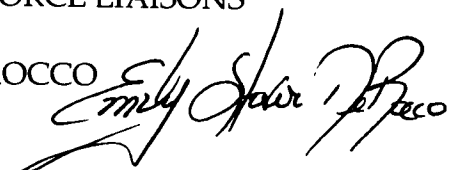


<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> WOTC/WtWTC
	<b>CORRESPONDENCE SYMBOL</b> OWI
	<b>DATE</b> January 31, 2006

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 12-05

TO: ALL STATE WORKFORCE AGENCIES  
ALL STATE WORKFORCE LIAISONS

FROM: EMILY STOVER DeROCCO  
Assistant Secretary



SUBJECT: Work Opportunity Tax Credit (WOTC) Temporary Target Group for Hurricane Katrina Employees and New Retention Tax Credit

1. **Purpose.** To inform the state workforce agencies (SWAs) of the new temporary WOTC target group and the retention tax credit included in the Katrina Emergency Tax Relief Act of 2005 and clarify the SWAs' role.
2. **References.** The Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73); the Working Families Tax Relief Act of 2004 (P.L. 108-311); Internal Revenue Code of 1986, Sections 51 and 51A, as amended; Employment and Training Administration (ETA) Handbook No. 408, Third Edition, November 2002; and the May 2005, Addendum to ETA Handbook 408.
3. **Background.** On August 28, 2005, Hurricane Katrina devastated certain areas in the states of Louisiana, Mississippi and Alabama. On September 21, Congress passed a relief package to help businesses and families recover and rebuild in the aftermath of Hurricane Katrina. On September 23, 2005, President Bush signed into law the Katrina Emergency Tax Relief Act (the Act) of 2005 (P.L. 109-73).
4. **Information.**
  - A. **Title II. "Employment Relief."** Section 201 of this Act expands the WOTC program by adding a new, temporary target group, "Hurricane Katrina Employees." The WOTC for "Hurricane Katrina employees" is a federal income tax credit that encourages employers to hire individuals who lived in the hurricane disaster areas and lost their jobs. This legislation also simplifies the process that employers must follow in order to obtain the WOTC. This law, however, did not reauthorize the overall WOTC and WtWTC beyond December 31, 2005.

RESCISSIONS	EXPIRATION DATE
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1. The Work Opportunity Tax Credit (WOTC) for Hurricane Katrina Employees. In accordance with the provisions in Section 51 of the Internal Revenue Code (IRC) of 1986, as amended, the tax credit for this target group allows a maximum credit of \$2,400 (of the first \$6,000 paid in wages) per new hire so long as the employee works at least 400 hours or more.
2. New Hires That Qualify Employers for the Hurricane Katrina WOTC. The credit applies to the following new hires (target group members):
  - a. Any individual, who on August 28, 2005, lived in the core disaster area and is hired during the two-year period beginning on such a date for an employment position located in the core disaster area; and
  - b. Any individual, who on August 28, 2005, lived in the core disaster area, was displaced from his house/dwelling as a result of Hurricane Katrina, and is hired during the period beginning on such date and before January 1, 2006.
3. Period of Eligibility. Employers that hire “Hurricane Katrina Employees” for employment outside of the affected areas can be eligible for the tax credit if they hire Hurricane Katrina impacted individuals, who begin to work on or after August 28, 2005, and before January 1, 2006. In the case of an individual who is being hired for a position that has a principal place of employment within the Hurricane Katrina disaster area, the period of eligibility is extended until August 28, 2007.
4. Waivers. Title II. “Employment Relief.” Section 201. The Work Opportunity Tax Credit for Hurricane Katrina Employees of the Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73) waives the following WOTC provisions or requirements:
  - a. The certification requirement by the SWAs for all Hurricane Katrina Employees. In lieu of the certification requirement, an individual may provide to the employer reasonable evidence that he/she is a Hurricane Katrina Employee. The IRS will determine what “reasonable” evidence means.
  - b. The expiration date (December 31, 2005) for this target group only.
  - c. The rule that denies the credit to wages of employees who had been previously employed by the employer is waived for an individual who is first hired as a Hurricane Katrina Employee, unless such employee was an employee of the employer on August 28, 2005.

