



MEMORANDUM

To: Virginia Nonprofits¹
From: David Carter, Director of Programs and General Counsel, The Phoenix Project²
(david@phoenixproject.org)
Date: March 24, 2008
Re: Virginia Neighborhood Assistance Program

I. INTRODUCTION

As part of our ongoing efforts to assist Virginia nonprofits expand their reach and deepen their impact upon the citizens of the community, we have prepared for your benefit the following memorandum regarding the Virginia Neighborhood Assistance Program (“VNAP”). VNAP allows eligible nonprofits to entice additional donors to support their work by offering businesses and individuals a significant tax credit for qualifying donations. This memorandum will summarize the key attributes of the VNAP and highlight how an eligible organization may apply to participate in the program.³

¹ This memorandum is for informational purposes only and is not intended to provide legal advice. While the information contained herein is believed to be accurate, readers are encouraged to consult independent legal counsel to fully understand the requirements of the Virginia Neighborhood Assistance Program and their duties and obligations with respect thereto.

² The Phoenix Project is a statewide nonprofit organization that seeks to alleviate poverty by building a sustainable partnership between Virginia higher education and the Commonwealth’s most distressed communities that adds civic capacity to communities, strengthens the mission of universities, and provides a powerful context in which to prepare nonprofit and social entrepreneurs for tomorrow’s Virginia. To learn more about the Phoenix Project please visit www.phoenixproject.org.

³ Shukita L. Whitaker, a third-year law student at the William and Mary School of Law participating in a fellowship with The Phoenix Project, substantially contributed to the research and drafting of this memorandum. Many thanks for her superb assistance.

As you undoubtedly know, nonprofit organizations must rely heavily on outside resources and contributions in order to provide their valuable services. Indeed, many nonprofit organizations respond to failures in the marketplace, and generally in a more efficient and effective manner than governmental organizations, to provide services to some of the poorest members of our communities. Recognizing the central role nonprofit organizations play in our society, some states have implemented neighborhood assistance programs to encourage businesses and individuals to contribute to these organizations. As stated in the Code of Virginia, it is the "...public policy of the Commonwealth to encourage business firms to make donations to neighborhood organizations for the benefit of impoverished people."⁴ The concept has manifested itself in the form of "tax credits to businesses [and individuals] that contribute...to community-based nonprofit organizations, often targeting low-income people and communities."⁵ This tax credit initiative is known as the Virginia Neighborhood Assistance Program ("VNAP").

II. PROGRAM OVERVIEW

VNAP, established in 1981 through the Virginia General Assembly, focuses on establishing partnerships between the private and public sectors to assist economically disadvantaged communities.⁶ Businesses and individuals who contribute directly to a qualified VNAP organization may receive a *state tax credit of up to forty percent* (40%) of their total contribution amount.⁷ In order to qualify for the tax credit, individuals must contribute in excess

⁴ Va. Code Ann. § 63.2-2001.

⁵ Wayman, Carol. "Neighborhood Assistance Programs" at <http://www.nhi.org/online/issues/91/naps.html>.

⁶ Virginia Department of Social Services, "Neighborhood Assistance Program" at <http://www.dss.virginia.gov/community/nap/index.html>.

⁷ See VA Acts of Assembly, Sect. 3-5.06 of Chap. 847(A).

of \$500 in *cash*.⁸ However, no individual may generally receive a credit for more than \$50,000 in a taxable year.⁹ Businesses, on the other hand, may donate cash, stock, real estate, the rental or leasing of the participating nonprofit's facilities, or other goods and services.¹⁰ No business tax credit will be awarded in an amount of less than \$400 (equal to a donation of \$1,000).¹¹ The maximum business credit in a taxable year is \$175,000 (equal to a donation of \$437,500).¹²

The opportunity for businesses to donate professional services in exchange for the tax credit provides many opportunities for approved VNAPs to receive highly-valuable services. By way of example, law firms and accountants may donate *pro bono* time to an approved VNAP in return for a tax credit.¹³ The same is true for health care services provided by a professional to an approved VNAP healthcare facility.¹⁴ For all types of professional services rendered, the value of the professional services, for purposes of determining the amount of the tax credit allowable, is the lesser of (1) the reasonable cost for similar services from other providers, or (2) \$125 per hour.¹⁵

⁸ Pursuant to VA Acts of Assembly, Sect. 3-5.06 of Chap. 847, individuals may now obtain both a VNAP state tax credit and claim a deduction for federal income tax purposes.

⁹ See Va. Code Ann. § 63.2-2006, *but see* VA Acts of Assembly, Sect. 3-5.06 of Chap. 847(A) (providing that “the \$50,000 taxable year limitation on individual tax credits . . . shall not apply in any taxable year . . . if the total amount of tax credits granted for all programs approved under the Act for such fiscal year was less than \$12 million.”).

¹⁰ Va. Code Ann. § 63.2-2003(B). Business may not receive tax credit for donations to an approved VNAP if the VNAP is providing job training or education for the employees of that business in return for the donation. *See id.*

¹¹ *Id.*

¹² *Id.*

¹³ Va. Code Ann. § 63.2-2000 defines professional services as “. . . any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants and attorneys-at-law.”

