

Part III - Administrative, Procedural, and Miscellaneous

Treatment of Certain Travel, Lodging, and Other Allowances Paid by Federal Executive Agencies to Employees Evacuated from Hurricane Katrina Core Disaster Area

Notice 2006-10

SECTION 1. PURPOSE

This notice provides guidance on the federal income and employment tax treatment of special allowances (as defined in 5 C.F.R. §§ 550.403(c) and 550.405(b)(2)) paid by federal executive agencies (as defined in 5 U.S.C. § 105) to employees (as defined in 5 C.F.R. § 550.401(b)(2), (3), and (4)) to reimburse certain expenses the employees and their dependents incur while evacuating from the Hurricane Katrina core disaster area and staying at a safe haven as a result of the extraordinary damage and destruction caused by Hurricane Katrina. The term “Hurricane Katrina core disaster area” means 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. See § 2(2) of the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, 119 Stat. 2016 (2005).

SECTION 2. BACKGROUND

In the wake of Hurricane Katrina, which was a Presidentially declared disaster, federal executive agencies may make payments to their employees to reimburse the costs of travel, lodging, meals, and incidental expenses the employees and their dependents incur while evacuating from the Hurricane Katrina core disaster area and

staying at a safe haven. Federal executive agencies are authorized to pay these special allowances to employees under 5 U.S.C. § 5523(b) (“An employee in an Executive agency may be granted such additional allowance payments”) and 5 C.F.R. § 550.403(c) if the employees and their dependents “are evacuated in the United States because of natural disasters or for military or other reasons that create imminent danger to their lives.” 5 C.F.R. § 550.401(a). The payments authorized by 5 C.F.R. § 550.403(c) include travel expenses and per diem payments to offset direct added expenses the employees and their dependents incur due to an evacuation. Additional special allowance payments for subsistence expenses, as authorized by and computed under 5 C.F.R. § 550.405(b)(2), may be paid for a period not to exceed 180 days after the effective date of the order to evacuate. Federal executive agencies generally must determine the amount of the special allowance payments for the employees and their dependents consistent with the Federal Travel Regulation (FTR), 41 C.F.R. Chapters 300 through 304. For dependents under 12 years of age and for payments made after the first 30 days of evacuation, the special allowance payments are paid at a rate less than the maximum per diem. 5 C.F.R. § 550.405. The regulations authorizing these payments are silent as to whether federal executive agencies are required to take into account reimbursements from other payors when determining the amount of a special allowance.

Section 61 provides that except as otherwise provided in subtitle A of the Code, gross income means all income from whatever source derived.

The Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2001), added § 139 to the Code. Section 139(a) provides that gross income shall

not include any amount received by an individual as a qualified disaster relief payment.

Under § 139(b)(1), a qualified disaster relief payment includes any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster, but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

Section 139(c) defines a qualified disaster to include:

- (1) a disaster that results from a terroristic or military action (as defined in § 692(c)(2));
- (2) a Presidentially declared disaster (as defined in § 1033(h)(3)); or
- (3) a disaster resulting from an accident involving a common carrier, or from any other event, that is determined by the Secretary to be of a catastrophic nature.

Section 139(d) provides that for purposes of chapter 2 and subtitle C of the Code, a qualified disaster relief payment shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

Because “of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the [§ 139] exclusion, provided that the amount of the payments can be reasonably expected to be commensurate with the expenses incurred.” Joint Committee on Taxation Staff, *Technical Explanation of the “Victims of Terrorism Tax Relief Act of 2001,” As Passed by the House and Senate on December 20, 2001*, 107th Cong., 1st Sess. 16 (2001).

SECTION 3. APPLICATION

.01 Payments Made by Federal Executive Agencies to Which This Notice Applies

The special allowances described in 5 U.S.C. § 5523(b) and 5 C.F.R. §§ 550.403(c) and 550.405(b)(2) that an employee receives as a result of Hurricane Katrina will be treated as reasonable, necessary, and excludable from the gross income and wages of the employee under § 139 to the extent that the expenses compensated by the special allowances are not otherwise compensated for by insurance or otherwise.

Federal executive agencies that pay an employee special allowances authorized by 5 U.S.C. § 5523(b) and 5 C.F.R. §§ 550.403(c) and 550.405(b)(2) as a result of Hurricane Katrina will not be required to report the special allowances (even if the expenses are otherwise compensated for by insurance or otherwise) on Form W-2, Wage and Tax Statement, or to deduct and withhold taxes from these amounts. In addition, the IRS will not require either a Federal executive agency or its employee to include any amount of Hurricane Katrina special allowances in wages for employment tax purposes (even if the expenses are otherwise compensated for by insurance or otherwise).

.02 Payments Made by Federal Executive Agencies to Which This Notice Does Not Apply

The rules provided in section 3.01 of this notice do not apply to payments not described therein. For example, the rules do not apply to advance payments of pay, allowances, and differentials under 5 U.S.C. § 5522(a) and to payments made by a federal executive agency to compensate an employee for expenses incurred in relocating to the disaster area.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Sheldon A. Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, please contact Mr. Iskow on (202) 622-4920 (not a toll-free call).