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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9301

RIN 1545-BF89

Reduction in Taxable Income for Housing Hurricane Katrina Displaced Individuals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the reduction in taxable income under section 302 of the Katrina Emergency Tax Relief Act of 2005. The regulations affect taxpayers who provide housing in their principal residences to individuals displaced by Hurricane Katrina. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective December 11, 2006.

Applicability Date: For date of applicability, see §1.9300-1T(g).

FOR FURTHER INFORMATION CONTACT: Marnette M. Myers, 202-622-4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part

1) relating to the reduction in taxable income for housing provided to displaced individuals under section 302 of the Katrina Emergency Tax Relief Act of 2005 (Pub. L. No. 109-73, 119 Stat. 2016) (KETRA).

For taxable years beginning in 2005 and 2006, a taxpayer may reduce taxable income by \$500 for each Hurricane Katrina displaced individual to whom the taxpayer provides free housing in the taxpayer's principal residence for a period of 60 consecutive days that ends in the taxable year. No reduction is allowed if the taxpayer receives rent or other compensation from any source for providing the housing.

A taxpayer may not claim a reduction in taxable income with respect to the same Hurricane Katrina displaced individual in more than one taxable year and must include the Hurricane Katrina displaced individual's tax identification number on the taxpayer's return. Generally, the total reduction for all taxable years is \$2,000.

A Hurricane Katrina displaced individual is defined as a natural person who was displaced from a principal place of abode that, on August 28, 2005, was in the Hurricane Katrina core disaster area. A Hurricane Katrina displaced individual also is defined as an individual whose principal place of abode was located in the Hurricane Katrina disaster area, but outside the core disaster area, if the abode was damaged by Hurricane Katrina or the individual was evacuated from the abode because of Hurricane Katrina. A Hurricane Katrina displaced individual may not be the taxpayer's spouse or dependent.

Under section 2(1) of KETRA, the Hurricane Katrina disaster area is the area with respect to which a major disaster by reason of Hurricane Katrina has been declared by the

President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) (Stafford Act). For purposes of relief provided under KETRA, this area comprises the states of Louisiana, Mississippi, Alabama, and Florida. Under section 2(2) of KETRA, the Hurricane Katrina core disaster area is the 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 Stafford Act. See Appendix to Notice 2005-73 (2005-42 I.R.B. 723) (Oct. 17, 2005) (listing parishes and counties designated for assistance under the Stafford Act).

Explanation of Provisions

Provision of Housing

The temporary regulations provide that a taxpayer is considered to provide housing if the housing is provided either in, or on the site of, the taxpayer's principal residence. In addition, the taxpayer must be an owner or lessee of the residence to be treated as providing housing to a Hurricane Katrina displaced individual. The term principal residence has the same meaning as in section 121 and the regulations thereunder.

Amounts in connection with the provision of housing (for which the taxpayer may not be reimbursed or compensated) include rent and utilities. Amounts for telephone calls, food, clothing and transportation are not amounts in connection with the provision of housing for this purpose.

Limitations on Amount of Reduction

The temporary regulations provide that the \$2,000 aggregate limit on the reduction in taxable income applies to unmarried individuals and married taxpayers filing a joint tax return. Married taxpayers who file separate returns may reduce taxable income by \$1,000 each for all taxable years.

The temporary regulations clarify that a taxpayer may reduce taxable income with respect to a specific Hurricane Katrina displaced individual in 2005 or 2006, but not both years. Additionally, the temporary regulations provide that a Hurricane Katrina displaced individual may be taken into account by only one taxpayer occupying the same principal residence.

Effective Date

The temporary regulations apply to taxable years beginning after December 31, 2004, and before January 1, 2007, and ending on or after December 11, 2006, which is the date the temporary regulations were filed with the **Federal Register**. Taxpayers may rely on the temporary regulations with respect to taxable years ending before the filing date, but may not rely on the absence of regulations for taxable years ending before the filing date for a result contrary to that under the temporary regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Please refer to the cross-

referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marnette M. Myers of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.9300-1T also issued under 26 U.S.C. 6001. * * *

Par. 2. Section 1.9300-1T is added to read as follows:

§1.9300-1T Reduction in taxable income for housing Hurricane Katrina displaced individuals.

(a) In general. For a taxable year beginning in 2005 or 2006, a taxpayer who is a

natural person may reduce taxable income by \$500 for each Hurricane Katrina displaced individual (as defined in paragraph (e)(1) of this section) to whom the taxpayer provides housing free of charge in, or on the site of, the taxpayer's principal residence for a period of 60 consecutive days ending in the taxable year. A taxpayer may not claim the reduction in taxable income unless the taxpayer includes the taxpayer identification number of the Hurricane Katrina displaced individual on the taxpayer's income tax return.

(b) Provision of housing--(1) Principal residence. For purposes of this section, the term principal residence has the same meaning as in section 121 and the regulations thereunder. See §1.121-1(b)(1) and (b)(2).

(2) Legal interest required. A taxpayer is treated as providing housing for purposes of this section only if the taxpayer is an owner or lessee (including a co-owner or co-lessee) of the residence.

