

PART IX

Tax Credits for Employers

After Hurricane Katrina, Congress passed the Katrina Emergency Tax Relief Act of 2005 (KETRA). The GO Zone Act extends many of the provisions in KETRA to the Rita GO Zone, including the new Employee Retention Tax Credit and KETRA's enhancement of the Work Opportunity Tax Credit. And while the primary emphasis of KETRA was on tax relief for individuals, Congress recognized that the individual tax relief would be beneficial to many small businesses, whose owners were turning to personal savings and credit in an effort to help workers and save their businesses.

Work Opportunity Tax Credit

Work opportunity credits have existed in tax law for many years. These provide employers a credit based on a percentage of the wages paid to targeted employee groups. Existing provisions targeted felons, low-income employees and others.

KETRA provided a new targeted group, which is "Hurricane Katrina employees." This group consists of individuals whose "principal abode" as of Aug. 28, 2005, was in the core disaster area. The credit against the employer's federal income taxes is equal to 40% of the first \$6,000 of wages paid to each qualifying employee.

If the employer is located outside the core disaster area, they must have hired the qualifying employee by Dec. 31, 2005. If the employer is located within the core disaster area, they will have two years from Aug. 28, 2005, to hire a Hurricane Katrina employee and qualify for the credit.

For purposes of calculation of the Work Opportunity Tax Credit, for employees who work more than 400 hours, the credit will equal 40% of their first year's qualified wages not in excess of \$6,000. For employees who work equal to or less than 400 hours but more than 120 hours, the credit equals 25% of their first year qualified wages not in excess of \$6,000.

No credit is permitted if the employee has worked fewer than 120 hours. If this period of calculation lapses into 2006 and the employer knows that the employee will qualify for the requisite number of hours, then the pro-rata part of the credit can be taken in 2005.

The certification requirement is waived for the purposes of defining a "Hurricane Katrina employee." In lieu of the certification requirement, the individual must provide to the employer reasonable evidence that he or she qualifies as a Hurricane Katrina employee. Salary expense must be reduced by the amount of the credits.

EXAMPLE

Phoenix Industries Inc. is located in Gretna. It was shut down by Katrina from 8/28/05 to 9/9/05. During that time, it paid its two employees, Al and Bud, even though they had left the area and performed no duties. It paid each of them \$600. They returned to work on Sept. 10. Phoenix needed additional help upon reopening, so it hired Boudreaux, a resident of Harahan, and the sole stockholder's son, Felise, to help with recovery. Boudreaux earned \$6,800 during the remainder of 2005 and Felise \$9,500. Phoenix is entitled to an Employee Retention credit of \$480 ($\$600 \times 2 \times 40\%$) for the period it was inoperable and a WOTC of \$2,400 for Boudreaux's employment ($\$6,000$ of Boudreaux's wages $\times 40\%$). Since Felise is a related party,

no credit is available on his wages.

Employee Retention Credit

New to the tax law is an income tax credit for “eligible employers” who continued to pay employees during the period their business was inoperable between Aug. 27 and Dec. 31, 2005, as a result of damage sustained by hurricanes Katrina, Wilma or Rita. This credit is calculated on 40% of the qualified wages paid to each eligible employee up to \$6,000 of wages, regardless of whether the employee performed no services, performed services at a different place of employment than their principal place of employment, or performed services at the principal place of employment before significant operations resumed.

This would mean that if an employer’s business was inoperable because of the hurricane and the employer continued to pay the employees during this down period, they could qualify for the credit.

An “eligible employer” is defined as any employer conducting an active trade or business on Aug. 28, 2005, for the Katrina GO Zone or on Sept. 23, 2005, for the Rita GO Zone, whose business became inoperable on any date between Aug. 28 (for Katrina) or Sept. 23 (for Rita) and December 31, 2005, as a result of “damage sustained” by Katrina or Rita. An employee cannot be taken into account more than once for purposes of credit. An “eligible employee” is an employee whose principal place of employment on Aug. 28 or on Sept. 23 was with an eligible employer in the respective core disaster area.

The GO Zone Act eliminated the original restriction in the Katrina Emergency Tax Relief Act that restricted this credit to employers of not more than 200 employees; it also extended the eligibility to employers affected by Hurricane Rita and Wilma and located in those disaster areas.

In Act 23 of the Extraordinary Special Session, the Louisiana legislature enacted a provision that does not require that the Louisiana income tax deduction be reduced by the Employee Retention Credit or the WOTC attributable to Katrina. Certain other credits are also covered by this provision.