5. Applying for the WOTC. To apply for the credit and request certification, employers do not need to complete the required WOTC ETA 9061 and Internal Revenue Service (IRS) 8850 forms. The IRS has indicated that they may develop a new form for this target group. It is posted on their Web site.
  6. Definitions.
    - a. "Hurricane Katrina Disaster Area" is an area declared a major disaster by the President before September 14, 2005, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina, Section 2(1); and
    - b. "Core Disaster Area" is 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 such Act.
- B. Title II. "Employee Retention Credit for Employers Affected by Hurricane Katrina. Sec. 201" The new tax credit provides 40 percent of the qualified wages (up to a maximum of \$6,000 in qualified wages per employee) paid by an "eligible employer" to an "eligible employee." The credit is available only to small businesses with fewer than 200 employees. The following definitions apply:
1. An "eligible employer" is an employer:
    - a. that conducted an active trade or business on August 28, 2005, in the core disaster area; and
    - b. whose trade or business described in (1) is inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage caused by Hurricane Katrina.
  2. An "eligible employee" is, with respect to an eligible employer, an employee:
    - a. whose principal place of employment on August 28, 2005, with such employer was in a core disaster area; and
    - b. whose "eligible employer" did not claim a credit under section 51 of the Internal Revenue Code (IRC) with respect to the employee for the period.
  3. "Qualified wages" are wages that include wages paid whether the employee performs no services, performs services at a different place of employment than the principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

This means that the only eligible wages are those paid while the business location is inoperable and before January 1, 2006. The credit is part of the employer's current business credit under section 38(b) of the IRC and therefore is subject to the tax liability limitations of section 38(c) of this code.

5. **Role of the state workforce agencies (SWAs)**. The role of the SWAs is limited to providing accurate information and timely responses to inquiries received from private sector businesses and their representatives, participating agencies, and other Federal and state partners. For additional information, the SWAs should refer to the IRS Web site at [www.irs.gov](http://www.irs.gov).
6. **Action**. State workforce agency administrators should ensure that all WOTC/WtWTC State Coordinators, One-Stop Career Centers, and related staff receive this information and guidance.
7. **Inquiries**. Direct all questions to the WOTC Regional Coordinators.
8. **Attachments**. Title II, Sections 201 and 202, Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73).

PUBLIC LAW 109-73—SEPT. 23, 2005

KATRINA EMERGENCY TAX RELIEF ACT OF  
2005

Public Law 109-73  
109th Congress

An Act

Sept. 23, 2005  
[H.R. 3768]

Katrina  
Emergency Tax  
Relief Act of  
2005.  
26 USC 1 note.

To provide emergency tax relief for persons affected by Hurricane Katrina.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE, ETC.**

(a) **SHORT TITLE.**—This Act may be cited as the “Katrina Emergency Tax Relief Act of 2005”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

Sec. 2. Hurricane Katrina disaster area.

**TITLE I—SPECIAL RULES FOR USE OF RETIREMENT FUNDS FOR RELIEF RELATING TO HURRICANE KATRINA**

Sec. 101. Tax-favored withdrawals from retirement plans for relief relating to Hurricane Katrina.

Sec. 102. Recontributions of withdrawals for home purchases cancelled due to Hurricane Katrina.

Sec. 103. Loans from qualified plans for relief relating to Hurricane Katrina.

Sec. 104. Provisions relating to plan amendments.

**TITLE II—EMPLOYMENT RELIEF**

Sec. 201. Work opportunity tax credit for Hurricane Katrina employees.

Sec. 202. Employee retention credit for employers affected by Hurricane Katrina.

**TITLE III—CHARITABLE GIVING INCENTIVES**

Sec. 301. Temporary suspension of limitations on charitable contributions.

Sec. 302. Additional exemption for housing Hurricane Katrina displaced individuals.

Sec. 303. Increase in standard mileage rate for charitable use of vehicles.

Sec. 304. Mileage reimbursements to charitable volunteers excluded from gross income.

Sec. 305. Charitable deduction for contributions of food inventory.

Sec. 306. Charitable deduction for contributions of book inventories to public schools.

**TITLE IV—ADDITIONAL TAX RELIEF PROVISIONS**

Sec. 401. Exclusions of certain cancellations of indebtedness by reason of Hurricane Katrina.

Sec. 402. Suspension of certain limitations on personal casualty losses.

Sec. 403. Required exercise of authority under section 7508A for tax relief relating to Hurricane Katrina.

Sec. 404. Special rules for mortgage revenue bonds.

Sec. 405. Extension of replacement period for nonrecognition of gain for property located in Hurricane Katrina disaster area.

Sec. 406. Special rule for determining earned income.

Sec. 407. Secretarial authority to make adjustments regarding taxpayer and dependency status.

**TITLE V—EMERGENCY REQUIREMENT**

Sec. 501. Emergency requirement.

(3) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2) of such Code, the period described in paragraph (1) shall be disregarded.

(c) **QUALIFIED INDIVIDUAL.**—For purposes of this section, the term “qualified 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.

**SEC. 104. PROVISIONS RELATING TO PLAN AMENDMENTS.**

(a) **IN GENERAL.**—If this section 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 subsection (b)(2)(A).

