

# Congress of the United States

Washington, DC 20515

April 7, 2003

The Honorable Dennis Hastert  
Speaker of the House  
235 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Bill Frist  
Senate Majority Leader  
416 Russell Senate Office Building  
Washington, D.C. 20510

Dear Speaker Hastert and Senate Majority Leader Frist:

Because you visited Ground Zero after 9/11 to stand united with New York, you are well aware of the enormous economic devastation the attacks caused in lower Manhattan. Residents and businesses in the area suffered billions of dollars in financial damages. Thanks to the federal aid package authorized by Congress, these lower Manhattan businesses and residents have received more than one billion dollars in recovery grants. The problem, however, is that a large percentage of this aid is in danger of being returned wrongly to the federal government because of a bureaucratic decision by the IRS to treat the grants as income subject to federal tax. This proposed tax on 9/11 grants will take away a substantial amount of the aid, stall New York's recovery, and go against the intent of Congress in authorizing these grants.

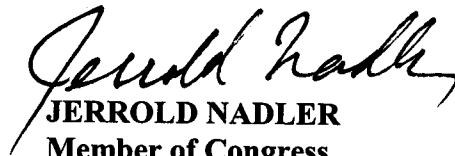
We write to urge your intervention in the IRS plan to tax 9/11 recovery grants provided to lower Manhattan businesses and residents. While these businesses and families are trying to get back on their feet, the IRS is pulling a portion of their lifeline out from under them. The value of this incentive program to encourage businesses and residents to stay in or move to lower Manhattan would be seriously eroded by this taxation. The federal government should not offer help to those impacted by disaster with one hand and take that help back in taxes with the other.

What makes matters worse, because of delays by the IRS, recipients were not aware that the grants would be taxed until just weeks prior to the end of the 2002 fiscal year. Many businesses and residents had no time to plan for the costs of the IRS decision. In addition, the IRS waited until March 17, 2003, barely one month before the April 15, 2003 tax filing deadline, to release guidelines for the tax policy. Clearly, businesses and residents struggling to overcome the economic challenges of 9/11 do not need the additional burden of unexpected taxes on these grants.

Attached please find prior Congressional letters on this subject and a report of specific impacts to individuals and businesses facing almost insurmountable challenges of this taxation. Thank you for your efforts to date in support of New York's recovery. We know that you are aware, as the leaders of the House and Senate, that taxation on these recovery grants was never the intent of Congress. We respectfully urge your leadership in advancing legislation that could prevent this taxation, an additional burden on 9/11 victims, from becoming a reality, and at least allow for the tax to be refunded.

Sincerely,

  
CAROLYN B. MALONEY  
Member of Congress

  
JERROLD NADLER  
Member of Congress

# Congress of the United States

Washington, DC 20515

September 30, 2002

The Honorable Paul O'Neill  
Secretary  
Department of Treasury  
1500 Pennsylvania Ave, NW  
Washington, D.C. 20220

The Honorable Charles O. Rossotti  
Commissioner  
Internal Revenue Service  
1111 Constitution Ave, NW  
Washington, D.C. 20224

Dear Secretary O'Neill and Commissioner Rossotti:

We are writing out of deep concern for our constituent victims of the terrorist attacks of September 11, who subsequently received some of the \$772 million in federal grants awarded to businesses and individuals formerly and currently located near ground zero. A report in this morning's *New York Daily News* indicates that these grants may be treated as taxable income by the IRS. We believe this tax treatment totally violates the intent of these grants and will do severe damage to the effort to restore lower Manhattan.

The grants in question, that were intended by Congress to help to rebuild the economy of lower Manhattan, are being distributed to businesses and individuals who were located or lived in lower Manhattan. These are people whose lives were torn apart by September 11, but because of their desire to help rebuild the area, many have bravely chosen to remain in lower Manhattan. At the time these grants were distributed, it was incomprehensible that the grants would later be considered taxable income. If the IRS had thought such tax treatment was a possibility at the time, it should have indicated to policymakers such a concern. Taxing this as income will have the direct opposite of the intended effect of these grants and will drive businesses and residents from the disaster zone or into bankruptcy.