(3) Compensation for providing housing--(i) In general. No reduction in taxable income is allowed under this section to a taxpayer who receives rent or any other amount from any source in connection with the provision of housing.

(ii) Amounts in connection with the provision of housing. For purposes of this section, amounts in connection with the provision of housing include (but are not limited to) amounts for rent and utilities. Amounts for telephone calls, food, clothing, and transportation are examples of amounts not in connection with the provision of housing.

(c) Limitations--(1) Dollar limitation--(i) In general. The reduction under paragraph (a) of this section may not exceed the maximum dollar limitation reduced by the amount of

the reduction under this section for all prior taxable years. The maximum dollar limitation is--

(A) \$2,000 in the case of an unmarried individual;

(B) \$2,000 in the case of a husband and wife who file a joint income tax return; and

(C) \$1,000 in the case of a married individual who files a separate income tax return.

(ii) Married individuals with separate principal residences. The limitations in paragraphs (c)(1)(i)(B) and (c)(1)(i)(C) of this section apply without regard to whether the married individuals occupy the same principal residence. A person is treated as married for purposes of this section if the individual is treated as married under section 7703.

(2) Spouse or dependent of the taxpayer. No reduction is allowed for a Hurricane Katrina displaced individual who is the spouse or dependent of the taxpayer.

(3) Individual taken into account only once. A taxpayer may not reduce taxable income under paragraph (a) of this section with respect to a Hurricane Katrina displaced individual who was taken into account by the taxpayer for any prior taxable year.

(4) Taxpayers occupying the same principal residence. A Hurricane Katrina displaced individual may be taken into account by only one taxpayer occupying the same principal residence for all taxable years.

(d) Substantiation. A taxpayer claiming a reduction under this section must prepare and maintain records sufficient to show entitlement to the reduction as provided in Form 8914 (Exemption Amount for Taxpayers Housing Individuals Displaced by Hurricane

Katrina) or other forms, instructions, publications or guidance published by the IRS.

(e) Definitions. The following definitions apply for purposes of this section.

(1) Hurricane Katrina displaced individual. The term Hurricane Katrina displaced individual means any natural person if the following requirements are met--

(i) The person's principal place of abode on August 28, 2005, was in the Hurricane Katrina disaster area (as defined in paragraph (e)(2) of this section);

(ii) The person was displaced from that abode; and

(iii) If the abode was located outside the Hurricane Katrina core disaster area (as defined in paragraph (e)(3) of this section)--

(A) The abode was damaged by Hurricane Katrina; or

(B) The person was evacuated from that abode by reason of Hurricane Katrina.

(2) Hurricane Katrina disaster area. The term Hurricane Katrina disaster area means the states of Alabama, Florida, Louisiana, and Mississippi.

(3) Hurricane Katrina core disaster area. The term Hurricane Katrina core disaster area means the portion of the Hurricane Katrina disaster area designated 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 (42 U.S.C. 5170).

(f) Examples. The provisions of this section are illustrated by the following examples in which each Hurricane Katrina displaced individual, who is not a dependent or spouse of the taxpayer, is provided housing (within the meaning of paragraph (b) of this section) in, or on the site of, the taxpayer's principal residence for a period of at least 60 consecutive

days ending in the applicable taxable year. The examples are as follows:

Example 1. Taxpayer A provides housing to N, a Hurricane Katrina displaced individual, from September 1, 2005, until March 10, 2006. Under paragraphs (a) and (c)(3) of this section, A may reduce taxable income by \$500 on A's 2005 income tax return or A's 2006 income tax return, but not both, with respect to N.

Example 2. The facts are the same as in Example 1 except that A and B, A's unmarried roommate and co-lessee, provide housing to N. Under paragraphs (a) and (c)(4) of this section, either A or B, but not both, may reduce taxable income by \$500 for 2005 with respect to N. If either A or B reduces taxable income for 2005 with respect to N, neither A nor B may reduce taxable income with respect to N for 2006.

Example 3. Unmarried roommates and co-lessees C and D provide housing to eight Hurricane Katrina displaced individuals during 2005. Under paragraphs (a) and (c)(1)(i)(A) of this section, C and D each may reduce taxable income by \$2,000 on their 2005 income tax returns.

Example 4. (i) H and W are married to each other and provide housing to a Hurricane Katrina displaced individual, O, in 2005. H and W file their 2005 income tax return married filing jointly. Under paragraphs (a) and (c)(4) of this section, H and W may reduce taxable income by \$500 on their 2005 income tax return with respect to O.

(ii) In 2006, H and W provide housing to O and to another Hurricane Katrina displaced individual, P. H and W file their 2006 income tax return married filing separately. Because H and W reduced their 2005 taxable income with respect to O, under paragraph (c)(3) of this section, neither H nor W may reduce taxable income on their 2006 income tax return with respect to O. Under paragraphs (a) and (c)(4) of this section, either H or W, but not both, may reduce taxable income by \$500 on his or her 2006 income tax return with respect to P.

(g) Effective date. This section applies for taxable years beginning after December 31, 2004, and before January 1, 2007, and ending on or after December 11, 2006.

Linda M. Kroening

Acting Deputy Commissioner for Services and Enforcement.

Approved: December 1, 2006

Eric Solomon

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).