(b) **AMENDMENTS TO WHICH SECTION APPLIES.**—

(1) **IN GENERAL.**—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this title, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this title, and

(B) 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 of the Treasury may prescribe.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), subparagraph (B) shall be applied by substituting the date which is 2 years after the date otherwise applied under subparagraph (B).

(2) **CONDITIONS.**—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (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

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

Effective date.

**TITLE II—EMPLOYMENT RELIEF**

**SEC. 201. WORK OPPORTUNITY TAX CREDIT FOR HURRICANE KATRINA EMPLOYEES.**

(a) **IN GENERAL.**—For purposes of section 51 of the Internal Revenue Code of 1986, a Hurricane Katrina employee shall be treated as a member of a targeted group.

(b) **HURRICANE KATRINA EMPLOYEE.**—For purposes of this section, the term “Hurricane Katrina employee” means—

(1) any individual who on August 28, 2005, had a principal place of abode in the core disaster area and who is hired

during the 2-year period beginning on such date for a position the principal place of employment of which is located in the core disaster area, and

(2) any individual who on such date had a principal place of abode in the core disaster area, who is displaced from such abode by reason of Hurricane Katrina, and who is hired during the period beginning on such date and ending on December 31, 2005.

(c) **REASONABLE IDENTIFICATION ACCEPTABLE.**—In lieu of the certification requirement under subparagraph (A) of section 51(d)(12) of such Code, an individual may provide to the employer reasonable evidence that the individual is a Hurricane Katrina employee, and subparagraph (B) of such section shall be applied as if such evidence were a certification described in such subparagraph. Applicability.

(d) **SPECIAL RULES FOR DETERMINING CREDIT.**—For purposes of applying subpart F of part IV of subchapter A of chapter 1 of such Code to wages paid or incurred to any Hurricane Katrina employee— Applicability.

(1) section 51(c)(4) of such Code shall not apply, and

(2) section 51(i)(2) of such Code shall not apply with respect to the first hire of such employee as a Hurricane Katrina employee, unless such employee was an employee of the employer on August 28, 2005.

**SEC. 202. EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY HURRICANE KATRINA.**

(a) **IN GENERAL.**—In the case of an eligible employer, there shall be allowed as a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the taxable year 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.

(b) **DEFINITIONS.**—For purposes of this section—

(1) **ELIGIBLE EMPLOYER.**—The term “eligible employer” means any employer—

(A) which conducted an active trade or business on August 28, 2005, in a core disaster area, and

(B) with respect to whom the trade or business described in subparagraph (A) 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.

(2) **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 a core disaster area.

(3) **QUALIFIED WAGES.**—The term “qualified wages” means wages (as defined in section 51(c)(1) of such Code, but without regard to section 3306(b)(2)(B) of such Code) 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—

(A) beginning on the date on which the trade or business described in paragraph (1) first became inoperable



at the principal place of employment of the employee immediately before Hurricane Katrina, and

(B) 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.

(c) CREDIT NOT ALLOWED FOR LARGE BUSINESSES.—The term “eligible employer” shall not include any trade or business for any taxable year if such trade or business employed an average of more than 200 employees on business days during the taxable year.

(d) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of sections 51(i)(1), 52, and 280C(a) of such Code shall apply.

(e) EMPLOYEE NOT TAKEN INTO ACCOUNT MORE THAN ONCE.—An employee shall not be treated as an eligible employee for purposes of this section for any period with respect to any employer if such employer is allowed a credit under section 51 of such Code with respect to such employee for such period.

(f) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—The credit allowed under this section shall be added to the current year business credit under section 38(b) of such Code and shall be treated as a credit allowed under subpart D of part IV of subchapter A of chapter 1 of such Code.

### TITLE III—CHARITABLE GIVING INCENTIVES

#### SEC. 301. TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Except as otherwise provided in subsection (b), section 170(b) of the Internal Revenue Code of 1986 shall not apply to qualified contributions and such contributions shall not be taken into account for purposes of applying subsections (b) and (d) of section 170 of such Code to other contributions.

(b) TREATMENT OF EXCESS CONTRIBUTIONS.—For purposes of section 170 of such Code—

(1) INDIVIDUALS.—In the case of an individual—

(A) LIMITATION.—Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's contribution base (as defined in subparagraph (F) of section 170(b)(1) of such Code) over the amount of all other charitable contributions allowed under such section 170(b)(1).

(B) CARRYOVER.—If the aggregate amount of qualified contributions made in the contribution year (within the meaning of section 170(d)(1) of such Code) exceeds the limitation of subparagraph (A), such excess shall be added to the excess described in the portion of subparagraph (A) of such section which precedes clause (i) thereof for purposes of applying such section.

(2) CORPORATIONS.—In the case of a corporation—