Committee on Ways and Means

H.R. 4440, *THE GULF OPPORTUNITY ZONE ACT OF 2005, as Amended by the Senate*

TITLE I: GULF OPPORTUNITY ZONE TAX INCENTIVES

Creates a "Gulf Opportunity (GO) Zone" (the "Zone") comprised of the counties and parishes in Louisiana, Mississippi and Alabama that were designated as warranting individual or public and individual assistance by reason of Hurricane Katrina. The bill creates tax incentives to help revitalize and rebuild communities in the Zone.

Housing

- **Increases incentives to rebuild housing**. Expands the allocation and size of the low-income housing tax credit in the Zone.

  - ⇨ Provides an emergency allocation of low-income housing tax credits in 2006, 2007 and 2008. The emergency allocation is $18.00 multiplied by each State's population in the Zone (based on 2004 Census estimates). This amount is more than nine times larger than the current-law allocation of $1.90 per capita. The increased allocation must be used to build housing in the Zone and may not be carried forward from year to year. In addition, a further allocation of low-income housing tax credits in the amount of $3.5 million is provided to both Texas and Florida in 2006.

  - ⇨ Increases the size of the credit from 100 percent of qualifying project costs to 130 percent of such costs by designating the GO Zone, Rita Zone and Wilma Zone each as a "Difficult Development Area" in 2006, 2007 and 2008. The increased credit would also apply to historic buildings, which are already eligible for the Rehabilitation Credit under current law.

  - ⇨ The operator of a qualified residential rental project may rely on the representations of prospective tenants displaced by reason of Hurricane Katrina for purposes of determining whether such individuals satisfy the income limitations for qualified residential rental projects. This rule only applies if the individual's tenancy begins during the six-month period beginning on the date when such individual was displaced by Hurricane Katrina.

- **Increases the Rehabilitation Tax Credit to help restore commercial buildings.** Increases the credit from 10 percent of qualified expenditures to 13 percent for qualified rehabilitated buildings in the Zone. The credit is increased from 20 percent to 26 percent for certified historic structures. This provision applies to qualifying expenses incurred through December 31, 2008.

- **Employer-Provided Housing Incentives.** For a six-month period, provides employers with a 30-percent tax credit for the cost of employer-provided housing (up to $600 per month) for employees located in the Zone. In addition, up to $600 per month of such cost would be excluded from the employee's income.

- **Expands the availability of below-market mortgages in the disaster areas.** Under current law, state and local governments may issue mortgage revenue bonds (MRBs) to finance low-interest rate mortgages for first-time homebuyers who meet certain income and purchase price limits. The proposal waives the first-time homebuyer requirement so that individuals whose homes were rendered uninhabitable by Hurricanes Katrina, Rita or Wilma can qualify for these low-interest rate mortgages through 2010. In addition, the proposal provides that up to $150,000 of the loan proceeds may be used to repair damaged homes. To be eligible, the new home must be located in one of the declared disaster areas.

Investment and Rebuilding in the Gulf Opportunity Zone

- **Provides 50-percent bonus depreciation to help businesses rebuild in the Zone.** Permits businesses to claim an *additional* first-year depreciation deduction equal to 50 percent of the cost of new property investments made in the Zone. The additional deduction applies to purchased computer software, leasehold improvements, certain commercial and residential real estate expenditures and equipment. All depreciation deductions (including bonus depreciation) would be exempt from the AMT. The provision applies to property placed in service through December 31, 2007 (December 31, 2008 for real property). Also authorizes the Secretary of the Treasury to grant taxpayers affected by Hurricane Katrina, Hurricane Rita or Hurricane Wilma an extension of time up to one year to place assets in service in the Zone in order to qualify for the bonus depreciation provided by the *Jobs and Growth Tax Relief Reconciliation Act of 2003*.

- **Provides enhanced section 179 expensing to assist small businesses.** Current law permits eligible small businesses to expense up to $100,000 of qualifying investments. Eligible small businesses are defined as those with less than $400,000 of annual investments. The proposal doubles the amount that may be expensed under section 179 (from $100,000 to $200,000) for investments made in the Zone. It also increases the phase-out floor from $400,000 of annual investments to $1 million. The higher phase-out ensures that section 179 expensing remains available to small businesses even if they have extraordinary investments in one year due to rebuilding after the hurricane. The provision expires after December 31, 2007.

