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Income Issues for Rideshare Drivers

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The popularity of rideshare services like Uber and Lyft has been on the rise as an alternative form of private transportation. Rideshare drivers earn extra income with the benefit of working flexible hours. The recent surge in the number of low-income housing tax credit (LIHTC) property tenants working as drivers in the rideshare industry creates new challenges for property managers to verify, calculate and document income information. Potential questions and issues on compliance with IRS regulations on low-income housing will arise that need to be addressed.

Question: Should rideshare income be treated as employment or self-employment income?

Answer: A LIHTC property tenant who is working as a driver in the rideshare industry is generally considered an independent contractor and should be treated as self-employed. When a tenant is self-employed, the tenant is responsible for recordkeeping of the business operation. According to the Internal Revenue Service (IRS) Form 8823 Guide (8823 Guide), record keeping of the business activity is essential because "the net income from the operation of a business" is counted as tenant income for qualification purposes.

Because net income is used for qualification purposes, the tenant is required to keep track of all revenue and expenses. Acceptable expenses to be included when arriving at net income include amenities for passenger (water, gum), tolls, parking fees, maintenance, gas and vehicle loan interest. Only the expense portion that is related to the business use of the vehicle can be deducted. The tenant should have receipts, logs, and other documentations to support the vehicle expenses especially when the vehicle is also being use for personal transportation. The tenant is also allowed to deduct depreciation on their vehicle. It is important to note that according to the U.S. Department of Housing and Urban Development (HUD) Handbook 4350.3 Rev-1 CHG-3 (HUD Handbook), the depreciation must be calculated on a straight line basis. However, if the tenant is claiming depreciation on the tax return they likely use an accelerated depreciation method and not straight line deprecation on the tax return, so the depreciation will be less for purposes of the HUD Handbook.

Question: How should property managers verify the income of a rideshare driver?

Answer: According to the HUD Handbook, when a tenant is self-employed, the property manager

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should obtain a financial statement of the business and the tenant's prior year tax return and Schedule C as support for the self-employment income. In situations where the tenant is unable to provide a financial statement of the business and/or the prior year tax return, a notarized statement or affidavit showing the net income for a business may be accepted. In addition, property managers may request a summary of payments to the tenant from the rideshare company. It is always recommended to discuss with the local state agencies for any additional requirements on income documentation.

Question: How should rideshare driver income be calculated?

Answer: The 8823 Guide, outlines two methods for calculating income from a business, using the prior year tax return or annualize the current year income.

The 8823 Guide appears to allow the owner to use the income reported on the prior year tax return as the income for the up-coming year. However, we would caution against relying solely on the prior year's tax return. On many occasions, the self-employment included on the tax return is only for a partial year of operations, or the tenant may be working more or less hours in the current year. Ignoring any of these factors and merely relying on the prior year tax return may result in a non-qualified tenant occupying a LIHTC unit. Therefore, the property manager should ensure that the self-employment income listed on the tax return is for a full 12-month period and that there are no anticipated changes in income.

Alternatively, the 8823 Guide allows the property manager to "use the current year business activity based on the number of full months in business" to calculate the tenant's income. This method should be used when the tenant cannot produce a tax return, the tenant started the business in the certification year, or the current year income from the business will be inconsistent with the prior year's income from the business. Property managers should communicate to the tenants the importance of complete records and how the records are used to calculate income. In situations where reliable records are available, according to the 8823 Guide, property managers should obtain the profit and loss statements of the number of full months in business and then annualized the income by the average of the number of full months in business. In situations where records are not available and the tenant just started working as a driver, property managers should use care when evaluating the tenant's income. It is recommended that the property manager obtain a notarized statement or affidavit showing the anticipated net income. The property manager should communicate with the tenant that it is the tenant's obligation to notify the property of any changes to the net income within the certification year.

Property managers may run into situations where all the information is not readily available to calculate the tenant's income. When the circumstances are difficult or challenging, according to the 8823 Guide, "owners are expected to make reasonable judgment regarding the most reliable method of estimating the income of household will receive during the year." When there is ambiguity with calculating the tenant's income, the property manager should ask additional questions and document the assumptions in the file. For example, the property manager should ask how many hours a week the tenant is working, average pay per week, etc. The tenant's responses to these questions, property manager's assumptions, and any supporting documentation should be clearly documented in the file.

When the property manager makes assumptions or there is ambiguity surrounding a tenant's income, care should be given to make sure the property manager documents assumptions and the reasoning for how they solved the ambiguity. It is important to include

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the details of the assumptions and the conclusion of the tenant's income. Some of the best practices for documentation include: clearly identify the issues, have concise and legible writing, have assumptions supported, and have a conclusion. When there are gray areas, it is recommended to discuss with the local state agencies for any additional requirements on income documentation.

Conclusion

The tenant's net income from the rideshare business should be included in the tenant's income as self-employment income from a business; verification of that income will likely include self-affidavits or prior year tax returns. Documenting tenant income for rideshare companies can be difficult and requires property managers to use their best judgment. ❖

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