

Empowerment Zone Designation Extension

Notice 2018-47

I. PURPOSE

This notice explains how a State or local government is deemed to extend the termination date designated in an empowerment zone nomination until December 31, 2017. This notice is issued pursuant to § 1391 of the Internal Revenue Code, as amended by § 40311(a) of the Bipartisan Budget Act of 2018, Pub. L. No. 115-123, 132 Stat. 64 (February 9, 2018) (the “BBA”).

II. BACKGROUND

Section 1391 was enacted in 1993 to allow a State or local government (“entity”) to nominate an area or areas in its jurisdiction for designation as an empowerment zone. 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. Unless an earlier termination date was provided by the nominating entity, a designation was originally effective for the period beginning on the date of designation and ending on the close of the 10th taxable year beginning on or

after the date of designation.

Section 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)(A) to extend the designation period for all empowerment zones through December 31, 2009, regardless of the original termination date. Subsequent amendments to § 1391(d)(1)(A) further extended the designation period through December 31, 2016. See § 753(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (December 17, 2010), § 327(a) of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (January 2, 2013), § 139(a) of the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010 (December 19, 2014), and § 171(a) of the Protecting Americans from Tax Hikes Act of 2015, enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. No. 114-113, 129 Stat. 2242 (December 18, 2015).

Based on these amendments to § 1391(d)(1)(A), the Treasury Department and the Internal Revenue Service (IRS) issued guidance treating any nomination for an empowerment zone as extended for a specified period unless the nominating entity declined the extension in a written notification to the IRS. Specifically, in Notice 2013-38, 2013-25 I.R.B. 1251, nominations were deemed extended to December 31, 2013; in Notice 2015-26, 2015-13 I.R.B. 814, nominations were deemed extended to December 31, 2014; and in Notice 2016-28, 2016-15 I.R.B. 576, nominations were deemed extended to December 31, 2016. The IRS received no written requests declining the extensions under Notice 2013-38, Notice 2015-26, or Notice 2016-28. Accordingly, the

designations of all empowerment zones currently have a termination date of December 31, 2016.

In 2018, Congress further amended § 1391(d)(1) to extend the period for which an empowerment zone designation is in effect by an additional year. As amended by § 40311(a)(1) of the BBA, § 1391(d)(1) provides that any designation of an empowerment zone ends on the earliest of (A) December 31, 2017, (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 40311(a)(2) of the BBA provides that where a nomination of an empowerment zone includes a termination date of December 31, 2016, § 1391(d)(1)(B) shall not apply to the designation if, after the date of the enactment of the BBA, the nominating entity follows the procedures provided by the Secretary of the Treasury to extend the termination date to December 31, 2017. The amendments made by § 40311(a) of the BBA apply to taxable years beginning after December 31, 2016. Section III of this notice explains the process for extending the termination date designated in an empowerment zone nomination.

III. EXTENDING THE NOMINATION OF AN EMPOWERMENT ZONE DESIGNATION TO DECEMBER 31, 2017

Any nomination for an empowerment zone designation with a current termination date (as amended by CRTRA, Notice 2013-38, Notice 2015-26, and Notice 2016-28) of December 31, 2016, is deemed to be amended to provide for a new termination date of December 31, 2017, unless the nominating entity sends written notification to the IRS

by July 3, 2018. The written notification must affirmatively decline the December 31, 2017, designated termination date of the empowerment zone nomination. 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 termination date designated in the empowerment zone nomination will be deemed extended from December 31, 2016, through December 31, 2017. 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, 2017.

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).