

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Presidential Disaster Relief Credits (LAC 61:I.601)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish Rules, R.S. 47:295 and R.S. 47:1511, which allow the department to make reasonable rules and regulations, the Secretary of Revenue hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule. This Emergency Rule shall be effective January 20, 2006, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

This Emergency Rule is necessary to allow the secretary to determine which federal credits are disaster relief credits pursuant to the Katrina Emergency Tax Relief Act of 2005 and the Gulf Opportunity Zone Act of 2005, which will be to claimed on 2005 Louisiana income tax returns. A delay in promulgating this Rule would have an adverse impact on the taxpayers who are unaware of which federal credits will be disaster relief credits for 2005 Louisiana Income tax season.

During the fall of 2005, Hurricanes Katrina and Rita made landfall on the southern gulf coast of the United States causing certain areas of Louisiana, Alabama, Texas and Mississippi to be presidentially declared disaster areas. Consequently, the 2005 First Extraordinary Session of the Louisiana Legislature was called to address, among other matters, Louisiana income tax relief. In particular, Act 23 of the 2005 Extraordinary Session was passed to amend and reenact R.S. 47:287.85(C)(2) and R.S. 47:293(3) to provide that the Louisiana income tax deduction for federal income taxes paid shall not be reduced by the amount of federal disaster relief tax credits. Normally, when federal income tax liability is decreased by credits Louisiana income tax liability increases since Louisiana provides a deduction for federal income tax paid. This provision prevents Louisiana taxpayers from paying additional tax because they received federal disaster relief credits.

Act 23 further amends R.S. 47:293(3) to authorize the secretary to determine which federal credits are disaster relief credits and to promulgate rules and regulations pertaining to the disaster credits with the approval of the Senate Revenue and Fiscal Affairs Committee and the House Committee on Ways and Means jointly. Recently, Congress has passed the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, 119 Stat. 2016 (H.R. 3768) and the Gulf Opportunity Zone Act of 2005 (H.R.4440), which provide for certain federal income tax credits. The purpose of the proposed Rule is to declare these credits as disaster relief credits and to provide guidance regarding their applicability.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 6. Presidential Disaster Relief §601. Presidential Disaster Relief Credits

A. Definitions

Gulf Opportunity Zone (GO Zone)—that portion of the Hurricane Katrina disaster area determined by the president to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Hurricane Katrina Disaster Area—any area with respect to which a major disaster has been declared by the president before September 14, 2005, under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

Hurricane Katrina Employee—an individual who on August 28, 2005, has a principal place of abode in the GO Zone and is hired during the two year period beginning on such date for a position with the principal place of employment in the GO Zone or an individual who on August 28, 2005, had a principal place of abode in the GO Zone but was displaced from such abode due to Hurricane Katrina and is hired during the period beginning on such date and ending on December 31, 2005, without regard to whether the new principal place of employment is in the GO Zone.

Hurricane Katrina Employer—any employer that conducted an active trade or business on August 28, 2005, in the GO Zone and the employer's active trade or business must have been inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage sustained due.

Hurricane Rita Disaster Area—any area with respect to which a major disaster has been declared by the president before October 6, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Rita.

Hurricane Rita Employee—an individual who on September 23, 2005, has a principal place of abode in the Rita GO Zone but was displaced from such abode due to Hurricane Katrina and is hired during the period beginning on such date and ending on December 31, 2005, without regard to whether the new principal place of employment is in the Rita GO Zone.

Hurricane Rita Employer—any employer that conducted an active trade or business on September 23, 2005, in the Rita GO Zone and the employer's active trade or business must have been inoperable on any day after September 23, and before January 1, 2006, as a result of damage sustained due Hurricane Rita.

Rita Gulf Opportunity Zone (Rita GO Zone)—that portion of the Hurricane Rita disaster area determined by the president to warrant individual or individual and public assistance from the Federal Government under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Rita.

B. The Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, 119 Stat. 2016 (H.R. 3768) ("KETRA") and the Gulf Opportunity Zone Act of 2005 provides for the following federal income tax credits, which the secretary hereby declares as presidential disaster area disaster relief credits.

