

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2013-38, page 1251.

This notice provides a simplified procedure for a State or local government to amend its nomination of an empowerment zone to provide for a new termination date of December 31, 2013, thereby resulting in the designation of the empowerment zone remaining in effect through December 31, 2013. Under this notice, 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 sends written notification to the Internal Revenue Service by July 29, 2013. 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, 2009, through December 31, 2013, as authorized under section 1391.

Notice 2013-39, page 1252.

This notice provides relief from certain requirements in § 142(d) to issuers of tax-exempt bonds that approve the housing of individuals displaced due to the effects of severe storms in Oklahoma in residential rental projects financed with tax-exempt bonds under § 142(d).

Notice 2013-40, page 1254.

This notice provides for the suspension of certain requirements under § 42 of the Code for low-income housing credit projects to provide emergency housing relief needed as a result of the devastation caused by severe storms and tornadoes in the State of Oklahoma.

EXEMPT ORGANIZATIONS

Announcement 2013-18, page 1256.

A list is provided of organizations now classified as private foundations.

Actions Relating to Court Decisions is on the page following the Introduction.
Finding Lists begin on page ii.



The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and en-

force the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered,

and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Actions Relating to Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean

that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

Subject: *Wilson v. Commissioner*, 705 F.3d 980 (9th Cir. 2013), *aff’g* T.C. Memo. 2010–134.

Issues: Whether I.R.C. § 6015(e)(1) provides both a *de novo* standard and a *de novo* scope of review in section 6015(f) cases petitioned to the Tax Court.

Discussion: Petitioner requested equitable relief under section 6015(f) from the joint and several tax liabilities with her former husband. The Internal Revenue Service issued a notice of determination that denied her relief. Petitioner petitioned the Tax Court.

Under section 6015(e)(1)(A), the Tax Court has jurisdiction to “determine the appropriate relief available” to an individual who requests equitable relief under section 6015(f) and files a timely petition. In this case, the Tax Court, relying on its prior interpretation of section 6015(e)(1) in *Porter v. Commissioner*, 130 T.C. 115 (2008), and *Porter v. Commissioner*, 132 T.C. 203 (2009), applied both a *de novo*

standard and a *de novo* scope of review to grant the taxpayer relief. *Wilson v. Commissioner*, T.C. Memo. 2010–134. The *de novo* scope of review allowed petitioner to introduce evidence outside the administrative record, and the *de novo* standard of review allowed the court to determine whether the taxpayer was entitled to relief without regard to the Service’s determination. The court observed that if it were not using the *de novo* standard and *de novo* scope of review, its findings on a number of factors would have been different.

The Service appealed. Affirming the Tax Court, the Ninth Circuit held that “determine,” as used in section 6015(e)(1)(A), provides both a *de novo* standard and a *de novo* scope of review in section 6015(f) cases. The circuit court interpreted section 6015(e)(1) in conjunction with the mandate under section 6015(f) “to consider the totality of the circumstances before making an equitable relief determination,” which the court noted would be impossible if the Tax Court limited its review to the administrative record. The majority rejected the Service’s argument that the phrase “the Secretary may relieve” in section 6015(f) means that the Tax Court should review the Service’s section 6015(f) determinations for an abuse of discretion, limiting its review to evidence in the administrative record.

Although the Service disagrees that section 6015(e)(1) provides both a *de novo* standard and a *de novo* scope of review, the Service will no longer argue that the Tax Court should review section 6015(f) cases for an abuse of discretion or that the court should limit its review to the administrative record.

THIS DOCUMENT IS NOT TO BE RELIED UPON OR OTHERWISE CITED AS PRECEDENT BY TAXPAYERS

Recommendation: Acquiescence.

Part III. Administrative, Procedural, and Miscellaneous

Empowerment Zone Designation Extension

Notice 2013–38

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, 2013, 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), and § 327(c) of the American Taxpayer Relief Act of 2012, Pub. L. 112–240, 126 Stat. 2313 (January 2, 2013) (ATRA).

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 (the original expiration date), 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), 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 and ATRA, § 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) provides 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 provides 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 nomi-

nation, 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.

Thus, under TRUIRJCA and ATRA, to have an empowerment zone designation remain in effect through December 31, 2013, the entity that made the nomination of the empowerment zone must amend the nomination to provide for a new termination date of December 31, 2013, as provided in this guidance.

III. AMENDMENT OF A NOMINATION TO EXTEND EMPOWERMENT ZONE DESIGNATION THROUGH DECEMBER 31, 2013

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 sends written notification to the Internal Revenue Service by July 29, 2013. The written notification must affirmatively decline extension of the empowerment zone nomination through December 31, 2013. If the United States mail is used, the notification should be sent to the following address:

Internal Revenue Service
Attn: Winston Douglas,
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: Winston Douglas,
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, 2009, through December 31, 2013. 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, 2013.