- **Net Operating Loss (NOL) carryback.** Extends the NOL carryback period from two to five years for losses attributable to (i) new investment and repairing existing investment in the areas damaged by Hurricane Katrina; (ii) business casualty losses caused by Hurricane Katrina; and (iii) moving expenses and temporary housing expenses for employees working in areas damaged by Hurricane Katrina. An additional rule permits taxpayers with casualty losses associated with public utility property caused by Hurricane Katrina to elect to either (i) carryback a net operating loss attributable to certain casualty losses 10 years; or (ii) treat certain casualty losses as having occurred five years prior to the disaster.

Note: The GO Zone bonus depreciation, section 179 expensing and extended NOL carryback with respect to certain casualty losses and depreciation expenses will not be extended to certain types of businesses or investments: private or commercial golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, liquor stores or gambling or animal racing property. Gambling or animal racing property is defined as (i) any equipment, furniture, software or other property used directly in connection with gambling, the racing of animals or the on-site viewing of such racing, and (ii) the portion of real property (determined by square footage) dedicated to such activities.

- **Speeds rebuilding efforts by temporarily reducing demolition and cleanup costs.** Permits businesses to expense 50 percent of cleanup and demolition costs in the Zone. In addition, brownfield expensing is extended and expanded to include brownfield sites in the Zone that are contaminated by petroleum products. Both incentives expire after December 31, 2007.

- **Incentives and relief for small timber owners.** Allows small timber owners (i.e., those owning less than 500 acres of timber in the Zone to expense $20,000 – as opposed to $10,000 under current law) of reforestation costs incurred from August 27, 2005 through 2007. In addition, small timber owners may elect a five-year carryback of net operating losses occurred after August 27, 2005 and before 2007. These incentives are also available to eligible counties and parishes affected by Hurricane Rita and Hurricane Wilma.

- **Expands and extends the Employee Retention Tax Credit.** Employers located in a disaster area that are eligible for individual and public assistance under the Stafford Act may claim a tax credit through the end of the 2005 calendar year if they retain an eligible employee on their payroll. The tax credit equals 40 percent of the first $6,000 of wages paid to the employee prior to January 1, 2006. The credit is available to employers whose businesses are inoperable as a result of damage sustained by Hurricane Katrina, Hurricane Rita or Hurricane Wilma. The credit is not affected if the employee reports to work at another location while the business is inoperable.

- **Hope Scholarship and Lifetime Learning Credit.** The provision doubles the Hope Credit dollar amounts so the maximum credit would be $3,000, and doubles the Lifetime Learning Credit percentage from 20 percent to 40 percent, for a maximum Lifetime Learning Credit of $4,000. Room and board would also be considered qualified expenses.

- **New Markets Tax Credit.** The proposal provides $1 billion from 2005 through 2007 in New Markets Tax Credit authority to investments in Community Development Entities with recovery and redevelopment of the Zone as a significant mission.

Bonding Authority

- **Creates additional tax-exempt bond authority to help rebuild devastated infrastructure in the GO Zone.** Provides Louisiana, Mississippi and Alabama the authority to issue a special class of private activity bonds, called GO Zone Bonds, outside of the state volume caps. Bond authority is approximately $7.9 billion for Louisiana, $4.8 billion for Mississippi and $2.1 billion for Alabama. These amounts are based on each State's population in the Zone, according to 2004 U.S. Census estimates.

- ⇨ GO Zone Bonds can be issued by States and municipalities. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property (including fixed improvements associated with such property), qualified low-income residential rental housing, single-family residential housing, and public utility property (e.g., gas, water, electric and telecommunication lines) located in the Zone.

- ⇨ The current low-income housing targeting rules are relaxed so that more bond proceeds can be used to rebuild housing in the Zone.

- ⇨ Up to $150,000 of GO Zone mortgage revenue bonds may be used to repair homes (as opposed to $15,000 under current law). In addition, the first-time homebuyer rule is waived.

- ⇨ Interest payments on the bonds are not subject to the AMT.

- ⇨ The authority to issue GO Zone Bonds expires after December 31, 2010.

