

Empowerment Zone Designation Extension

Notice 2016-28

I. PURPOSE

This notice provides the manner in which a State or local government may amend an empowerment zone nomination to provide for a new termination date of December 31, 2016. This notice is issued pursuant to § 1391 of the Internal Revenue Code, as amended by § 171(a) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. 114-113, ____ Stat. ____ (December 18, 2015).

II. BACKGROUND

Section 1391 was enacted in 1993 to allow a State or local government (“entity”) to nominate an area or areas in its jurisdiction for designation as an empowerment zone. The Secretary of Housing and Urban Development, in the case of any nominated area that is located in an urban area, and the Secretary of Agriculture, in the case of any nominated area that is located in a rural area, have since designated which of the nominated areas are empowerment zones. Unless an earlier termination date was provided by the nominating entity, a designation was originally effective for the period beginning on the date of designation and ending on the close of the 10th taxable year beginning on or after the date of designation. Section 112 of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763A-587 (December 21, 2000) (CRTRA), amended § 1391(d)(1) to extend the designation period for all empowerment zones through December 31, 2009, regardless of the original termination date.

Subsequent amendments to § 1391(d)(1)(A) further extended the designation period through December 31, 2014. See § 753(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (December 17, 2010) (TRUIRJCA), § 327(a) of the American Taxpayer Relief Act of 2012, Pub. L. 112-240, 126 Stat. 2313 (January 2, 2013) (ATRA), and § 139(a) of the Tax Increase Prevention Act of 2014, Pub. L. 113-295, 128 Stat. 4010 (December 19, 2014) (TIPA).

In 2013, the Treasury Department and the Internal Revenue Service (IRS) issued Notice 2013-38, 2013-25 I.R.B. 1251, pursuant to § 753(c) of TRUIRJCA and § 327(c) of ATRA. Notice 2013-38 provided that any nomination for an empowerment zone that was in effect on December 31, 2009, is deemed to be amended to provide for a new termination date of December 31, 2013, unless the nominating entity declined the extension in a written notification to the IRS. In 2015, the Treasury Department and the IRS issued Notice 2015-26, 2015-13 I.R.B. 814, pursuant to § 139(b) of TIPA. Notice 2015-26 provided that any nomination for an empowerment zone that was in effect on December 31, 2013, is deemed to be amended to provide for a new termination date of December 31, 2014, unless the nominating entity declined the extension in a written notification to the IRS. No written requests were received under either Notice 2013-28 or Notice 2015-26. Accordingly, the designations of all empowerment zones currently have a termination date of December 31, 2014.

In 2015, Congress further amended § 1391(d)(1) to extend the period for which an empowerment zone designation is in effect by an additional two years. As amended by § 171(a)(1) of the PATH Act, § 1391(d)(1) provides that any designation of an

empowerment zone ends on the earliest of (A) December 31, 2016, (B) the termination date designated by the State and local governments as provided for in their nomination, or (C) the date the appropriate Secretary revokes the designation. Section 171(a)(2) of the PATH Act provides that where a nomination of an empowerment zone included a termination date of December 31, 2014, § 1391(d)(1)(B) shall not apply with respect to such designation if, after the date of the enactment of the PATH Act, the entity that made such nomination amends the nomination, in such manner as the Secretary of the Treasury may provide, to provide for a new termination date. The amendments made by § 171(a) of the PATH Act apply to taxable years beginning after December 31, 2014.

Thus, pursuant to the PATH Act, an entity must amend its nomination to provide for a new termination date of December 31, 2016, in order to retain an empowerment zone designation that is effective through that date. Section III of this notice provides the procedures that an entity must follow to amend its termination date.

III. AMENDMENT OF A NOMINATION TO EXTEND EMPOWERMENT ZONE DESIGNATION THROUGH DECEMBER 31, 2016

Any nomination for an empowerment zone with a current termination date (as amended by CRTRA, Notice 2013-38, and Notice 2015-26) of December 31, 2014, is deemed to be amended to provide for a new termination date of December 31, 2016, unless the nominating entity sends written notification to the IRS by May, 24, 2016. The written notification must affirmatively decline extension of the empowerment zone nomination through December 31, 2016. If the United States mail is used, the notification should be sent to the following address:

Internal Revenue Service
Attn: Charles Magee, CC:ITA:7, Room 4136

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

If a private delivery service is used, the notification should be sent to the following address:

Internal Revenue Service
Attn: Charles Magee, CC:ITA:7, Room 4136
1111 Constitution Ave., NW
Washington, DC 20224

If the entity that nominated an empowerment zone does not send written notification, the nomination of that empowerment zone will be deemed extended from December 31, 2014, through December 31, 2016. Accordingly, § 1391(d)(1)(B) does not apply and, pursuant to § 1391(d)(1)(A)(i), the designation of that empowerment zone ends on December 31, 2016.

IV. DRAFTING INFORMATION

The principal author of this notice is Charles Magee of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Magee at (202) 317-7005 (not a toll-free call).