IV. DRAFTING INFORMATION

The principal author of this notice is Winston H. Douglas of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Douglas on (202) 622-4930 (not a toll-free call).

Temporary Shelter for Individuals Displaced by Severe Storms and Tornadoes in Oklahoma

Notice 2013-39

The Internal Revenue Service is suspending certain requirements under § 142(d) of the Internal Revenue Code for qualified residential rental projects financed with exempt facility bonds under § 142 to provide emergency housing relief needed as a result of the devastation caused by severe storms and tornadoes in Oklahoma that occurred between May 18, 2013, and May 27, 2013 (hereafter, the Tornadoes).

This Notice provides relief for all qualified residential rental projects described herein. For those projects that are also low-income housing tax credit (LIHTC) projects, this Notice should be read with Notice 2013-40, I.R.B. 2013-25 (June 17, 2013), which suspends certain low-income and non-transient requirements under § 42 to allow low-income housing credit projects to provide emergency housing needed because of the Tornadoes.

BACKGROUND

On May 20, 2013, the President issued a major disaster declaration for the State of Oklahoma because of the devastation caused by the Tornadoes. The President issued the declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions in Oklahoma as eligible for Individual Assistance (as FEMA uses that term). Because of the widespread damage

to housing caused by the Tornadoes, the Service has determined that issuers may approve the use of qualified residential rental projects described in § 142(d) to temporarily house displaced individuals, as defined below, regardless of their income, in accordance with this Notice. The Service has determined that the projects to which this approval may be given can be located in any State, regardless of whether a major disaster declaration with Individual Assistance has been issued for that State.

Consistent with Notice 2013-40, the term “displaced individual” means, for purposes of this Notice, an individual who resided in a jurisdiction designated for Individual Assistance and who has been displaced because his or her residence was destroyed or damaged as a result of the devastation caused by the Tornadoes.

SECTION 1. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 142(d) that apply to qualified residential rental projects financed with tax-exempt bonds issued by a qualified issuer under § 103 (Issuer). The suspension, described in Section 3 below, is available to both qualified residential rental projects under § 142(d) that are not subject to any LIHTC-related requirements (Bond Projects) and to qualified residential rental projects under § 142(d) that are also subject to LIHTC-related requirements (Bond/LIHTC Projects). For purposes of this Notice, the term “Project” refers to either a Bond Project or a Bond/LIHTC Project.

SECTION 2. GENERAL REQUIREMENTS

.01 *Issuer Approval for Relief.* If an Issuer that issued exempt facility bonds for a Project desires to allow the use of the Project to temporarily house displaced individuals, the Issuer must approve that use and must determine an appropriate period for the temporary housing, not to extend beyond May 31, 2014 (Temporary Housing Period). If a Bond/LIHTC Project subject to both Notice 2013-40 and this Notice receives approval, for purposes of § 42, for a temporary housing period and for the suspension of income limitations

from a State housing agency (as contemplated in Section IV(2) of Notice 2013-40) and that agency is not the Issuer, then the income limitations under § 142(d) for that Bond/LIHTC Project are suspended only if the project also receives the Issuer’s consent for a suspension. An Issuer that chooses to provide that consent must adopt for purposes of § 142(d) the same temporary housing period that the agency adopted for purposes of § 42.

.02 *Protection of Tenants.* Existing tenants in a Project whose income is at or below an applicable income limitation under § 142(d) cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

.03 *Certification and Recordkeeping Requirements.* The Project operator must comply with the certification and recordkeeping requirements in Section 4 of this Notice. For certification and recordkeeping requirements under § 42, see Notice 2013-40.

.04 *Rent Restrictions.* To the extent such rent restrictions are applicable, rents for the low-income units that house displaced individuals must not exceed the lesser of—

- (1) the maximum gross rent for that unit under § 142(d)(4)(B); or
- (2) the maximum gross rent for that unit under § 42(g)(2).

.05 *Project Must Meet All Remaining Requirements.* Except as expressly provided in this Notice, a Project continues to be subject to all other rules and requirements of § 142(d) and § 103.

SECTION 3. RELIEF FROM SECTION 142 REQUIREMENTS

.01 *Qualified Project Period.* Only a unit in a Project occupied by a non-displaced individual counts for purposes of determining the beginning of the qualified project period under § 142(d)(2)(A). Thus, only non-displaced individuals are counted for determining the 1st day on which 10 percent of the residential units in a Project are occupied under § 142(d)(2)(A). However, occupancy of a unit by any tenant (whether a displaced individual or a non-displaced individual) in a Project counts for purposes of determining the end of the qualified project period under § 142(d)(2)(A)(i). If occupancy by

a displaced individual in a Project causes any termination of assistance with respect to the Project under section 8 of the United States Housing Act of 1937, then that termination is disregarded for determining when the qualified project period ends under § 142(d)(2)(A)(iii).

