Dated: May 20, 1996.
Mary Elizabeth Hoinkes,
General Counsel.
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–29–95]

RIN 1545–AT60

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the low-income housing credit. The proposed regulations provide rules for determining the treatment of low-income housing units in a building that are occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). The proposed regulations affect owners of those buildings. This document also provides notice of public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for September 17, 1996, must be received by August 28, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS–29–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS–29–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David Selig, (202) 622–3040; concerning submissions and the hearing, Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 42. These amendments are proposed to provide guidance under section 42(g)(2)(D), as amended by section 7108(e)(1) of the Omnibus Budget and Reconciliation Act of 1989, and section 11701(a)(3)(A) and (a)(4) of the Omnibus Budget and Reconciliation Act of 1990. Section 42(g)(2)(D) provides rules for determining the treatment of low-income housing units that are occupied by individuals whose incomes rise above the income limitation applicable under section 42(g)(1).

The general rule in section 42(g)(2)(D)(i) provides that if the income of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). The unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occupant's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent-skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new resident, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit).

Explanation of Provisions

All Available Units Must Be Rented to Qualified Residents

The heading of section 42(g)(2)(D)(ii) indicates that the next available unit must be rented to a low-income tenant to maintain the low-income status of an over-income unit. Although the heading of section 42(g)(2)(D)(ii) refers to the next available unit, the body of section 42(g)(2)(D)(ii) clarifies that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. Therefore, all available comparable units in the building, not only the next available unit, must be rented to qualified residents to maintain the low-income status of the over-income unit.

A Current Resident May Move Within the Same Low-Income Building

The proposed regulations define a qualified resident under the available unit rule as any person whose income does not exceed the applicable income limitation or any current resident, regardless of the income level of the current resident. Thus, a current resident may move to a different unit in the same low-income building without causing a violation of the available unit rule even if the current resident's income exceeds the applicable income limitation. When a current resident moves to a different unit within the same low-income building, the new unit adopts the status of the vacated unit.

Rule Applies to Each Building Separately

The rules of section 42 generally apply on a building-by-building basis. For example, the amount of credit allowable under section 42(a) is determined for each building in a qualified low-income housing project. The recapture of credit under section 42(j) is determined by examining the qualified basis of each building. In addition, section 42(g)(2)(D)(ii) uses the phrase ''any residential rental unit in the building'' to identify residential rental units that must be rented to qualified residents to preserve the low-income status of an over-income unit. The proposed regulations provide, therefore, that in a project containing more than one low-income building, the available unit rule applies separately to each building.

Effect of Violation of Available Unit Rule

The proposed regulations further provide that all over-income units in the building lose their status as low-income units if an owner violates the available unit rule. A violation of the rule occurs when a building has one or more over-income units and the owner of the building rents an available comparable unit in the building to a nonqualified resident.

Over-Income Unit Counts Toward Minimum Set-Aside Requirement

The proposed regulations also clarify whether an over-income unit counts towards satisfying the applicable minimum set-aside requirement of section 42(g)(1). The available unit rule provides that an over-income unit maintains its status as a low-income unit as long as the owner does not rent an available comparable unit to a nonqualified resident. Section 42(i)(3), which defines a low-income unit, and section 42(g)(2)(D), which contains rules

for increases in the income of existing low-income tenants, work together to treat an over-income unit as a low-income unit when determining whether a project satisfies the applicable minimum set-aside requirement. This treatment helps diminish any incentive a project owner may have to evict from a rent-restricted unit those tenants who originally qualified as low-income tenants. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–97 (1986), 1986–3 (Vol. 4) C.B. 97. Therefore, the proposed regulations provide that an over-income unit may continue to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

Relationship to Tax-Exempt Bond Provisions

Financing arrangements using obligations that purport to be exempt facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). The requirements under section 142(d) may differ from those under section 42. For example, section 142(d)(1) is applied on a project rather than on a building-by-building basis. The rules set forth in these proposed regulations are not intended as an interpretation of the applicable rules under section 142.

