

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April, 1997. See Rev. Rul. 97-17, page 5.

26 CFR 1.42-16T: Eligible basis reduced by federal grants (temporary).

T.D. 8713

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Section 42(d)(5) Federal Grants.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations with respect to the low-income housing tax credit relating to the application of section 42(d)(5) to certain rental assistance programs under section 42(g)(2)(B)(i). The regulations clarify that certain types of federal rental assistance payments do not result in a reduction in the eligible basis of a low-income housing building. The text of these regulations also serves as the text of REG-254394-96, page 14.

EFFECTIVE DATE: These regulations are effective January 27, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wilson (202) 622-3040 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Under section 42(d)(1), the eligible basis used to compute the low-income housing tax credit of a new low-income building is the adjusted basis of the building as of the close of the first taxable year of the credit period. Section 42(d)(5) provides that if, during a taxable year in the compliance period (as defined in section 42(i)(1)), a federal grant is made with respect to a low-income building or the operation thereof, the eligible basis of the building for the taxable year and all succeeding taxable years is reduced to the extent of the federal grant. Questions have arisen whether rental assistance payments under section 8 of the United States Housing Act of 1937 (Act) (42 U.S.C. § 1437f) and certain rental assistance

payments under section 9 of the Act (42 U.S.C. 1437g) are federal grants requiring a reduction in eligible basis.

The legislative history of section 42 indicates that section 42(d)(5) was enacted to prevent a taxpayer from “double-dipping” in federal benefits. S. Rep. No. 313, 99th Cong., 2d Sess. II-767 (1986), 1986-3 (Vol 3) C.B. 767. This would occur, for example, if the owner of a building received both the low-income housing credit and a federal-interest subsidy or federal grant with respect to the building. The legislative history further indicates, however, that Congress did not intend to treat federal rental assistance payments as grants for this purpose. Thus, the legislative history indicates that no basis reduction is required for rental assistance payments provided by the Department of Housing and Urban Development (HUD) under section 8 of the Act. (In contrast to this treatment of section 8 rental assistance payments, section 42(c)(2) generally denies the low-income housing tax credit to buildings that receive “moderate rehabilitation assistance” under section 8(e)(2) of the Act).

HUD recently was granted the authority to assist mixed-finance projects under section 9 of the Act. Under this new initiative, public housing authorities receiving HUD assistance are permitted to disburse that assistance to private owners as reimbursement for the operating expenses of units the owner has agreed to maintain for public-housing tenants. This section 9 assistance for operating expenses functions in a manner similar to rental assistance payments under section 8 of the Act. The section 8 rental assistance payments are designed to compensate the unit owner for all or part of the difference between the rent a low-income tenant is able to pay and a fair market rent standard as set by HUD. Similarly, the section 9 payments are designed to cover an allocable share of operating costs of the units rented to low-income tenants, thus, in effect, supplementing the rents that these tenants are required to pay.

Explanation of Provisions

These temporary regulations provide that certain federal rental assistance payments made to the owner of a building on behalf of low-income tenants are not federal grants with respect to a building

or its operation that require a reduction in the building’s eligible basis under section 42(d)(5). These payments include rental assistance payments made under section 8 of the Act, certain payments made under section 9 of the Act, and payments made under such other programs or methods of rental assistance as may be designated in the Federal Register or the Internal Revenue Bulletin.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Christopher J. Wilson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42-16T also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42-16T is added to read as follows:

§ 1.42-16T Eligible basis reduced by federal grants (temporary).

(a) *In general.* If, during any taxable year of the compliance period (described in section 42(i)(1)), a grant is made with respect to any building or the operation thereof and any portion of the grant is funded with federal funds (whether or not includible in gross income), the eligible basis of the building for the taxable year and all succeeding taxable years is reduced by the portion of the grant that is so funded.

(b) *Grants do not include certain rental assistance payments.* A federal rental assistance payment made to a building owner on behalf or in respect of a tenant is not a grant made with respect to a building or its operation if the payment is made pursuant to—

(1) Section 8 of the United States Housing Act of 1937;

(2) A qualifying program of rental assistance administered under section 9 of the United States Housing Act of 1937; or

(3) A program or method of rental assistance as the Secretary may designate through the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(c) *Qualifying rental assistance program.* For purposes of paragraph (b)(2) of this section, payments are made pursuant to a qualifying rental assistance program administered under section 9 of the United State Housing Act of 1937 to the extent that the payments—

(1) Are made to a building owner pursuant to a contract with a public housing authority with respect to units the owner has agreed to maintain as public housing units (PH-units) in the building;

(2) Are made with respect to units occupied by public housing tenants, provided that, for this purpose, units may be considered occupied during periods of short term vacancy (not to exceed 60 days); and

(3) Do not exceed the difference between the rents received from a building's PH-unit tenants and a pro rata portion of the building's actual operating costs that are reasonably allocable to the PH-units (based on square footage, number of bedrooms, or similar objective criteria), and provided that, for this purpose, operating costs do not include any development costs of a building

(including developer's fees) or the principal or interest of any debt incurred with respect to any part of the building.

(d) *Effective date.* This section is effective January 27, 1997.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved January 8, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 24, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 27, 1997, 62 F.R. 3792)

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of April, 1997. See Rev. Rul. 97-17, this page.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted federal long-term rate is set forth for the month of April, 1997. See Rev. Rul. 97-17, this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April, 1997. See Rev. Rul. 97-17, this page.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April, 1997. See Rev. Rul. 97-17, this page.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April, 1997. See Rev. Rul. 97-17, this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the

month of April, 1997. See Rev. Rul. 97-17, this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April, 1997. See Rev. Rul. 97-17, this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April, 1997. See Rev. Rul. 97-17, this page.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rate for April, 1997.

Rev. Rul. 97-17

This revenue ruling provides various prescribed rates for federal income tax purposes for April 1997 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.