.02 *Satisfaction of the Non-Transient Use Requirement.* The occupancy of a unit in a Project by a displaced individual during the Temporary Housing Period is treated as satisfying the non-transient use requirement applicable to qualified residential rental projects described in § 142(d). See § 1.103–8(b)(4); see also Notice 2013–40 for suspension of the non-transient use requirement under § 42(i)(3)(B)(i).

.03 *Income Qualification of Units in Bond Projects during Temporary Housing Period.* A unit in a Bond Project occupied by a displaced individual during the Temporary Housing Period retains the income status it had immediately before that occupancy, regardless of whether the unit was a market-rate unit, a unit occupied by a tenant who met an applicable income limit, a designated low-income unit, or a never previously occupied unit. See Rev. Proc. 2004–39, 2004–2 C.B. 49 (treating never previously occupied units as unavailable). This means, for example, that if a unit in a Bond Project had been designated as a low-income unit or rented to an individual whose income was at or below an applicable income limit or was a market-rate unit or an unavailable unit, then the unit remains as such while occupied by a displaced individual during the Temporary Housing Period regardless of the occupancy by, or income of, the displaced individual. Thus, the fact that a unit becomes occupied by a displaced individual does not affect compliance with the 20–50 test or 40–60 test of § 142(d)(1)(A) and (B) (or the 25–60 test under the special rule in § 142(d)(6)).

Under § 142(d)(3)(B), if the income of a low-income resident of a Project rises above a specified percentage of the applicable income limit, then, for that resident's income to continue to be treated as not exceeding the applicable income limit, the next residential unit meeting certain criteria to become available in the same Project must be occupied by a new resident whose income does not exceed the applicable income limit (the next avail-

able unit rule). For purposes of determining compliance with the next available unit rule, an operator of a Bond Project may disregard the new occupancy of units during the Temporary Housing Period by displaced individuals, and apply the rule solely based on new occupancy by persons who are not displaced individuals. The operator may, however, take into account a displaced individual's occupancy for purposes of § 142(d)(3)(B) if the operator obtains sufficient evidence that the displaced individual's income does not exceed the applicable income limit.

.04 *Income Qualifications of Units in Bond/LIHTC Projects During the Temporary Housing Period.* The income status of a unit and the income qualification of the occupant of a unit for purposes of § 142(d) in a Bond/LIHTC Project occupied by a displaced individual during the Temporary Housing Period shall be treated the same as they are for purposes of § 42 under Notice 2013–40. For purposes of determining compliance with the next available unit rule, an operator of a Bond/LIHTC Project may disregard the new occupancy of units during the Temporary Housing Period by displaced individuals, and apply the rule solely based on new occupancy by persons who are not displaced individuals. The operator may, however, take into account a displaced individual's occupancy for purposes of § 142(d)(3)(B) if the operator obtains sufficient evidence that the displaced individual's income does not exceed the applicable income limit.

.05 *Income Qualifications when Temporary Housing Period Ends.* After the end of the Temporary Housing Period, the status as a displaced individual of an occupant remaining in a unit in a Project will be disregarded and the status of the unit occupied by such individual and the income of such individual will be re-evaluated as though the formerly displaced individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. Thus, if the displaced individual remains in the unit, the unit will be treated as occupied for all purposes of § 142(d) and the income of the displaced individual will be used for determining compliance with the requirements of § 142(d). If non-compliance relates to continued occupancy of the unit after the Temporary Housing Period by an occupant who was a displaced individual during the

Temporary Housing Period, a 60-day period is allowed for correction.

SECTION 4. CERTIFICATIONS AND RECORDKEEPING

In addition to any information and certifications required by § 142(d)(7), Project operators must maintain and certify certain information concerning each displaced individual temporarily housed in the Project. The records must contain the following information: the name of the displaced individual, the address of the damaged residence of the displaced individual, the displaced individual's social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in a jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused by the Tornadoes, the individual requires temporary housing. In addition, the Project operator must keep accurate records of the Issuer's approval of the Project's use for displaced individuals and the approved Temporary Housing Period and the dates during which displaced individuals occupied units in the Projects.

The recordkeeping described under this paragraph must be included as part of the books and records of the Project operator and also must be maintained in a manner that is consistent with any compliance monitoring process imposed by § 142(d).

SECTION 5. EFFECTIVE DATE

This Notice is effective May 20, 2013.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this Notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2244.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this Notice is in the section entitled "Section 4: CERTIFICATIONS AND RECORDKEEPING." This information is required

to enable the Service to verify whether individuals are displaced as a result of the devastation caused by the Tornadoes and thus warrant temporary housing in vacant units in certain Projects. The collection of information is required to obtain a benefit. The likely respondents are individuals and businesses.

