to damaged or destroyed property.) Businesses using BRGP grants for the purpose of repairing or replacing the damaged or destroyed property generally are eligible to defer gain under Code Sec. 1033, if they make the required election and timely purchase property similar or related in service or use to the converted property, the basis of which would be determined under Code Sec. 1012 if Code Sec. 1033(b) did not apply ("qualified replacement property"). Amounts paid by the grant recipients to repair damaged or destroyed property, including amounts paid for debris removal and other clean-up costs, are generally treated as amounts paid to purchase qualified replacement property. Because the property for which businesses will receive the BRGP grants was destroyed in a Presidentially declared disaster, the businesses may use the BRGP grants to purchase any tangible property of a type held for use in a trade or business and still defer recognition of the gain. (Code Sec. 1033(h)(2)) A BRGP grant recipient must replace the damaged or destroyed property within 2 years after the close of the tax year in which the BRGP grant is received (or 5 years if the property was damaged or destroyed due to the Sept. 11, 2001, terrorist attacks in the New York Liberty Zone and substantially all of the use of the replacement property is in New York City), but if necessary may request additional time from its local IRS office.

> Illustration : ABC Co. owned tangible personal property with a fair market value of $18,000 and a basis of $10,000 that was destroyed in the WTC attacks. ABC filed an amended 2000 return claiming a $10,000 casualty loss. In 2003, it receives a BRGP grant payment of $18,000 for damage to its tangible personal property and uses the entire amount to buy replacement property for use in its trade or business. *Result:* Under Code Sec. 111 and the tax benefit rule, ABC must include $10,000 of the grant on its 2003 return. It may defer the remaining $8,000 by meeting the requirements of Code Sec. 1033, in which case its basis in the replacement property would be $10,000 ($18,000 cost of the replacement property minus $8,000 gain deferred). (Notice 2003-18).

References: For contributions to capital, see FTC 2d/FIN ¶ F-1901; United States Tax Reporter ¶ 1184; TaxDesk ¶ 232,300; TG ¶ 13255. For involuntary conversions, see FTC 2d/FIN ¶ I-3701; United States Tax Reporter ¶ 10,334; TaxDesk ¶ 229,701; TG ¶ 10425.

END OF DOCUMENT -

26 USC § 139 - Disaster relief payments

Current through Pub. L. 113-36. (See Public Laws for the current Congress.)

(a) General rule

Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

(b) Qualified disaster relief payment defined

For purposes of this section, the term "qualified disaster relief payment" means any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,

(3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or

(4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare,

but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

(c) Qualified disaster defined

For purposes of this section, the term "qualified disaster" means—

(1) a disaster which results from a terroristic or military action (as defined in section 692 (c)(2)),

(2) federally [1] declared disaster (as defined by section 165 (h)(3)(C)(i)),

(3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

(4) with respect to amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.

(d) Coordination with employment taxes

For purposes of chapter 2 and subtitle C, qualified disaster relief payments and qualified disaster mitigation payments shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

(e) No relief for certain individuals

Subsections (a), (f), and (g) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terroristic action (as so defined), or a representative of such individual.

(f) Exclusion of certain additional payments

Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.

(g) Qualified disaster mitigation payments

(1) In general

Gross income shall not include any amount received as a qualified disaster mitigation payment.

(2) Qualified disaster mitigation payment defined

For purposes of this section, the term "qualified disaster mitigation payment" means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

(3) No increase in basis

Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

(h) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.

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[1] So in original. Probably should be preceded by "a".

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LAW ABOUT... ARTICLES FROM WEX

- Dodd-Frank: Title XIV – Mortgage Reform and Anti-Predatory Lending Act
- Due process
- Fictional complaint for trespass to land
- Criminal procedure
- Negotiable instruments