Internal Revenue Service

Department of the Treasury

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[redacted]

Washington, DC 20224

Person to Contact:
[redacted], [redacted]
Telephone Number:
[redacted]
Refer Reply To:
CC:ITA:4 – CONEX-165760-02
Date:
January 6, 2003

Dear [redacted]:

[redacted] asked my office to reply to your email to her about the taxation of payments to the small business community in Lower Manhattan in response to the September 11, 2001, attacks on the World Trade Center. Your email states that the [redacted] contributions to the Lower Manhattan small business community will become a tax burden for the small business owners unless recipients can exclude the contributions from gross income.

As discussed more fully below, a recipient generally can exclude from gross income for federal income tax purposes a donation from a nongovernment donor as a gift if the donation is motivated by detached and disinterested generosity and is not in anticipation of an economic benefit or in return for services. The issue is intensely factual and is dependent on the subjective motivation of the donor. Thus, the taxability of the [redacted]'s contribution depends on the [redacted]'s intent in making the contribution. Of course, if the facts indicate that the donation is includible in the gross income of the business donee, then the donee may offset its deductible expenses and any net operating losses against the income.

Gross income generally means all income from whatever source derived and includes all accessions to wealth, clearly realized, over which taxpayers have complete dominion and is subject to tax unless specifically exempted [*Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955)].

Gross income does not include the value of property acquired by gift [Section 102(a) of the Internal Revenue Code]. A leading authority on the meaning of the term gift for this purpose is *Duberstein v. Commissioner*, 363 U.S. 278 (1960). Under *Duberstein*, a recipient may exclude a transfer as an excludable gift if it:

(1) Results from a "detached and disinterested generosity",

(2) Is made "out of affection, respect, admiration, charity or like impulses",

(3) Is not made from "any moral or legal duty" nor "the incentive of anticipated benefit" of an economic nature, and

(4) Is not in return for services rendered. *Id.*

The determination of whether a transfer proceeds from detached and disinterested generosity requires an inquiry into the transferor's intention in making the payment [*Duberstein* at 285-86, Rev. Rul. 99-44, 1999-2 C.B. 549]. Unlike governmental grants to businesses in response to a disaster, which generally do not qualify for exclusion as gifts [*See Kroon v. United States*, Civ. No. A-90-71, 1974 U.S. Dist. LEXIS 8656 (D. Alaska 1974)], donations from private donors to a business donee may be made with the requisite intent. However, we have found no reported court decision or other authority in which a transfer of money or property to a for-profit business was treated as a nontaxable gift under § 102.

I hope this information is helpful. Please call [redacted], Identification Number [redacted], at [redacted], if you have any questions.

Sincerely,

Lewis J. Fernandez
Deputy Associate Chief Counsel
(Income Tax & Accounting)