The estimated total annual recordkeeping burden is 25 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 50.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

SECTION 7. DRAFTING INFORMATION

The principal authors of this notice are Timothy L. Jones and Spence Hanemann of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Mr. Hanemann at (202) 622-3980 (not a toll-free call).

Low-Income Housing Credit Disaster Relief for Oklahoma Severe Storms and Tornadoes Notice 2013-40

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects to provide emergency housing relief needed as a result of the devastation caused by severe storms and tornadoes in the State of Oklahoma that occurred between May 18, 2013, and May 27, 2013 (hereafter, the Tornadoes). This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations. This notice should be read with Notice 2013-39, I.R.B. 2013-25 (June 17, 2013), which suspends certain requirements under § 142(d) for qualified residential rental projects financed with

exempt facility bonds under § 142 to provide emergency housing relief due to the Tornadoes.

BACKGROUND

On May 20, 2013, the President issued a major disaster declaration for the State of Oklahoma because of the devastation caused by the Tornadoes. The President issued the declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance. Because of the damage to housing caused by the Tornadoes, the Service has determined that state housing agencies (Agencies) may provide approval to project owners in their respective states to provide temporary emergency housing for displaced individuals in accordance with this notice. For purposes of this notice, the term "displaced individual" means an individual who resided in a jurisdiction designated for Individual Assistance and who has been displaced because his or her residence was destroyed or damaged as a result of the Tornadoes. The Service has also determined that the projects to which this approval may be given may be located in any state, regardless of whether a major disaster declaration with Individual Assistance has been issued for that state.

I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income housing projects. The suspension will apply to low-income housing projects which are approved by the Agency with jurisdiction over the project (the applicable Agency) and in which vacant units are rented to displaced individuals. The applicable Agency will determine the appropriate period of temporary housing for each project, not to extend beyond May 31, 2014 (temporary housing period).

II. STATUS OF UNITS

A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test or 40-60 test as elected by the project owner under § 42(g)(1). After the end of the temporary housing period established by the applicable Agency, a displaced individual will no longer be deemed a qualified low-income tenant.

B. Vacant units after the first year of the credit period

During the temporary housing period established by the applicable Agency, the status of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii). However, even if it houses a displaced individual, a low-income or market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income or market rate unit. Similarly, a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual. Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20-50 test or 40-60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the temporary occupancy of a unit by a displaced individual will not cause application of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project

owner is not required during the temporary housing period to make attempts to rent to low-income individuals the low-income units that house displaced individuals.

III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the temporary housing period determined by the applicable Agency.

IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the applicable Agency. After the end of the temporary housing period, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the nontransient requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent a unit to a displaced individual after the end of the temporary housing period, the displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42–5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

(1) Major Disaster Area

In the case of an individual displaced by the Tornadoes, the displaced individual must have resided in a jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused by the Tornadoes.

(2) Agency Approval

The project owner must obtain approval from the applicable Agency for the relief

described in this notice. The applicable Agency will determine the appropriate period of temporary housing for each project, not to extend beyond May 31, 2014.

(3) Certifications and Recordkeeping

To comply with the requirements of § 1.42–5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, specifically the following: name, address of damaged residence, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in a jurisdiction designated for Individual Assistance by FEMA as a result of the Tornadoes, the individual requires temporary housing. The owner must notify the applicable Agency that vacant units are available for rent to displaced individuals.

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the applicable Agency. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Agency.

(4) Rent Restrictions

Rents for the low-income units that house displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

(5) Protection of Existing Tenants

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

EFFECTIVE DATES

This notice is effective May 20, 2013.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2244.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in the section titled "OTHER REQUIREMENTS" under "(3) Certifications and Recordkeeping." This information is required to enable the Service to verify whether individuals are displaced as a result of the Tornadoes and thus warrant temporary housing in vacant low-income housing units. The collection of information is required to obtain a benefit. The likely respondents are individuals and businesses.

The estimated total annual recordkeeping burden is 300 hours.

The estimated annual burden per recordkeeper is approximately 15 minutes. The estimated number of recordkeepers is 1200.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is David Selig of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Selig at (202) 622–3040 (not a toll-free call).

Part IV. Items of General Interest

Foundation Status of Certain Organizations

Announcement 2013–18

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does

not indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Shurush Los Angeles, CA

If an organization listed above submits information that warrants the renewal of

its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

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Internal Revenue Service

Washington, DC 20224

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at www.irs.gov/irb/.

CUMULATIVE BULLETINS

The contents of the weekly Bulletins were consolidated semiannually into permanent, indexed, Cumulative Bulletins through the 2008-2 edition.

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WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, SE:W:CAR:MP:P:SPA, Washington, DC 20224.