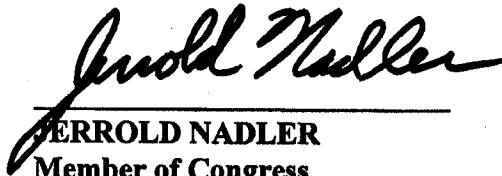
Accordingly, we are writing to strongly urge you not to treat these grants as taxable income. Doing so will have a devastating impact on our constituents and significantly damage the recovery effort. Take for example the situation cited by Meyer Feig, the President of the World Trade Center Tenants Association in today's press report. A former tenant company of the World Trade Center that received a \$70,000 grant could be liable for taxes on the money of up to 35%. Given that the grant likely fell well short of the funding needed to recoup losses from the attack, this new tax liability will likely drive such a business to bankruptcy.

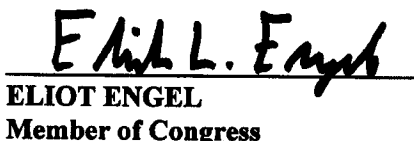
We thank you for your immediate attention to this urgent matter. Given the uncertainty created by the possibility that these grants could be treated as taxable income we request that you resolve this situation expeditiously. Please contact Ben Chevat with Rep. Maloney (225-7944)

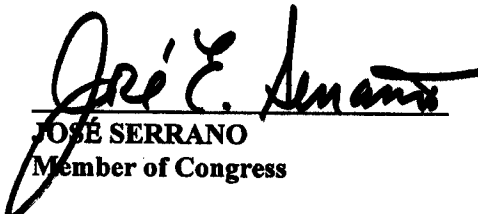
as liaison for this matter.

Sincerely,

  
CAROLYN B. MALONEY  
Member of Congress

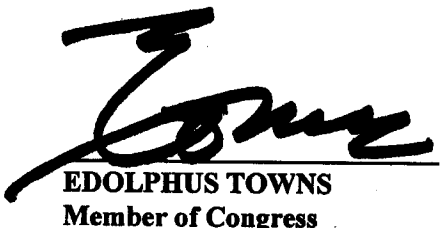
  
JERROLD NADLER  
Member of Congress

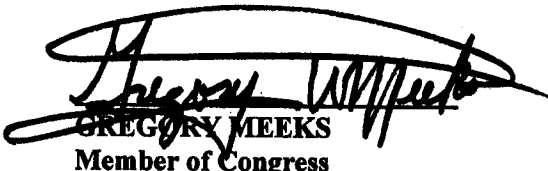
  
ELIOT ENGEL  
Member of Congress

  
JOSÉ SERRANO  
Member of Congress

  
GARY ACKERMAN  
Member of Congress

  
STEVE ISRAEL  
Member of Congress

  
EDOLPHUS TOWNS  
Member of Congress

  
GREGORY MEEKS  
Member of Congress

# Congress of the United States

Washington, DC 20515

December 13, 2002

Bob Wenzel  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Acting Commissioner Wenzel:

We are writing to express our disappointment at the recent decisions of the I.R.S. regarding the taxability of certain disaster-related grants to residents and businesses of lower Manhattan. We strongly urge you to reverse these decisions. If there are legal impediments to ruling in this manner, we request that you submit specific legislative changes that could be made by Congress to enable a positive ruling.

As you know, Congress has appropriated over \$3 billion through the Community Development Block Grant program specifically to assist residents and businesses in lower Manhattan through a variety of grant programs. These funds have been a vital element in beginning the economic revitalization of this devastated community.

Members of the New York Congressional delegation have written your office numerous times urging that these grants be made non-taxable. We have explained that Congress never intended that this assistance would later be rescinded in the form of taxation. Recipients of these funds were never asked to prepare a budget with the prospect of paying taxes in mind. Furthermore, such a policy would scare away others considering a move to lower Manhattan, exactly the opposite effect the grants are meant to promote.

According to IRS Notice 2002-76, published November 14, 2002, the one-time \$1,000 grants, as well as the family and minimum grants under the two-year commitment grant program, will be tax exempt. However, payments in excess of the minimum grant amounts under the two-year commitment grants program will be taxable. According to this notice, these payments "are not intended to compensate individuals for the extra reasonable and necessary personal, living, and family expenses they incur as a result of residing in the area of the World Trade Center disaster." We respectfully disagree.

The residents of Zones One and Two face a significant loss of services and mobility and these grants are necessary to help alleviate the extra burdens that have been placed on their lives. To apply a strict cap on how much money may be considered tax exempt runs counter to the intent of Congress when it designated funds for these purposes.

