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Rev. Rul. 2020-4: Low-income housing credit

The IRS today released an advance version of Rev. Rul. 2020-4 clarifying how to properly compute the income limits applicable to the low-income housing credit under section 42.

Rev. Rul. 2020-4 [PDF 35 KB] addresses the additional income limits available in the average income test.

Background

Prior to the enactment of the Consolidated Appropriations Act of 2018 (Pub. L. No. 115-141), section 42(g) set forth two minimum set-aside tests—known as the "20-50 test" and the"40-60 test."

- Under the 20-50 test, at least 20% of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 50% or less of the area median gross income (AMGI).
- Under the 40-60 test, at least 40% of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 60% or less of AMGI.

The Consolidated Appropriations Act of 2018 added a third minimum set-aside test—the average income test—under section 42(g)(1)(C).

- Section 42(g)(1)(C)(i) provides that a project meets the minimum requirements of the average income test if 40% or more (25% or more in the case of a project located in a high-cost housing area) of the residential units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit.

- Section 42(g)(1)(C)(ii) provides special rules relating to the income limitation. Specifically, the taxpayer must designate the imputed income limitation for each unit. The designated imputed income limitation of any unit must be 20%, 30%, 40%, 50%, 60%, 70%, or 80% of AMGI. The average of the designated imputed income limitations must not exceed 60% of AMGI.

Rev. Rul. 89-24 (as modified and superseded in part by Rev. Rul. 94-57 for the limited purpose of permitting taxpayers to rely on a list of income limits released by the Department of Housing and Urban Development (HUD)) provides the manner for properly compute the income limits applicable under section 42 with respect to the 20-50 and 40-60 tests. The income limits are computed based on the income limits of the very low-income families under Section 8, as adjusted by family size. This is consistent with the legislative history's reference to HUD's very low-income limits.

Rev. Rul. 2020-4

Consistent with the ruling under Rev. Rul. 89-24, the IRS in Rev. Rul. 2020-4 requires that HUD determinations for very low-income families be used in calculating the low-income housing credit income limits of 50% and 60% of AMGI. As explained by the IRS, in adding the average income test, Congress did not indicate that a different HUD income level calculation category must be used; therefore, Rev. Rul. 2020-4 continues to use HUD's determinations for very low-income families.

Rev. Rul. 2020-4 concludes that HUD's very low-income calculation, as adjusted by family size and consistent with the methods provided in Rev. Rul. 89-24, is to be used as the basis for determining the full range of income limits under the average-income set-aside. The income limits for the very low-income families for purposes of Section 8 are computed and listed according to family size by HUD.