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RELIEF EXTENDED FOR HURRICANE VICTIMS AND PLAN SPONSORS

KETRA RELIEF

The Katrina Emergency Tax Relief Act of 2005 (“KETRA”), signed by President Bush on September 23, 2005, provided much needed relief and flexibility for employee benefit plan sponsors in dealing with the devastation left behind by Hurricane Katrina, including the following:

Exception to Early Withdrawal Penalty. An exception to the 10% early withdrawal penalty is provided for a distribution from a qualified retirement plan, a 403(b) annuity, or an IRA for a “qualified Hurricane Katrina distribution.” A “qualified Hurricane Katrina distribution” is a distribution from an eligible retirement plan (Code Section 401(a) qualified retirement plan, Section 403(a) annuity plan, Section 403(b) annuity plan, or Section 457(b) plan) that is made on or after August 25, 2005 and prior to January 1, 2007 to an individual whose principal place of abode on August 28, 2005 is in the Hurricane Katrina disaster area, provided that the individual sustained an economic loss as a result of Hurricane Katrina. The total amount of such distributions that an individual may receive from all plans, IRAs or annuities is \$100,000. The 20% mandatory withholding rule does not apply. Any amount that must be included in gross income as a result of the distributions may, at the election of the participant, be included in income ratably over a three-year period beginning with the year in which the distribution is made. Any amount recontributed during the three-year period is treated as a rollover and is not includible in income. This “recontribution” may require the individual to file an amended income tax return for a prior year in which all or a portion of the distribution was treated as taxable.

Recontributions of Withdrawals for Home Purchases Cancelled Due to Katrina. If a participant received a hardship distribution from a 401(k) plan or 403(b) annuity or a qualified first-time homebuyer distribution from an IRA after February 28, 2005 and prior to August 29, 2005 that was to be used to buy or construct a principal residence in the disaster area and the residence is not bought or constructed due to Hurricane Katrina, the amount may be recontributed between August 25, 2005 and February 28, 2006 to a plan, annuity or IRA to which the participant could make a rollover. As a result, the portion recontributed is not includible in income and is not subject to the 10% early withdrawal penalty.

Qualified Plan Loans for Katrina Relief. For a participant whose principal place of abode on August 28, 2005 is located in a Katrina disaster area and who sustained an economic loss due to Katrina, if the due date for loan repayment for an outstanding loan from a qualified employer plan occurs between August 25, 2005 and December 31, 2006, the due date is delayed for one year. Any subsequent payments will be adjusted to reflect the delay and accrued interest during the delay. The relief provides that the delay in repayment is disregarded in applying the five-year repayment and level amortization rules.

Plan Amendments to Implement the Relief. Plan amendments required to implement the Katrina relief may be retroactively effective if the amendment is made on or before the last day of the first plan year which begins on or after January 1, 2007 or such later date as may be provided by the Secretary of the Treasury. The relief allows two additional years for governmental plans to make amendments.

ADDITIONAL RELIEF

The KETRA provisions apply only to victims of Hurricane Katrina. It is unclear whether similar legislation will be enacted for victims of Hurricane Rita. Prior to enactment of KETRA, the IRS, DOL and PBGC had granted other relief to victims of Hurricane Katrina and Hurricane Rita, including the following:

IRS Extension of Deadline For Certain Employee Benefits Requirements. The IRS has extended the deadline for all employee benefit-related acts included in Treasury Regulation Section 301.7508A-1(c)(1) and Section 8 of Revenue Procedure 2005-27 to February 28, 2006 for acts required on or after August 29, 2005 (August 24, 2005 for Florida affected taxpayers) for Hurricane Katrina victims and on or after September 23, 2005 for Hurricane Rita victims (e.g., plan loan repayments, distribution of excess contributions and excess deferrals, filing of Forms 5500).

(IRS News Releases 2005-84 (8/30/05), 2005-91 (9/6/05), 2005-96 (9/8/05), 2005-109 (9/21/05), 2005-110 (9/26/05), 2005-84 (8/30/05), 2005-112 (9/28/05), and IRS Notice 2005-73).

Extension of DOL Form 5500 Filing Requirements. The Department of Labor has extended the deadline for filing Form 5500s for plan sponsors and administrators affected by Katrina and Rita to February 28, 2006. The extension is also available for entities located outside the disaster areas who cannot obtain information from service providers, banks or insurance companies that were directly affected by Katrina or Rita. (DOL Releases 05-1732-NAT (9/20/05) and 05-1848-DAL (9/29/05)).