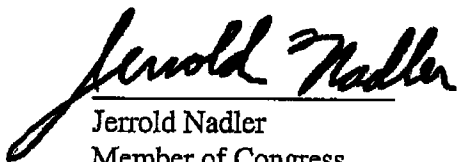
Equally egregious is the determination, as revealed in your letter of November 6, 2002, that "businesses must include in gross income governmental grants that compensate for lost wages or

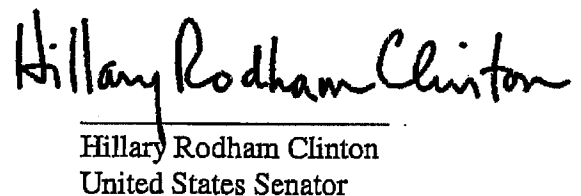
lost profits." This decision assumes that these grants will make the businesses of lower Manhattan whole. However, the entire economy of lower Manhattan will be devastated for years to come. The modest grants given to these businesses are a great help in the short-term but cannot begin to recover the full losses they face.

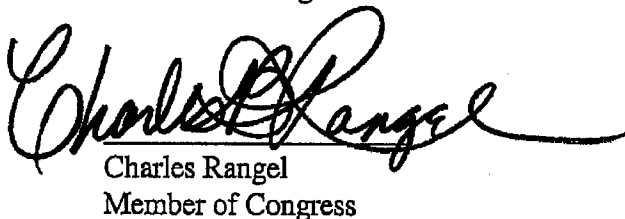
If there are provisions of law that prevent the IRS from ruling that all of the grants in question are tax exempt, please provide *specific legislative language* that would grant you such authority. In addition, the letter of November 6<sup>th</sup>, referenced above, explained that should Congress enact legislation to make these grants tax exempt, "recipients of the payments will not be able to deduct expenses they incur to carry out the specific purpose for which the payment is made." Please include legislative language that would eliminate this requirement as well.

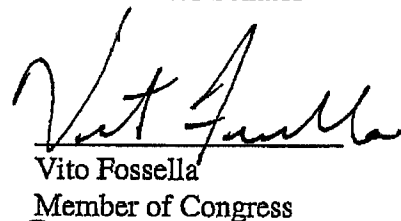
We look forward to working with you to ensure that the people and businesses of lower Manhattan, whose lives have been forever changed by the tragedy of September 11<sup>th</sup>, do not face further hardships on their road to recovery. Thank you for your attention to this important matter.

