

HURRICANE SANDY - PATHS TO RELIEF

Many small and mid-size businesses in New York City suffered severe losses due to Hurricane Sandy. Below is a practical guide for business owners seeking relief.

- **Insurance.**

- The first place business owners should turn is to their insurance providers. Insurance companies will be inundated with claims after an event like Hurricane Sandy. To expedite the claims process, carefully document the damage to your business, to the extent it is safe to do so, by photographing or taking video of the damage. Be mindful of potential hazards such as exposed electrical wires, potential gas leaks or structural damage. Keep track of receipts for immediate repairs (e.g., windows).
- New York Governor Andrew Cuomo has announced two directives that, for now, apply only to residential homeowners: First, homeowners will not have to pay hurricane deductibles because Sandy did not have sustained hurricane-force winds when it made land in New York. Second, insurers must accept homeowners' photo and video documentation of losses, which allows residents to document their damage and then discard debris in a timely way before a second storm hits the region.

- **New York City Assistance.**

- **Emergency Loans.** Under a New York City program coordinated by the Department of Small Business Services and the New York City Economic Development Corporation, emergency loans up to \$10,000 are available for small and midsize businesses. Call 311 and ask for "NYC Business Emergency Loan" or contact the NYC Business Solutions Account Manager here: <http://www.nyc.gov/html/sbs/nycbiz/html/contact/manager.shtml>.
- **IDA Sales Tax Letter.** New York City Industrial Development Authority is making an emergency sales tax letter available that will allow businesses to avoid payment of New York City and New York State sales taxes on materials purchased for rebuilding. Contact Shin Mitsugi at smitsugi@nycedc.com for further information.
- **Displaced Businesses.** 40,000 square feet of short-term office space is being made available at Brooklyn Army Terminal free of charge for the next 30 days. Call 311 and ask for "NYC Business Solutions" or contact an NYC Business Solutions Account Manager here: <http://www.nyc.gov/html/sbs/nycbiz/html/contact/manager.shtml>.

- **Federal Assistance.**

- **SBA Disaster Loans.** SBA provides low interest disaster loans to businesses of all sizes to repair or replace real estate, machinery & equipment, inventory and business assets that have been damaged or destroyed in a declared disaster such as Hurricane Sandy. For more information, see here: <http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/disaster-loans>.
- **FEMA.** For businesses that have accepted assistance from all other sources, including insurance carriers and SBA disaster loans, assistance may be available from the Federal Emergency Management Agency (FEMA) under its "Other Than Housing Needs" Assistance program. For more information, see here: <http://www.fema.gov/apply-assistance>.

- **Federal Income Tax Relief.**

- The IRS announced tax relief for individuals and businesses located in certain localities in New York, New Jersey and Connecticut. In general, the IRS has extended to February 1, 2013 various tax filing and payment deadlines that occurred starting in late October. The extension applies to (among other things), the fourth quarter individual estimated tax payment, normally due Jan. 15, 2013; payroll and excise tax returns and accompanying payments for the third and fourth quarters, normally due on Oct. 31, 2012 and Jan. 31, 2013 respectively; and also applies to tax-exempt organizations required to file Form 990 series returns with an original or extended deadline falling during this period. The IRS will also work with any taxpayers who reside outside a disaster area but whose books, records or tax professional are located in the areas affected by Hurricane Sandy. Taxpayers who live outside of an impacted area and think that they may qualify for this relief need to contact the IRS at 866-562-5227. For more information, see here: <http://www.irs.gov/uac/Newsroom/IRS-Provides-Tax-Relief-to-Victims-of-Hurricane-Sandy;-Return-Filing-and-Tax-Payment-Deadline-Extended-to-Feb.-1,-2013>.
- In general, payments received by a business for property damage or destruction (such as payments from an insurance company) are not required be included in the business' gross income as long as the payments do not exceed the taxpayer's adjusted basis in the damaged or destroyed property. If the payments for property damage or destruction exceed the taxpayer's adjusted basis in the damaged or destroyed property, the taxpayer will realize income or gain for federal income tax purposes. Under certain circumstances, any gain may be deferred. Businesses should consult their own tax advisors to determine whether or not the receipt of any payments related to property damage results in any taxable gain or income. For more information, see the IRS webpage *Disaster Assistance and Emergency Relief for Individuals and Businesses*, available here: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Disaster-Assistance-and-Emergency-Relief-for-Individuals-and-Businesses-1>.
- Damage, destruction or loss of property incurred by a business as a result of Hurricane Sandy may give rise to a casualty loss deduction for federal income tax purposes. In general, any insurance or reimbursements received or expected to be received by the business for the property damage would reduce the amount of any otherwise available casualty loss deduction (or, if in excess of basis, could give rise to income or gain). Businesses should consult their own tax advisors to determine the availability of a casualty loss deduction. For more information, see the IRS Publication 547 (2011), *Casualties, Disasters, and Thefts*, available here: <http://www.irs.gov/publications/p547/index.html>.

- **New York State Tax Relief.**

- New York State has postponed to November 14, 2012 various tax deadlines occurring within the period beginning on October 26, 2012, and ending on November 14, 2012. The postponed deadlines include the deadline for filing any tax returns (including those for personal income tax, corporate tax, sales tax, highway use tax and any other taxes administered by the Tax Department) and paying any tax. New York State has also postponed to November 14, 2012, the deadlines occurring within the aforementioned period for the remittances of income tax withheld by employers and the remittances of withholding tax or metropolitan commuter transportation mobility tax required to be made by an employer through PromptTax system. Taxpayers who were directly affected by Hurricane Sandy are eligible for the relief. For more information, see here http://www.tax.ny.gov/pdf/notices/n12_11.pdf and here http://www.tax.ny.gov/pdf/notices/n12_12.pdf.

- **Private Relief.**

- In addition to insurance and government assistance, some individuals and entities impacted by Hurricane Sandy may be able to seek assistance from private charitable organizations. Generally, for-profit businesses will be ineligible to receive such support, but certain individuals (artists, for example) and tax-exempt entities (such as museums, theaters, soup kitchens, and other creative or charitable entities) who were severely affected by the disaster may be able to receive financial help. Private foundations may also be able to direct funding to already-existing charitable organizations in order to supplement the relief efforts.
- **Council on Foundations Data.** The Council on Foundations (“COF”) has provided an ad hoc portal on its website with information on disaster grantmaking. COF has collected responses from community foundations, foundations at private companies, and others with respect to their ongoing efforts to provide relief for individuals and businesses from Hurricane Sandy. Contact information for these organizations and descriptions of fundraising efforts can be found at: <http://www.cof.org/events/Disasters.cfm>.
- **Guidestar Recommendations.** Guidestar, the nonprofit online charities database, has collected a list of “expert-recommended nonprofits” and other nonprofit organizations that are working to provide hurricane relief. Impacted businesses may check the list for information on reputable nonprofits that may be able to provide assistance. For more information, see here: <http://www.guidestar.org/rxg/give-to-charity/hurricane-sandy-recovery.aspx>.

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If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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