The rules contained in the proposed regulations are proposed to be effective on the date final regulations are published in the Federal Register.

Special Analyses

It has been determined that this notice of proposed rulemaking 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 17, 1996, at 10 a.m. in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and outlines of topics to be discussed and the time devoted to each topic (signed original and eight (8) copies by August 28, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is David Selig, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.42–15 is also issued under 26 U.S.C. 42(n). * * *

Par. 2. Section 1.42–15 is added to read as follows:

§ 1.42–15 Available unit rule.

(a) *Definitions.* The following definitions apply to this section:

Applicable income limitation means the limitation applicable under section 42(g)(1) or, for deep rent-skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income.

Available unit rule means the rule in section 42(g)(2)(D)(ii).

Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent-skewed projects described in section 142(d)(4)(B), any low-income unit.

Low-income resident means a person whose income does not exceed the applicable income limitation.

Low-income unit is defined by section 42(i)(3)(A).

New resident means a person who currently is not living in the low-income building.

Nonqualified resident means a new resident whose income exceeds the applicable income limitation.

Over-income unit means a low-income unit in which the income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent-skewed projects described in section 142(d)(4)(B).

Qualified resident means a low-income resident or a current resident.

(b) *General section 42(g)(2)(D)(i) rule.* Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low-income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent-restricted——

(1) The unit continues to be treated as a low-income unit; and

(2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

(c) *Exception.* A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. Thus, to continue treating the over-income unit as a low-income unit, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building.

(d) *Effect of current resident moving within building.* When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit.

(e) *Buildings accounted for separately.* In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f) *Result of violation of available unit rule.* If any comparable unit that subsequently becomes available is rented to a nonqualified resident, all over-income units within the same building lose their status as low-income units.

(g) *Examples.* The following examples illustrate this section.

Example 1. This example illustrates a violation of the available unit rule in a low-income building containing three over-income units. On January 1, 1997, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. To avoid recapture of credit, the Project owner must maintain five of the units as low-income units. The project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) (low-income residents). Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. On November 21, 1997, the annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become over-income units. On November 30, 1997, Units 8 and 9 became vacant. On December 1, 1997, the project owner rented Units 8 and 9 to qualified residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1997, the Project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the Project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident, eight of the units would be low-income units. Units 1, 2, and 3, the over-income units, could then be rented to market-rate tenants because the building would still contain five low-income units.

Example 2. This example illustrates the provisions of paragraph (d) of this section. A low-income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite the increase in J's income, J is a qualified resident under the available unit rule because J is a current resident of the building. The unit occupied by J becomes an over-income unit under the available unit rule. The over-income units in the building continue to be treated as low-income units.

(h) *Effective date.* This section is effective on the date final regulations are published in the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–13297 Filed 5–29–96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID1–1–5528b; FRL–5449–3]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho for the purpose of bringing about attainment of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in the Northern Ada County PM_{10} nonattainment area. In the Final Rules Section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by July 1, 1996.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Idaho, Division of Environmental Quality, 1410 North Hilton, Boise, Idaho 83720.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Region 10, Idaho Operations Office, 1435 North Orchard, Boise, Idaho 83706, (206) 334–9555.

SUPPLEMENTARY INFORMATION:

See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: March 20, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–12889 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 60, 63, 260, 261, 264, 265, 266, 270 and 271

[FRL–5511–7]

Hazardous Waste Combustors; Revised Standards; Proposed Rule—Notice of Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: notice of extension of comment period.

SUMMARY: Since publication of the proposed rule for hazardous waste combustors (61 FR 17358 (April 19, 1996)), EPA has received several requests to extend the comment period given the complexity of the proposed rulemaking. Accordingly, the Agency is extending the comment period 60 days to August 19, 1996.

DATES: Comment period is extended from June 18, 1996 to August 19, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–96–RCSP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. For other information regarding submitting comments electronically, viewing the comments