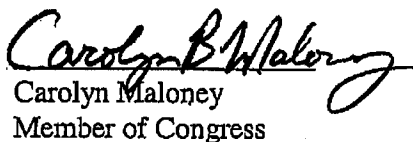
Sincerely,

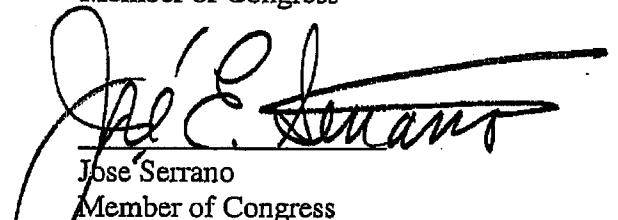
  
Jerrold Nadler  
Member of Congress

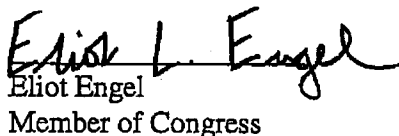
  
Hillary Rodham Clinton  
United States Senator

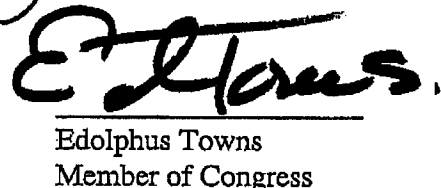
  
Charles Rangel  
Member of Congress

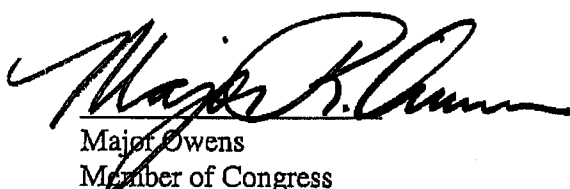
  
Vito Fossella  
Member of Congress

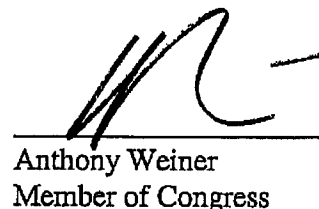
  
Carolyn Maloney  
Member of Congress

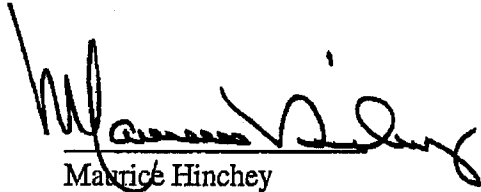
  
Jose Serrano  
Member of Congress

  
Eliot Engel  
Member of Congress

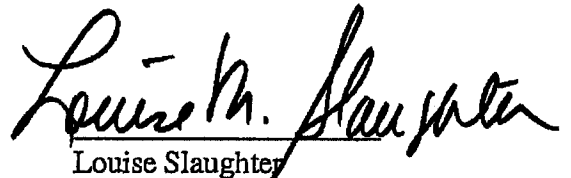
  
Edolphus Towns  
Member of Congress

  
Major Owens  
Member of Congress

  
Anthony Weiner  
Member of Congress



Maurice Hinchey  
Member of Congress



Louise Slaughter  
Member of Congress



Carolyn McCarthy  
Member of Congress

**RECOVERY GRANTS IN LOWER MANHATTAN:  
THE FEDERAL GOVERNMENT ATTEMPTS TO GIVE WITH ONE HAND,  
AND TAKE WITH ANOTHER**

**Small Business Owners Report On the Fiscal Impacts of 9/11  
and the Challenges of Unexpected Taxation on the Aid Grants that Followed**

## **SUMMARY**

In September of 2002, reports surfaced that the Internal Revenue Service was considering taxation on September 11<sup>th</sup> related grants being provided to lower-Manhattan residents and businesses. The grants were provided to assist in the recovery and as an incentive for businesses and residents to stay or move to lower Manhattan.

On November 7, 2002, the IRS confirmed that it had decided to tax the grants for small businesses in lower-Manhattan. On November 14, 2002, the IRS confirmed its determination that a large portion of grants to residents in lower Manhattan would also be taxed.

After the initial reports of potential taxation on the grants, New York Members of Congress immediately urged the Commissioner of the IRS to reverse the decision and introduced legislation authored by Congresswoman Carolyn Maloney and Congressman Jerrold Nadler in the House, and by Senators Chuck Schumer and Hillary Clinton in the Senate, to direct the IRS not to tax the grants.

Efforts to make the grants free of taxation are supported by the Lower Manhattan Development Corporation and State and City economic development corporations – which are distributing the \$281 million in housing grants and \$772 million in small-business grants respectively.

Meyer Feig, the President of the World Trade Center Tenants Association and Co-Founder of the Downtown Business Network – also President of the Intera Corp. Inc. which was located in the World Trade Center – said, “Lower-Manhattan’s small businesses are worried and astonished that these recovery grants, which only partially help to recoup enormous losses, will now be taxed significantly. These taxes create an extremely unfair burden on those who suffered the most, financially, due to the disaster. I wish to thank Congressmembers Maloney, Nadler and rest of the Congressional delegation for bringing this urgent matter to the attention of the House and Senate leadership.”

The individual case reports that follow detail losses experienced by specific small businesses in lower Manhattan as a result of the September 11<sup>th</sup> terrorist attacks. The reports also document the amount of federal aid received through these grant programs by individual small businesses, and detail the difficulties businesses have experienced in grappling with unexpected taxation on the grants.

With near one billion dollars in aid grants potentially subject to taxation as income by the IRS, under anticipated tax liability for the companies of between 15% to 34%, it is reasonable to project \$200 million dollars or more of the grants being returned to the federal government in taxes.



## **CASE REPORTS**

### **Avalon Partners Inc.**

Vincent Au, President

This financial services/brokerage firm reports losses of approximately \$900,000 dollars as a result of the terrorist attacks and its aftermath, receiving approximately \$120,000 in federal grants. Mr. Au reports that the company suffered an additional challenge in losses because it had relocated from an office of 1,100 square feet to an office of 5,500 square feet in August of 2001, and invested significantly in new office equipment.

The question of whether the federal grants would be taxed seemed “always up in the air” says Mr. Au, who now anticipates having to return \$40,000 to \$50,000 of the grants to the IRS, even though the funds were already used.

Mr. Au states, “I don’t understand how is this reasonable. If they looked the dictionary under red tape this would it.”

### **Karoon Capital Management, Inc.**

Kayvan Karoon, President

This financial services company reports losses of approximately \$2.5 million as a result of the September 11<sup>th</sup> terrorist attacks, while receiving \$33,000 in federal grants. Between five and six months after the disaster, Karoon Capital Management received \$13,000 in grants, while an additional \$20,000 was received more than a year later.

