

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part 1, §§ 142 and 42)

Rev. Proc. 2024-38

SECTION 1. PURPOSE

This revenue procedure provides guidance regarding the income requirements for qualified residential rental projects financed with exempt facility bonds under § 142(d) of the Internal Revenue Code of 1986, as amended (Code)¹ and for qualified low-income housing projects under § 42, certain income requirement provisions of which cross-reference to § 142(d). Specifically, this revenue procedure provides guidance on the effect on the income requirements under §§ 142(d) and 42 of the alternative income eligibility requirements for the Department of Housing and Urban Development–

¹ Unless otherwise specified, all “Section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

Veterans Affairs Supportive Housing (HUD–VASH) program, set forth in the notice published by the Department of Housing and Urban Development (HUD) in the Federal Register on August 13, 2024, 89 F.R. 65769 (HUD–VASH Notice).

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b)(1) provides that § 103(a) does not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides that the term "qualified bond" includes any private activity bond that is an exempt facility bond.

.02 Section 142(a)(7) provides that the term "exempt facility bond" includes any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects. Section 142(d)(1) generally provides that the term "qualified residential rental project" means any project for residential rental property if, at all times during the qualified project period, the project meets one of the two tests specified in § 142(d)(1)(A) and (B) as elected by the issuer at the time of the issuance of the issue with respect to the project. Under § 142(d)(1)(A), a residential rental project meets the test if 20 percent or more of the residential units in the project are occupied by individuals whose income is 50 percent or less of area median gross income. Under § 142(d)(1)(B), the project meets the test if 40 percent or more of the residential units in the project are occupied by individuals whose income is 60 percent or less of area median gross income.

.03 Section 142(d)(2)(B)(i) provides, in general, that income of individuals and area median gross income shall be determined by the Secretary of the Treasury or her

delegate in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937, hereinafter referred to as “Section 8 of the USHA of 1937” or “Section 8.”²

.04 Section 142(d)(3) provides rules for income determinations. Section 142(d)(3)(A) generally provides that, for purposes of § 142(d), the determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident.

.05 Section 1.103-8(b)(8)(v) of the Income Tax Regulations³ provides in relevant part that individuals and families of low or moderate income shall be determined in a manner consistent with determinations of lower income families under Section 8 of the USHA of 1937, as amended. Additionally, § 1.103-8(b)(8)(v) provides that the method of determining low or moderate income in effect on the date of issue of the exempt facility bonds financing the qualified residential rental project will be determinative for such issue, even if such method is subsequently changed.

.06 Section 42(g)(4) provides that the rules in § 142(d)(2)(B)(i) regarding income determinations shall apply for purposes of determining whether any project is a qualified low-income housing project (as defined in § 42(g)) and whether any unit is a low-income unit (as defined in § 42(i)(3)); except that, in applying those provisions for those

² The definition of income for the programs authorized under the USHA of 1937, including the Section 8 programs, is found in section 3(b) of that Act.

³ Regulations have not been promulgated under § 142(d). The regulations promulgated under § 103(b)(4) of the Internal Revenue Code of 1954 (1954 Code), the predecessor to § 142(d) of the Code, continue to apply to bonds issued to finance residential rental projects, except as otherwise modified by the Tax Reform Act of 1986 (1986 Act), Public Law 99-514, 100 Stat. 2085 (1986), 1986-3 (Vol. 1) C.B. 519-575, and subsequent law. In the 1986 Act, §§ 103 and 103A of the 1954 Code regarding tax-exempt bonds were reorganized into § 103 and §§ 141 through 150 of the Code. Congress intended that to the extent not amended by the 1986 Act, all principles of pre-1986 Act law would continue to apply to the reorganized provisions. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-686 (1986), 1986-3 (Vol. 4) C.B. 686.

purposes, the term “gross rent” shall have the meaning given such term by § 42(g)(2)(B). The determination whether a unit is a low-income unit includes determinations that the individuals occupying the unit meet the income limitation applicable to the unit under § 42(g)(1), that the unit is rent-restricted as defined in § 42(g)(2), and that the unit is suitable for occupancy, see § 42(i)(3)(B).

.07 Section 1.42-5(b)(1)(vi) provides that owners of a low-income housing project must be required to keep records to show for each year in the compliance period the annual income certification of each low-income tenant group per unit.⁴ In § 42(g)(8)(B), there is an exception to this recertification requirement for a 100 percent low-income building.

.08 Section 1.42-5(b)(1)(vii) provides that tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the USHA of 1937, not in accordance with the determination of gross income for Federal income tax purposes. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of § 1.42-5(b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant’s income does not exceed the applicable income limit under § 42(g).

.09 Notice 88-80, 1988-2 C.B. 396, informed taxpayers that regulations to be issued under § 42(g)(1) (relating to the determination of a qualified low-income housing project) would provide that the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under Section 8 of the USHA of

⁴ Under § 42(i)(1), the compliance period with respect to any building is the period of 15 taxable years beginning with the first taxable year of the credit period with respect to the building.