- **Allows States and municipalities to reduce costs by restructuring outstanding debt.** Provides States and municipalities in the Zone with one additional advance refunding before January 1, 2011. The additional authorization is up to $4.5 billion for Louisiana, $2.25 billion for Mississippi and $1.125 billion for Alabama. Advance refunding allows the bond issuer to restructure eligible debt by refinancing at a lower rate or by spreading interest payments over a longer period of time. Certain section 501(c)(3) bonds are also eligible for advance refunding under this provision.

- **Gulf Tax Credit Debt Service Bonds**. Authorizes GO Zone States to issue debt service tax credit bonds to help devastated communities meet their debt service requirements as a result of the hurricanes. Bonds must mature no more than two years after issuance and must be issued before January 1, 2007. The allocation of bonds is $200 million for Louisiana, $100 million for Mississippi and $50 million for Alabama.

- **Gulf Coast Recovery Bonds.** Expresses the sense of Congress that one or more series of savings bonds should be designated as "Gulf Coast Recovery Bonds."

Note: The GO Zone bonding authority will not be extended to the following types of businesses or investments: private or commercial golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetracks or other gambling facilities and liquor stores.

TITLE II: INDIVIDUAL TAX RELIEF RELATED TO HURRICANES RITA AND WILMA

The *Katrina Emergency Tax Relief Act of 2005* (P.L. 109-73) provided charitable giving incentives and tax relief for families affected by Hurricane Katrina. The following provisions from P.L. 109-73 are extended to families affected by Hurricanes Rita and Wilma in areas designated for individual or individual and public assistance.

- Waives the 10-percent penalty for early distributions from pensions and IRAs if the taxpayer suffered an economic loss by reason of Hurricane Rita or Hurricane Wilma. The income tax can be paid over three years. Amounts repaid to the pension or IRA within a certain amount of time are not subject to income tax.

- Allows corporations to claim a charitable deduction for cash contributions related to Hurricanes Rita or Wilma without regard to the 10 percent of taxable income cap.

- Allows full deductibility of individual casualty losses occurring in the Rita or Wilma Zones by eliminating the $100 and 10 percent of adjusted gross income thresholds for losses related to the hurricanes.

- Authorizes the Secretary of the Treasury to suspend the time period for certain acts, such as the filing of tax returns and the payment of taxes, by taxpayers affected by Hurricane Rita or Hurricane Wilma.

- Authorizes the Secretary of the Treasury to adjust rules so that individuals displaced by the hurricanes do not lose tax benefits - such as the Earned Income Credit and the child credit - because of a change in their eligibility status due to a prolonged dislocation.

TITLE III: OTHER PROVISIONS

- **Treating combat pay as earned income under the Earned Income Credit.** Under current law, combat pay is ignored for purposes of calculating the Earned Income Credit (EIC). Ignoring combat pay can reduce the EIC in some cases. A special rule gives military personnel the option to include combat pay in the EIC calculation. *The House has already passed a similar provision on December 7, 2005 as part of H.R. 4388 with a bipartisan vote of 423 – 0.*

- **Authority for IRS undercover operations.** Under current law, the IRS has the authority to use income earned by an undercover operation to pay additional expenses incurred in the undercover operation. This authority is extended by one year. *The House has already passed a similar provision on December 7, 2005 as part of H.R. 4388 with a bipartisan vote of 423 – 0.*

- **Authority for the IRS to disclose certain tax information.** Under current law, the IRS may share certain tax information with certain other Federal and/or State authorities in order to: (1) facilitate combined employment tax reporting, (2) investigate terrorist activities, and

(3) facilitate the repayment of student loans that are contingent on income. This disclosure authority is extended by one year. *The House has already passed a similar provision on December 7, 2005 as part of H.R. 4388 with a bipartisan vote of 423 – 0.*

- **Elimination of interest suspension.** The requirement that the IRS suspend interest on tax deficiencies determined more than 18 months after the due date of the return is eliminated with respect to certain tax shelters, subject to exceptions for (i) taxpayers participating in the IRS global tax shelter settlement initiative, (ii) taxpayers acting with reasonable cause and good faith, and (iii) certain closed transactions. The provision also eliminates interest suspension on certain amended returns.

TITLE IV: TECHNICAL AND OTHER CORRECTIONS

H.R. 4440 includes technical and other corrections with respect to the *American Jobs Creation Act of 2004*, *CAFTA* and other legislation.

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