Mr. Karoon was not informed that the grants would be taxed until late November of 2002, near the end of the fiscal year. The tax avoidance strategies suggested by the IRS at that time came too late in the process for this company to adjust its expenditures and investments from the grants, and additional guidance from the IRS – made public on March 19, 2003 with less than a month left before the tax filing deadline of April 15, 2003 – was never received by this company.

Mr. Karoon states of the situation, “Taxing these grants seems unfair. My business suffered \$2.5 million in losses from the disaster and we received a small but very appreciated federal grant of \$33,000 to help. But to tax these grants just heaps on additional burdens that really defeat the whole purpose of the assistance. I fail to find the logic in the whole thing, not just the amount of the grants in relation to losses, but the aftermath of being taxed. If I ran my business like this I’d be out of business.”

## **OM Beauty Concepts Inc.**

Olga Diaz, Owner

Ms. Diaz's hair salon was located in the World Trade Center and lost approximately \$300,000 as a result of the attacks, receiving \$37,000 in federal grants. Ms. Diaz states that she learned about the taxation on the grants "after I invested it in rebuilding my business and now I am struggling to find ways to pay."

Ms. Diaz reports that she already faced the initial requirement to become eligible for the grant of finding and securing a new location for her business, which took months and delayed needed aid. Now, as she works to build her business, she is facing an unexpected tax on the federal grants that she says, "makes the whole process just extremely, almost impossibly, challenging."

## **The Hunter Realty Organization**

Richard Selig, President

The Hunter Realty Organization suffered several million dollars in losses as a result of the September 11<sup>th</sup> disaster, receiving approximately \$80,000 in federal grants. While Mr. Selig reports a relatively early awareness that the grants could be taxed, his business has been forced to wait for the actual grant award, because the State agency distributing the grants – the Empire State Development Corporation (ESDC) – approved payments totaling \$49 million more than the amount allotted to the program.

As of late-March 2003, the ESDC reports that about 1,500 of the 14,233 companies approved for the small-business recovery grants faced the same situation as the Hunter Realty Organization in having been approved for grants, but not yet receiving any money. Mr. Selig states, "The delays are frustrating, but beyond that, the taxation on the grants seems really to defeat the purpose of getting people to come back and stay in lower-Manhattan, and it adds to the challenge for businesses here to recover and grow."

## **Medeast Inc.**

Martin Cukier, President

Medeast Inc., a medical practice formerly located in the World Trade Center, estimates losses of \$4 million from the September 11<sup>th</sup> terrorist attacks, receiving approximately \$300,000 in federal grants. Mr. Cukier reports that his company learned that the grants would be taxed "late in the process" and that guidance on the tax policy had not yet been received.

While Medeast Inc. relocated successfully after the disaster, is "up and running," and the company was able to keep all staff "on board," Mr. Cukier notes that, "the lost funds resulting from these grants being taxed is definitely hurting us." Mr. Cukier states, "Our company used these grants to rebuild our medical facility. When I write off the cost of this capital expense, it needs to be done over an extended number of years, and therefore, I am paying tax on the \$300,000 in grants from day one. It will take years to recoup the difference."

### **Transition Networks LLC**

Mary Olsen, President and CEO

Co-Founder of the Downtown Business Network

Transition Networks LLC reports estimated losses from the September 11<sup>th</sup> disaster of 66% of prior annual earnings. The company received \$26,000 in grants through the ESDC and learned that the aid would be taxed in November of 2002, after the funds had been reinvested in the companies recovery.

Ms. Olsen says of the tax on the grants, “Although the money allocated to small businesses like mine was not exponentially balanced with the mega-sums provided to large businesses, I did appreciate the funds. I don’t think it was legislators intention to tax this money, but if the IRS does this, they are reducing our ability to survive as a business. If we and other businesses can’t survive, this tax has the effect of reducing New York’s ability to recover more broadly, so in the end I really don’t understand what are they thinking.”

### **Serko & Simon LLP**

Christopher M. Kane, Esq., Partner

Tenants of the World Trade Center for more than twenty years, Serko and Simon LLP suffered property losses from the September 11<sup>th</sup> disaster in excess of two million dollars, receiving \$300,000 in grants through the ESDC.

Mr. Kane notes that, “At the time the grants were made, no statement was made as to their taxability. And, at the time of the receipt, we were not in a position to ‘put aside’ a portion of what was supposed to be ‘disaster relief’ in the possibility that the IRS was going to lay claim to what we had received.”

Mr. Kane also states, “This federal grant, while certainly appreciated, did not offset our uninsured losses to any significant degree. Taxing the grants in addition means that we will lose in help that we were hoping to could help us recover our firm more quickly.”

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