¹⁴ Va. Code Ann. § 63.2-2004(C).

Similarly, for contracting services, defined as “labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations,”¹⁶ the value of the contracting services, for purposes of determining the amount of the tax credit allowable to the donating business, must not exceed the lesser of (1) the reasonable cost for similar services from other providers, or (2) \$50 per hour.¹⁷

The Virginia Department of Social Service (“VDSS”) receives approximately \$9 million in funding annually to allocate to nonprofit organizations across the Commonwealth for the VNAP. Of that amount, \$3.75 million is initially set aside for educational programs.¹⁸ Additionally, ten percent (10%) of the tax credits are reserved for newly-qualified VNAP nonprofits, i.e., nonprofits who have never received VNAP status.¹⁹ If the amount requested by newly-qualified VNAP nonprofits is less than ten (10) percent, the unallocated portion is then put towards other programs.²⁰

III. NONPROFIT ELIGIBILITY

To become an approved VNAP organization, a nonprofit must have already obtained 501(c)(3) or 501(c)(4) tax exempt status from the Internal Revenue Service. Additionally, the nonprofit must demonstrate that its *primary function* is to assist impoverished individuals.²¹ An

¹⁵ Va. Code Ann. § 63.2-2004(A).

¹⁶ Va. Code Ann. § 63.2-2000.

¹⁷ Va. Code Ann. § 63.2-2005(A).

¹⁸ Va. Code Ann. § 63.2-2002(D).

¹⁹ Va. Code Ann. § 63.2-2002(B).

²⁰ *Id.*

²¹ *Id.*

“impoverished individual” is a person in Virginia with an income at or below 150 percent of the federal poverty level.²² The activities sponsored by approved VNAPs include, but need not be limited to, job training, housing assistance, education, health care clinics, and community services and projects.²³

To participate as a VNAP organization, the nonprofit must submit an application to the Virginia Department of Social Service’s Office of Community Services by the first business day of May of each year.²⁴ Applications may be obtained online at <http://www.dss.virginia.gov/community/nap/forms.cgi>. As part of the application process, the nonprofit will be required to specify how much tax credit it believes it will utilize in a given tax year. The maximum yearly allocation is \$500,000 per approved VNAP.

Following the submission of the application, the nonprofit will generally receive a letter from the Office of Community Services (OCS) regarding the status of its application by July 1. Only upon receipt of an acceptance letter may the nonprofit hold itself out to potential donors as a VNAP participant. For returning nonprofits, i.e., nonprofits who have applied to the VNAP more than once, the OCS will conduct a four-year average (or less depending on how many years the nonprofit has participated in the program), to evaluate whether the amount of tax credits requested is accurate or whether changes in the request should be made. A nonprofit

²² NAP application, page 5 at <http://www.dss.virginia.gov/files/division/cvs/nap/forms/032-27-0001-00-eng.pdf>.

²³ Virginia Department of Social Services, “Neighborhood Assistance Program” at <http://www.dss.virginia.gov/community/nap/index.html>.

²⁴ *Id.*

organization must reapply for VNAP status each year and may not assign or transfer its VNAP approval to another organization without permission from the OCS.²⁵

IV. RECEIVING TAX CREDIT THROUGH VNAP

A business or individual desiring to receive a tax credit for contributing to an approved VNAP organization may do so by completing the required form(s) found at <http://www.dss.virginia.gov/community/nap/forms.cgi>. The donor must complete and return the form to the VNAP nonprofit for forwarding to the VDSS. The VDSS, in turn, mails a tax credit certificate to the donor, which will identify the type and value of the donation received and by whom.²⁶ Tax credits are recorded and distributed based on a fiscal year basis of July 1 - June 30. Any tax credit not used in the taxable year the contribution was made may be carried over by the individual or business for the next five taxable years or until the full credit is consumed, whichever comes first.²⁷ Furthermore, no tax credits will be granted to a business making a donation to a VNAP nonprofit that is providing training or educational programs for that business's employees.²⁸

Credits granted to a partnership, Subchapter S corporation, or limited liability company will be given to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in the business.²⁹ It is important to note that the contributing business is eligible for a tax credit only to the extent that sufficient tax credit funding allocated to

²⁵ Va. Code Ann. §63.2-2002(C).

²⁶ Va. Code Ann. §63.2-2003(C).

²⁷ Va. Code Ann. § 63.2-2003(B).

²⁸ *Id.*

²⁹ *Id.*

the VNAP organization for an approved project is available,³⁰ and VNAP organizations themselves do not receive any tax credits or other tax benefits as a VNAP nonprofit.

V. CONCLUSION

Becoming an approved VNAP organization creates a win-win situation for both the nonprofit and its contributors. As such, the ability to attract new donors to your organization will more than offset the time spent completing the annual application process. Nonprofits seeking VNAP approval are strongly encouraged to allow sufficient time to review the application and gather the requisite documents that must be submitted with the application in advance of the May 1, 2008 deadline.

³⁰ Va. Code Ann. §63.2-2003(C).