

is an amount equal to 30 percent of any amount which is excludable from the gross income of a qualified employee of such employer under subsection (a) and not otherwise excludable under section 119.

(c) Qualified employee

For purposes of this section, the term “qualified employee” means, with respect to any month, an individual—

(1) who had a principal residence (as defined in section 121) in the Gulf Opportunity Zone on August 28, 2005, and

(2) who performs substantially all employment services—

(A) in the Gulf Opportunity Zone, and

(B) for the qualified employer which furnishes lodging to such individual.

(d) Qualified employer

For purposes of this section, the term “qualified employer” means any employer with a trade or business located in the Gulf Opportunity Zone.

(e) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(f) Application of section

This section shall apply to lodging furnished during the period—

(1) beginning on the first day of the first month beginning after the date of the enactment of this section, and

(2) ending on the date which is 6 months after the first day described in paragraph (1).

(Added Pub. L. 109-135, title I, §103(a), Dec. 21, 2005, 119 Stat. 2594.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 109-135, which was approved Dec. 21, 2005.

§ 1400Q. Special rules for use of retirement funds

(a) Tax-favored withdrawals from retirement plans

(1) In general

Section 72(t) shall not apply to any qualified hurricane distribution.

(2) Aggregate dollar limitation

(A) In general

For purposes of this subsection, the aggregate amount of distributions received by an individual which may be treated as qualified hurricane distributions for any taxable year shall not exceed the excess (if any) of—

(i) \$100,000, over

(ii) the aggregate amounts treated as qualified hurricane distributions received by such individual for all prior taxable years.

(B) Treatment of plan distributions

If a distribution to an individual would (without regard to subparagraph (A)) be a qualified hurricane distribution, a plan shall not be treated as violating any requirement of this title merely because the plan treats

such distribution as a qualified hurricane distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds \$100,000.

(C) Controlled group

For purposes of subparagraph (B), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

(3) Amount distributed may be repaid

(A) In general

Any individual who receives a qualified hurricane distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as the case may be.

(B) Treatment of repayments of distributions from eligible retirement plans other than IRAs

For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified hurricane distribution in an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(C) Treatment of repayments for distributions from IRAs

For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an individual retirement plan (as defined by section 7701(a)(37)), then, to the extent of the amount of the contribution, the qualified hurricane distribution shall be treated as a distribution described in section 408(d)(3) and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) Definitions

For purposes of this subsection—

(A) Qualified hurricane distribution

Except as provided in paragraph (2), the term “qualified hurricane distribution” means—

(i) any distribution from an eligible retirement plan made on or after August 25, 2005, and before January 1, 2007, to an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sus-

tained an economic loss by reason of Hurricane Katrina,

(ii) any distribution (which is not described in clause (i)) from an eligible retirement plan made on or after September 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita, and

(iii) any distribution (which is not described in clause (i) or (ii)) from an eligible retirement plan made on or after October 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

(B) Eligible retirement plan

The term “eligible retirement plan” shall have the meaning given such term by section 402(c)(8)(B).

(5) Income inclusion spread over 3-year period

(A) In general

In the case of any qualified hurricane distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable year period beginning with such taxable year.

(B) Special rule

For purposes of subparagraph (A), rules similar to the rules of subparagraph (E) of section 408A(d)(3) shall apply.

(6) Special rules

(A) Exemption of distributions from trustee to trustee transfer and withholding rules

For purposes of sections 401(a)(31), 402(f), and 3405, qualified hurricane distributions shall not be treated as eligible rollover distributions.

(B) Qualified hurricane distributions treated as meeting plan distribution requirements

For purposes¹ this title, a qualified hurricane distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A).

(b) Recontributions of withdrawals for home purchases

(1) Recontributions

(A) In general

Any individual who received a qualified distribution may, during the applicable period, make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan (as defined in section 402(c)(8)(B)) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made

under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.

(B) Treatment of repayments

Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(3) shall apply for purposes of this subsection.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term “qualified distribution” means any qualified Katrina distribution, any qualified Rita distribution, and any qualified Wilma distribution.

(B) Qualified Katrina distribution

The term “qualified Katrina distribution” means any distribution—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before August 29, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but which was not so purchased or constructed on account of Hurricane Katrina.

(C) Qualified Rita distribution

The term “qualified Rita distribution” means any distribution (other than a qualified Katrina distribution)—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before September 24, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Rita disaster area, but which was not so purchased or constructed on account of Hurricane Rita.

(D) Qualified Wilma distribution

The term “qualified Wilma distribution” means any distribution (other than a qualified Katrina distribution or a qualified Rita distribution)—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before October 24, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Wilma disaster area, but which was not so purchased or constructed on account of Hurricane Wilma.

