

## Treasury Decision 8713, IRC Sec(s). 42

**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 the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

**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. section 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.