Extension of PBGC Deadlines. The PBGC has extended certain deadlines for persons located in disaster areas, such as the deadlines for making premium payments, meeting requirements related to standard and distress terminations, and providing notices. The deadline is extended to February 28, 2006. (PBGC Disaster Relief Announcements 05-10 (8/31/05 and 9/14/05) and 05-11 (9/29/05)).

Deadline for Minimum Funding Contributions. The deadline for making minimum funding contributions is extended as a result of KETRA to February 28, 2006. (Treasury Department Press Release JS-2715 (9/13/05)).

Extension of HIPAA, COBRA and Claims Deadlines. For Hurricane Katrina victims in Louisiana, Mississippi or Alabama disaster areas (but not those in Florida and not Hurricane Rita victims), the following deadlines generally will not start running until February 28, 2006: (i) the 63-day HIPAA creditable coverage period; (ii) the 30-day period to get creditable coverage without a pre-existing condition exclusion for certain children (e.g., a newborn child, adopted child or child placed for adoption); (iii) the 30-day period for requesting special enrollment in a health plan due to loss of coverage; (iv) the 60-day period to elect COBRA; (v) the required date for paying COBRA premiums; (vi) the 60-day period for notifying the plan of qualifying events (e.g., divorce or loss of dependent status) or of a determination of disability; (vii) the date for filing a claim under the plan's claims procedure; and (viii) the date for filing an appeal of a denied claim.

Similarly, plans directly affected by Hurricane Katrina have relief for acts that they would otherwise have been required to do between August 29, 2005 and February 28, 2006, such as: (i) the date to provide a certificate of creditable coverage; and (ii) the date to provide a COBRA election notice. A plan is "directly affected" by Katrina if (i) the principal place of business of the employer maintaining the plan; (ii) the principal place of business of employers employing over 50% of covered active participants; (iii) the office of the plan or administrator; or (iv) the office of the plan's primary recordkeeper, was located in a Katrina disaster area eligible for Individual Assistance from FEMA.

Special Hardship Distributions and Loans. The IRS released Announcement 2005-70 on September 15, 2005 allowing hardship or emergency withdrawals and loans to employees or former employees whose principal residence or place of employment on August 29, 2005 was in a disaster area in Louisiana, Mississippi or Alabama designated by FEMA for Individual Assistance. Note that this relief is not available for Florida residents or for victims of Hurricane Rita. Loans and hardship distributions are allowed whether or not plan documents allow for them, provided that the plans are amended to do so by the end of the 2006 plan year. Plans are not required to implement the typical six-month suspension of contributions for participants receiving a hardship distribution. Additionally, an individual who does not live in a disaster area could take a loan or hardship withdrawal to assist a lineal ascendant or descendant as well as spouses and dependents who lived or worked in a disaster area.

Employer Leave Donation Programs. In Notice 2005-68 (9/8/05) the IRS provided that an employee can contribute vacation, sick or personal leave to a charitable organization for relief efforts for victims of Hurricane Katrina with no tax consequences to the employee if the donation is made before January 1, 2007. The employee cannot deduct the contribution. Employers may still deduct the amounts under Section 162.

Qualified Disaster Relief Payments by Employers. Employers and other entities may make qualified disaster relief payments to affected individuals which are not taxable to the recipient pursuant to Code Section 139 but are deductible by the employer or entity. A “qualified disaster relief payment” generally includes amounts (i) to reimburse or pay reasonable and necessary personal, living, family and funeral expenses as a result of a qualified disaster (i.e., a disaster declared by the President); (ii) to reimburse or pay reasonable and necessary expenses for repairing or rehabilitating a personal residence due to a qualified disaster or for repairing or replacing contents; (iii) by a person who provides transportation as a common carrier as a result of death or personal injury in a qualified disaster; or (iv) if the amount is paid by a government or governmental agency related to a qualified disaster to promote general welfare.

If you have any questions regarding the disaster relief measures and the impact on your benefit plans, please contact Dana Thrasher (205-226-5464; dthrasher@constangy.com), Rebecca Amthor (205-226-5460; ramthor@constangy.com), or the firm attorney that you regularly contact.