

Empowerment Zone Designation Extension

Notice 2015-26

I. PURPOSE

This notice explains how a State or local government amends the nomination of an empowerment zone to provide for a new termination date of December 31, 2014, as provided for by § 1391 of the Internal Revenue Code, as amended by § 753(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (December 17, 2010) (TRUIRJCA), § 327(c) of the American Taxpayer Relief Act of 2012, Pub. L. 112-240, 126 Stat. 2313 (January 2, 2013) (ATRA), and § 139(b) of the Tax Increase Prevention Act of 2014, Pub. L. 113-295, ___ Stat. ____ (December 19, 2014) (TIPA).

II. BACKGROUND

In 1993, § 1391 was enacted to allow a State or local government (“entity”) to nominate an area or areas in its jurisdiction for designation as an empowerment zone. Subsequently, the Secretary of Housing and Urban Development, in the case of any nominated area that is located in an urban area, and the Secretary of Agriculture, in the case of any nominated area that is located in a rural area, have designated which nominated areas are empowerment zones. The entities generally provided in their nomination that the designation would remain in effect for 10 years. This 10-year period in the nomination typically ended on December 31, 2009, but in some cases, it expired

before December 31, 2009. In the latter cases, § 112 of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763A-587 (December 21, 2000) (CRTRA), amended § 1391(d)(1) to extend the designation of those empowerment zones through December 31, 2009, regardless of the period provided in the nomination. Accordingly, the nomination for all empowerment zones originally had a termination date of December 31, 2009.

Prior to the enactment of TRUIRJCA, ATRA, and TIPA, § 1391(d)(1) provided that any designation of an empowerment zone ends on the earliest of (A) December 31, 2009, (B) the termination date designated by the State and local governments as provided for in their nomination, or (C) the date the appropriate Secretary revokes the designation. Section 1393(a)(1) defines the term “appropriate Secretary” as meaning the Secretary of Housing and Urban Development in the case of any nominated area that is located in an urban area, and the Secretary of Agriculture in the case of any nominated area that is located in a rural area.

Section 753(a) of TRUIRJCA amended § 1391(d)(1) to allow a two-year extension of the period for which the designation of an empowerment zone is in effect. As amended by § 753(a) of TRUIRJCA, § 1391(d)(1) provided that any designation of an empowerment zone ends on the earliest of (A) December 31, 2011, (B) the termination date designated by the State and local governments as provided for in their nomination, or (C) the date the appropriate Secretary revokes the designation. Section 753(c) of TRUIRJCA provided that where the nomination of an empowerment zone included a termination date of December 31, 2009, § 1391(d)(1)(B) shall not apply with

respect to such designation if, after the date of the enactment of TRUIRJCA, the entity that made such nomination amends the nomination, in such manner as the Secretary of the Treasury may provide, to provide for a new termination date. The amendments made by § 753 of TRUIRJCA apply to periods after December 31, 2009.

Section 327(a) of ATRA further amended § 1391(d)(1) to allow an additional extension of two years of the period for which the designation of an empowerment zone is in effect. As amended by § 327(a) of ATRA, § 1391(d)(1) provided that any designation of an empowerment zone ends on the earliest of (A) December 31, 2013, (B) the termination date designated by the State and local governments as provided for in their nomination, or (C) the date the appropriate Secretary revokes the designation. Section 327(c) of ATRA provided that where a nomination of an empowerment zone included a termination date of December 31, 2011, § 1391(d)(1)(B) shall not apply with respect to such designation if, after the date of the enactment of ATRA, the entity that made such nomination amends the nomination, in such manner as the Secretary of the Treasury may provide, to provide for a new termination date. The amendments made by § 327 of ATRA apply to periods after December 31, 2011.

In 2013, the Treasury Department and the Internal Revenue Service (IRS) issued Notice 2013-38, 2013-25 I.R.B. 1251, under TRUIRJCA and ATRA. Notice 2013-38 provided that any nomination for an empowerment zone that was in effect on December 31, 2009, is deemed to be amended to provide for a new termination date of December 31, 2013, unless the nominating entity declined the extension in a written notification to the IRS. No nominating entity declined the extension. Accordingly, the designations of

all empowerment zones that were in effect on December 31, 2009, currently have a termination date of December 31, 2013.

Section 139(a) of TIPA further amended § 1391(d)(1) to allow an additional extension of one year of the period for which the designation of an empowerment zone is in effect. As amended by § 139(a) of TIPA, § 1391(d)(1) provides that any designation of an empowerment zone ends on the earliest of (A) December 31, 2014, (B) the termination date designated by the State and local governments as provided for in their nomination, or (C) the date the appropriate Secretary revokes the designation. Section 139(b) of TIPA provides that where a nomination of an empowerment zone included a termination date of December 31, 2013, § 1391(d)(1)(B) shall not apply with respect to such designation if, after the date of the enactment of TIPA, the entity that made such nomination amends the nomination, in such manner as the Secretary of the Treasury may provide, to provide for a new termination date. The amendments made by § 139 of TIPA apply to periods after December 31, 2013.

Thus, under TIPA, to have an empowerment zone designation remain in effect through December 31, 2014, the entity that made the nomination of the empowerment zone must amend the nomination to provide for a new termination date of December 31, 2014, as provided in this guidance.

III. AMENDMENT OF A NOMINATION TO EXTEND EMPOWERMENT ZONE DESIGNATION THROUGH DECEMBER 31, 2014

Any nomination for an empowerment zone with a current termination date (as amended by CRTRA and Notice 2013-38) of December 31, 2013, is deemed to be

amended to provide for a new termination date of December 31, 2014, unless the nominating entity sends written notification to the IRS by May 11, 2015. The written notification must affirmatively decline extension of the empowerment zone nomination through December 31, 2014. If the United States mail is used, the notification should be sent to the following address:

Internal Revenue Service
Attn: Charles Magee, CC:ITA:7, Room 4136
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

If a private delivery service is used, the notification should be sent to the following address:

Internal Revenue Service
Attn: Charles Magee, CC:ITA:7, Room 4136
1111 Constitution Ave., NW
Washington, DC 20224

If the entity that nominated an empowerment zone does not send written notification, the nomination of that empowerment zone will be deemed extended from December 31, 2013, through December 31, 2014. Accordingly, § 1391(d)(1)(B) does not apply and, pursuant to § 1391(d)(1)(A)(i), the designation of that empowerment zone ends on December 31, 2014.

IV. DRAFTING INFORMATION

The principal author of this notice is Charles Magee of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Magee at (202) 317-7005 (not a toll-free call).