(3) Applicable period

For purposes of this subsection, the term “applicable period” means—

(A) with respect to any qualified Katrina distribution, the period beginning on August 25, 2005, and ending on February 28, 2006,

(B) with respect to any qualified Rita distribution, the period beginning on Septem-

¹ So in original. Probably should be followed by “of”.

ber 23, 2005, and ending on February 28, 2006, and

(C) with respect to any qualified Wilma distribution, the period beginning on October 23, 2005, and ending on February 28, 2006.

(c) Loans from qualified plans

(1) Increase in limit on loans not treated as distributions

In the case of any loan from a qualified employer plan (as defined under section 72(p)(4)) to a qualified individual made during the applicable period—

(A) clause (i) of section 72(p)(2)(A) shall be applied by substituting “\$100,000” for “\$50,000”, and

(B) clause (ii) of such section shall be applied by substituting “the present value of the nonforfeitable accrued benefit of the employee under the plan” for “one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan”.

(2) Delay of repayment

In the case of a qualified individual with an outstanding loan on or after the qualified beginning date from a qualified employer plan (as defined in section 72(p)(4))—

(A) if the due date pursuant to subparagraph (B) or (C) of section 72(p)(2) for any repayment with respect to such loan occurs during the period beginning on the qualified beginning date and ending on December 31, 2006, such due date shall be delayed for 1 year,

(B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under paragraph (1) and any interest accruing during such delay, and

(C) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2), the period described in subparagraph (A) shall be disregarded.

(3) Qualified individual

For purposes of this subsection—

(A) In general

The term “qualified individual” means any qualified Hurricane Katrina individual, any qualified Hurricane Rita individual, and any qualified Hurricane Wilma individual.

(B) Qualified Hurricane Katrina individual

The term “qualified Hurricane Katrina individual” means an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina.

(C) Qualified Hurricane Rita individual

The term “qualified Hurricane Rita individual” means an individual (other than a qualified Hurricane Katrina individual) whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita.

(D) Qualified Hurricane Wilma individual

The term “qualified Hurricane Wilma individual” means an individual (other than a

qualified Hurricane Katrina individual or a qualified Hurricane Rita individual) whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

(4) Applicable period; qualified beginning date

For purposes of this subsection—

(A) Hurricane Katrina

In the case of any qualified Hurricane Katrina individual—

(i) the applicable period is the period beginning on September 24, 2005, and ending on December 31, 2006, and

(ii) the qualified beginning date is August 25, 2005.

(B) Hurricane Rita

In the case of any qualified Hurricane Rita individual—

(i) the applicable period is the period beginning on the date of the enactment of this subsection and ending on December 31, 2006, and

(ii) the qualified beginning date is September 23, 2005.

(C) Hurricane Wilma

In the case of any qualified Hurricane Wilma individual—

(i) the applicable period is the period beginning on the date of the enactment of this subparagraph and ending on December 31, 2006, and

(ii) the qualified beginning date is October 23, 2005.

(d) Provisions relating to plan amendments

(1) In general

If this subsection applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i).

(2) Amendments to which subsection applies

(A) In general

This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any provision of this section, or pursuant to any regulation issued by the Secretary or the Secretary of Labor under any provision of this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as the Secretary may prescribe.

In the case of a governmental plan (as defined in section 414(d)), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

(B) Conditions

This subsection shall not apply to any amendment unless—

(i) during the period—

(I) beginning on the date that this section or the regulation described in sub-

paragraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by this section or such regulation, the effective date specified by the plan), and

(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

(Added Pub. L. 109–135, title II, §201(a), Dec. 21, 2005, 119 Stat. 2596.)

REFERENCES IN TEXT

The date of the enactment of this subsection and this subparagraph, referred to in subsec. (c)(4)(B)(i), (C)(i), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

§ 1400R. Employment relief

(a) Employee retention credit for employers affected by Hurricane Katrina

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Katrina employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed \$6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term “eligible employer” means any employer—

(i) which conducted an active trade or business on August 28, 2005, in the GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Katrina.

(B) Eligible employee

The term “eligible employee” means with respect to an eligible employer an employee whose principal place of employment on August 28, 2005, with such eligible employer was in the GO Zone.

(C) Qualified wages

The term “qualified wages” means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) 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, which occurs during the period—

(i) beginning on the date on which the trade or business described in subpara-

graph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Katrina, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under section 51 with respect to such employee for such period.

(b) Employee retention credit for employers affected by Hurricane Rita

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Rita employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed \$6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term “eligible employer” means any employer—

(i) which conducted an active trade or business on September 23, 2005, in the Rita GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after September 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Rita.

(B) Eligible employee

The term “eligible employee” means with respect to an eligible employer an employee whose principal place of employment on September 23, 2005, with such eligible employer was in the Rita GO Zone.

(C) Qualified wages

The term “qualified wages” means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after