1. Employee Retention Credit

a. This is a new credit. It provides a credit of 40 percent of the qualified wages paid by an eligible employer to an eligible employee in the GO Zone or the Rita GO Zone. The wages are capped at \$6,000. Thus, the maximum amount of the credit is \$2,400 or 40 percent of \$6,000.

b. GO Zone Qualified wages as defined in IRC 51(c)(1) are the wages paid or incurred by an eligible

employer with respect to an eligible employee on any day after August 28, 2005, and before January 1, 2006, during the period when the trade or business first became inoperable and ending on the date on which the business resumed significant operations. Qualified wages include wages paid to an employee whether the employee performed the service, whether the service was performed elsewhere other than the principle place of employment or whether paid before significant operations have resumed.

c. Rita GO Zone qualified wages as defined in IRC 51(c)(1) are the wages paid or incurred by an eligible employer with respect to an eligible employee on any day after September 23, 2005, and before January 1, 2006, during the period when the trade or business first became inoperable and ending on the date on which the business resumed significant operations. Qualified wages include wages paid to an employee whether the employee performed the service, whether the service was performed elsewhere other than the principle place of employment or whether paid before significant operations have resumed.

d. The secretary has determined that the employee retention credit is a federal disaster relief credit granted for Hurricanes Katrina and Rita presidential disaster areas.

2. Work Opportunity Credit

a. Pre Hurricane Katrina

i. The work opportunity credit is available on an elective basis to employers who employ individuals from one or more of eight target groups. The eight target groups are:

- (a). families that receive benefits from the Temporary Assistance for Needy Families Program;
- (b). high-risk youth;
- (c). qualified ex-felons;
- (d). vocational rehabilitation referrals;
- (e). qualified summer youth employees;
- (f). qualified veterans;
- (g). families receiving food stamps; and
- (h). persons receiving supplemental security income benefits.

ii. Certification is required for an individual to be treated as a member of a targeted group.

iii. The credit equals 40 percent of qualified first-year wages, which are capped at \$6,000. The percentage decreases to 25 percent if the employee works less than 400 hours.

iv. This credit does not apply to rehires or wages paid to individuals who had previously been employed by the employer.

v. This credit expires December 31, 2005.

b. Post Hurricane Katrina

i. The KETRA Act provides that Hurricane Katrina employees are members of a targeted group for the purpose of the work opportunity credit.

ii. The certification requirement for Hurricane Katrina employees is waived.

iii. Wages paid to individuals who had previously been employed, which would normally not be included in qualified first year wages, are now included for Hurricane Katrina employee unless they were employed by the employer on August 28, 2005.

iv. The expiration date is waived for Hurricane Katrina employees.

v. The secretary has determined that the work opportunity credit, with respect to wages paid to Hurricane

Katrina employees, is a federal disaster relief credit granted for the Hurricane Katrina presidential disaster areas.

3. Both the employee retention credit and the Katrina disaster relief portion of the work opportunity credit are part of the general business credit under IRC §38. If the general business credit is limited, the lesser of the amount equal to total disaster relief credits that are components of the general business credit or the general business credit will be allowed as disaster relief credits granted for the Hurricane Katrina presidential disaster areas or Hurricane Rita Disaster presidential disaster areas.

4. Employer-provided Housing Credit for Individuals affected by Hurricane Katrina

a. Definitions

Qualified Employee—with respect to a month, an individual who: (1) on August 28, 2005, had a principal residence in the Gulf Opportunity ("O") Zone; and (2) performs substantially all of his or her employment services in the GO Zone for the qualified employer furnishing the lodging.