1937. Notice 88-80 referred to 24 CFR 813.106 for the definition of annual income under Section 8. (The regulatory provisions cited have since been recodified, and 24 CFR 5.609 now defines annual income for purposes of Section 8.) The notice also clarified that the income of individuals and area median gross income (adjusted for family size) for purposes of § 42(g)(1) does not refer to items of income used in determining gross income for purposes of computing Federal income tax liability.

.10 On August 13, 2024, HUD published the HUD–VASH Notice, which is titled “Section 8 Housing Choice Vouchers: Revised Implementation of the HUD–Veterans Affairs Supportive Housing Program.” This HUD notice sets forth the policies and procedures for the administration of eligibility for, and amount of, tenant-based and project-based Section 8 Housing Choice Voucher rental assistance under the HUD–VASH program. The HUD-VASH program combines HUD’s Housing Choice rental assistance with case management and clinical services provided by the Department of Veterans Affairs (VA) to assist veterans experiencing homelessness. That program is administered by local public housing agencies (PHAs) that have partnered with local VA medical facilities or other entities as designated by the Secretary of Veterans Affairs. Among other guidance, the HUD–VASH Notice provides new requirements for determining income for purposes of eligibility of HUD–VASH applicants that receive VA service-connected disability benefits.

.11 The HUD–VASH Notice seeks to ensure that homeless veterans are not excluded from participation in the HUD–VASH program because of their VA service-connected disability benefits. In particular, the HUD–VASH Notice seeks to ensure disabled veterans’ opportunity to reside in HUD–VASH project-based-voucher housing,

located either on the site of a VA facility or where HUD–VASH supportive services are provided on-site at the housing. To achieve these goals, HUD is exercising its waiver authority and is establishing new requirements for determining income for purposes of eligibility for HUD–VASH. Specifically, for HUD–VASH applicants receiving VA service-connected disability benefits, HUD is waiving section 3(b) of the USHA of 1937.⁵ That section applies for purposes of determinations of lower income family eligibility based on area median income under the USHA of 1937, including Section 8 programs. HUD is also waiving 24 CFR 5.609(a)(1), which provides that annual income includes all amounts not specifically excluded in 24 CFR 5.609(b). (These waivers, together, are hereinafter referred to as “the HUD–VASH income eligibility waiver.”) HUD-VASH Notice, 89 FR 65773. As an alternative requirement, the PHA must determine the HUD–VASH applicant’s annual income for purposes of income eligibility by excluding all VA service-connected disability benefits received by the applicant in addition to the income exclusions listed under 24 CFR 5.609(b). *Id.* This special income exclusion applies only to the definition of annual income for purposes of determining income eligibility. *Id.*

.12 Section 4.01 and Section 4.02 of this revenue procedure provide the same exclusion for purposes of § 142(d)(2) and (3) and § 42, respectively.⁶ This exclusion mirrors the HUD–VASH income eligibility waiver because § 142(d)(2)(B)(i) requires that the income of individuals and area median gross income be determined in a manner consistent with determinations of lower income families and area median gross income

⁵ See explanation in footnote 2 above.

⁶ Section 42(g)(4) makes § 142(d)(2) applicable for satisfying the requirements to be a qualified low-income housing project and to be a low-income unit. Thus, § 142(d)(2) applies under § 42 for determining tenant income.

under Section 8 of the USHA of 1937.

SECTION 3. SCOPE

This revenue procedure applies for purposes of determining income under §§ 142(d) and 42 of prospective and current tenants who, as of the date of the income determination, are approved to receive or are currently receiving assistance under the HUD–VASH program and to whom the HUD–VASH income eligibility waiver applies (In-scope Tenants).

SECTION 4. APPLICATION

.01 For purposes of initial and continuing income determinations under § 142(d)(2) and (3), respectively, all VA service-connected disability benefits are excluded from income, consistent with the HUD–VASH income eligibility waiver, for In-scope Tenants.

.02 For purposes of initial and continuing income determinations with respect to whether any project is a qualified low-income housing project (as defined in § 42(g)), and whether any unit is a low-income unit (as defined in § 42(i)(3)), all VA service-connected disability benefits are excluded from income, consistent with the HUD–VASH income eligibility waiver, for In-scope Tenants.

SECTION 5. EFFECTIVE DATE

.01 This revenue procedure applies to income determinations with respect to residential rental projects financed with exempt facility bonds under § 142(d) issued as part of an issue with an issue date on or after October 24, 2024. This revenue procedure may be applied to income determinations with respect to residential rental projects financed with exempt facility bonds under § 142(d) issued as part of an issue with an issue date before October 24, 2024, notwithstanding the provision of § 1.103-

8(b)(8)(v) that states that the method of determining low or moderate income in effect on the date of issue will be determinative for such issue, even if such method is subsequently changed.

.02 This revenue procedure applies to income determinations with respect to qualified low-income housing projects (as defined in § 42(g)), and low-income units (as defined in § 42(i)(3)) on or after October 24, 2024.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Jian H. Grant, Zoran Stojanovic, and Brian Choi of the Office of Associate Chief Counsel (Financial Institutions & Products), and James A. Holmes of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure relating to residential rental projects under § 142(d), contact Mr. Choi on (202) 317-3154; for further information regarding this revenue procedure relating to the low-income housing credit under § 42, please contact Mr. Holmes on (202) 317-4137 (not toll-free numbers).