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Refer Reply To:
CC:PSI:6 GENIN-134614-03
Date:
November 30, 2005

Re: Request to retroactively utilize certain tax incentives contained in the Community Renewal Tax Relief Act of 2000 (CRTRA of 2000) for the five census tracts added by the Round III Empowerment Zone's Amendment #2 to the Memorandum of Agreement, dated March 24, 2003 (MOA Amendment #2), and subsequently approved by U.S. Department of Housing and Urban Development (HUD)

Dear Ms. Spring:

This letter is in response to Lorraine Drolet's e-mail to the Internal Revenue Service dated May 30, 2003, inquiring whether January 1, 2002, the designation date of the Empowerment Zone, or March 24, 2003, the date of MOA Amendment #2, is the effective date for taxpayers in the five census tracts added by MOA Amendment #2 to use the empowerment zone tax incentives contained in the CRTRA of 2000. These tax incentives are the enhanced tax-exempt financing under § 1394 of the Internal Revenue Code, the empowerment zone employment credit under § 1396, the increased section 179 expensing under § 1397A, and the nonrecognition of gain on rollover of empowerment zone investments under § 1397B. The tax incentives for the Round III empowerment zones generally are available during the period beginning on January 1, 2002, and ending on December 31, 2009. HUD may approve a Round II or Round III Empowerment Zone's request for a boundary modification, subject to specified eligibility requirements for empowerment zone designation. See 24 C.F.R. 598.425.

The CRTRA of 2000 authorized the designation of nine additional empowerment zones (Round III empowerment zones). See § 1391(h). The CRTRA of 2000 provided that seven of the Round III empowerment zones will be located in urban areas, and two will be

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located in rural areas. The CRTRA of 2000 required that the Round III empowerment zones be designated before January 1, 2002. See § 1391(h)(2). The Secretary of HUD (in the case of any nominated area which is located in an urban area) and the Secretary of Agriculture (in the case of any nominated area which is located in a rural area) determine the population and poverty rate of a nominated area by using the most recent decennial census data available. See § 1393(a)(1), (9).

The _____ empowerment zone was designated as of January 1, 2002. At that time, the most recent decennial census data available was the 1990 census data and the boundary of the _____ empowerment zone was based on that census data. On March 24, 2003, HUD approved MOA Amendment #2, which allows _____ to expand its designated Zone boundary to include five more census tracts. MOA Amendment #2 is retroactive to January 1, 2002, the date of designation.

HUD approved this expansion of the boundary of _____ empowerment zone based on the 2000 census data. We understand that, in HUD's view, once the 2000 census data became available, designees (such as _____) had a statutory right under § 1393(a)(9) to use that data even though the designations had already been made. We also understand that HUD's General Counsel has advised that it seems persuasive as a matter of equity that the designee be given the benefit of the newly available census data.

We have reservations about whether HUD has the statutory authority to expand the empowerment zone boundaries using the 2000 census data because, as of the designation date, the most recent decennial census data available to HUD was the 1990 census data. See § 1393(a)(9). However, the 2000 census data was collected by the designation date for the Round III empowerment zones and, arguably, such data may be used once it became available. Because the 2000 census data was not collected by the designation date of the Round I or Round II empowerment zones, we strongly believe that the boundaries of these zones may not be expanded based on the 2000 census data.

If HUD has the statutory authority to expand the boundary of a Round III empowerment zone retroactive to the designation date of January 1, 2002, by using the 2000 census data, then: (1) the effective date for the empowerment zone employment credit under § 1396, the increased section 179 expensing under § 1397A, and the nonrecognition of gain on rollover of empowerment zone investments under § 1397B, would be January 1, 2002, for taxpayers in the added census tracts; and (2) the effective date for tax-exempt enterprise zone facility bonds under § 1394 would be March 24, 2003, the date of MOA Amendment #2, for facilities in the added census tracts. The effective date under § 1394 for facilities in the added census tracts could be no earlier than March 24, 2003, because the tax status of bonds is initially tested as of the issue date of the bonds and the requisite expectations of the issuer could not have been established before the date of MOA Amendment #2.

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This letter has called your attention to certain general principles of tax law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Revenue Procedure 2005-1, 2005-1 I.R.B. 1, 7. If you should have any additional questions or comments, please contact our office at .

Sincerely yours,

/s/ Kathleen Reed

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