Qualified Employer—any employer with a trade or business located in the GO Zone.

b. Pre-Hurricane Katrina—Employer-provided housing is includable in income as compensation pursuant to IRC §61.

c. Post-Hurricane Katrina

i. The Gulf Opportunity Zone Act of 2005 provides a temporary income exclusion for the value of in kind lodging for a month to a qualified employee by or on behalf of a qualified employer.

ii. The amount of the exclusion for any month can not exceed \$600.

iii. The provision also permits a temporary credit to a qualified employer of 30 percent of the value of the lodging excluded from the income of a qualified employee. The amount taken as a credit is not deductible by the employer.

iv. The secretary has determined that the employer-provided housing credit, with respect to wages paid to Hurricane Katrina employees, is a federal disaster relief credit granted for the Hurricane Katrina presidential disaster areas.

5. Rehabilitation Tax Credit

a. Definitions

Certified Historic Structure—any building that is listed in the National Register, or that is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district.

Qualified Rehabilitated Building—a building that meets the following requirements: retention of existing external walls and internal structural framework of the building and a substantial rehabilitation requirement credit only if the rehabilitation expenditures during the 24-month period selected by the taxpayer and ending within the taxable year exceed the greater of (1) the adjusted basis of the building (and its structural components), or (2) \$5,000.

b. Pre-Hurricane Katrina—A 20 percent credit is provided for qualified rehabilitation expenditures with respect to certified historic structures. A 10 percent credit is also provided for qualified rehabilitation expenditure with respect to a qualified rehabilitation building placed in service before 1936.

c. Post-Hurricane Katrina

i. The Gulf Opportunity Zone Act of 2005 increases the 20 percent credit to 26 percent with respect to certified historic structures. The Act also increases the 10 percent credit to 13 percent for qualified rehabilitation buildings.

ii. The qualifying certified historic structures and qualified rehabilitation buildings must be located in the GO Zone.

iii. These expenditures must have been incurred with respect to such buildings on or after August 28, 2005, and before January 1, 2009.

iv. The secretary has determined that the increase in the rehabilitation tax credit, with respect to the rehabilitation of buildings is a federal disaster relief credit granted for the Hurricane Katrina presidential disaster areas.

6. Hope Scholarship and Lifetime Learning Credits

a. Pre-Hurricane Katrina

i. The hope scholarship credit is a nonrefundable credit of up to \$1,500 per student per year for qualified tuition and related expenses paid for the first two years of the student's post-secondary education in a degree or certificate program.

ii. The lifetime learning credit is equal to 20 percent of qualified tuition and related expenses incurred during the taxable year on behalf of the taxpayer, the taxpayer's spouse, or any dependents. Up to \$10,000 of qualified tuition and related expenses per taxpayer return are eligible for the lifetime learning credit. A taxpayer may claim the lifetime learning credit for an unlimited number of taxable years.

iii. Both the hope scholarship and the lifetime learning credits are available for "qualified tuition and related expenses," which include tuition and fees (excluding nonacademic fees) required to be paid to an eligible educational institution as a condition of enrollment or attendance of a student at the institution. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living or family expenses are not eligible for the credit. The expenses of education involving sports, games, or hobbies are not qualified tuition expenses unless this education is part of the student's degree program, or the education is undertaken to acquire or improve the job skills of the student.

b. Post-Hurricane Katrina

i. The provision temporarily expands the Hope Scholarship and Lifetime Learning credits for students attending an eligible education institution located in the Gulf Opportunity Zone.

ii. The hope scholarship credit is increased to 100 percent of the first \$2,000 in qualified tuition and related expenses and 50 percent of the next \$2,000 of qualified tuition and related expenses for a maximum credit of \$3,000 per student.

iii. The lifetime learning credit rate is increased from 20 percent to 40 percent. Thus, the maximum amount of the credit is \$4,000 or 40 percent of \$10,000.

iv. The provision expands the definition of qualified expenses to mean qualified higher education expenses as defined under the rules relating to qualified tuition programs, including certain room and board expenses for at least half-time students.

v. The secretary has determined that the increase in the hope scholarship and the lifetime learning credits, with respect to qualified tuition and related expenses of

students in the Gulf Opportunity Zone, are federal disaster relief credits granted for the Hurricane Katrina presidential disaster areas.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:1511, R.S. 47:287.85(C)(2), R.S. 47:293(3) and R.S. 47:287.785.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 32:

Cynthia Bridges
Secretary

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