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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-113068-22]

RIN 1545-BQ47

### Section 42, Low-Income Housing Credit Average Income Test Regulations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations concerning recordkeeping and reporting requirements for the average income test for purposes of the low-income housing credit. If a building is part of a residential rental project that satisfies this test, the building may be eligible to earn low-income housing credits. These proposed regulations affect owners of low-income housing projects and State or local housing credit agencies that monitor compliance with the requirements for low-income housing credits. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations concerning the recordkeeping and reporting requirements for the average income test. The text of the temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written (including electronic) comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](https://www.regulations.gov) (indicate IRS and REG-113068-22)

by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and on paper, to its public docket.

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, Dillon Taylor at (202) 317-4137; concerning submissions of comments, Regina L. Johnson at (202) 317-6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** add §1.42-19T to the temporary Income Tax Regulations (26 CFR part 1) that relate to the average income test under section 42 of the Internal Revenue Code. These new temporary regulations set forth certain recordkeeping and reporting requirements that relate to the rules in §1.42-19. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments. These proposed regulations would integrate the text of the temporary regulations into portions of §1.42-19 that are currently reserved.

**Special Analyses**

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic

impact on a substantial number of small entities. The basis for this certification can be found in the Special Analyses section of the temporary regulations.

Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and a Request for Public Hearing**

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and any paper comments submitted, will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the Federal Register. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

### **Drafting Information**

The principal author of these proposed regulations is Dillon Taylor, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.42-19 also issued under 26 U.S.C. 42(n);

\* \* \* \* \*

Par. 2. Section 1.42-19 is amended by adding paragraphs (c)(1) and (2), (c)(3)(iv), (c)(4), and (d)(2) and revising paragraph (f) to read as follows:

#### **§ 1.42-19 Average income test.**

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(c) \* \* \*

(1) [The text of proposed §1.42-19(c)(1) is the same as the text of §1.42-19T(c)(1) in the final and temporary rule published elsewhere in this issue of the **Federal Register**].

(2) [The text of proposed §1.42-19(c)(2) is the same as the text of §1.42-19T(c)(2) in the final and temporary rule published elsewhere in this issue of the **Federal Register**].

(3) \*\*\*

(iv) [The text of proposed §1.42-19(c)(3)(iv) is the same as the text of §1.42-19T(c)(3)(iv) in the final and temporary rule published elsewhere in this issue of the **Federal Register**].

(4) [The text of proposed §1.42-19(c)(4) is the same as the text of §1.42-19T(c)(4) in the final and temporary rule published elsewhere in this issue of the **Federal Register**].

(d) \*\*\*

(2) [The text of proposed §1.42-19(d)(2) is the same as the text of §1.42-19T(d)(2) in the final and temporary rule published elsewhere in this issue of the **Federal Register**].

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(f) [The text of proposed §1.42-19(f) is the same as the text of §1.42-19T(f) in the final and temporary rule published elsewhere in this issue of the **Federal Register**].

Douglas W. O'Donnell,  
Deputy Commissioner for Services and Enforcement.

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