

Part III - Administrative, Procedural, and Miscellaneous

Temporary Relief for Certain REITs and Taxable REIT Subsidiaries that Provide Accommodations to Persons Affected by Hurricanes Katrina and Rita

Notice 2005-89

The Internal Revenue Service will not treat a hotel, motel, or other establishment that otherwise satisfies the definition of a “lodging facility” under § 856(d)(9) of the Internal Revenue Code as other than a “lodging facility” if it is used to provide temporary housing to certain persons affected by Hurricane Katrina or Hurricane Rita, provided the recordkeeping requirements of this Notice are satisfied.

BACKGROUND

On August 28, 2005, and August 29, 2005, the President issued major disaster declarations for the states of Florida, Alabama, Louisiana, and Mississippi as a result of Hurricane Katrina. On September 24, 2005, the President declared major disasters for the states of Louisiana and Texas as a result of Hurricane Rita. These declarations were made pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206.

Subsequently, the Federal Emergency Management Agency (FEMA) designated certain counties and parishes as being eligible for individual assistance (or individual

and public assistance). For purposes of this Notice, the term “covered disaster area” means the counties and parishes designated by FEMA as being eligible for individual assistance (or individual and public assistance) as a result of Hurricane Katrina and/or Hurricane Rita. For a list of counties and parishes designated by FEMA as being eligible for individual assistance (or individual and public assistance) as a result of Hurricane Katrina, see Notice 2005-73, 2005-42 I.R.B. 723. For a list of counties and parishes designated by FEMA as being eligible for individual assistance (or individual and public assistance) as a result of Hurricane Rita, see IR-2005-110 (September 26, 2005).

Certain real estate investment trusts (REITs) that own lodging facilities have expressed concern that extended stays at those facilities by persons affected by these disasters may cause the REITs to fail to satisfy the income tests under §§ 856(c)(2) and (c)(3). Although rents from real property generally are treated as qualifying income for purposes of these tests, amounts received or accrued from a corporation in which the REIT owns stock are subject to special rules. Under one of these rules, if a REIT leases an interest in real property that is a qualified lodging facility to a taxable REIT subsidiary (TRS) of that REIT, then the lease payments may qualify as rents from real property if the property is operated on behalf of the TRS by a person who is an eligible independent contractor. Section 856(d)(9)(D)(ii) provides that a “lodging facility” is a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis. Section 856 and the regulations thereunder do not define the term “transient basis”.

TRANSIENT BASIS REQUIREMENT

For purposes of § 856(d)(9)(D)(ii), the Service will treat a dwelling unit within a lodging facility as being used on a transient basis during any period in which the unit is used to provide shelter to (a) an individual whose principal residence for purposes of § 1033(h)(4) on August 28, 2005, was located in a covered disaster area and who has been displaced because the residence has been destroyed or damaged as a result of Hurricane Katrina or Hurricane Rita (a displaced resident); (b) employees of business entities whose principal place of business is located in a covered disaster area who have been relocated to other areas where the business entities have job openings (a displaced employee); or (c) a worker assisting in relief activities in the covered disaster area, whether or not the worker is affiliated with a recognized government or philanthropic organization (a relief worker).

A TRS that is the lessee of a hotel, motel, or other establishment and that seeks to rely on this Notice with respect to the provision of shelter to a displaced resident, displaced employee, or relief worker for any period ending on or after November 29, 2005 must keep records indicating the dates on which shelter was provided and the name and address of the displaced resident, displaced employee, or relief worker. In addition, (a) with respect to a displaced employee, the TRS must keep records indicating the individual's employer, and (b) with respect to any relief worker, the TRS must keep records indicating the name of the individual's employer or sponsoring organization and the nature of the relief activities undertaken during the individual's stay.

This Notice will be effective for six (6) months from its effective date.

EFFECTIVE DATE

This Notice is effective August 28, 2005 (the date of the President's first major disaster declaration resulting from Hurricane Katrina).

PAPERWORK REDUCTION ACT

The collections of information in the Notice have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1977.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in the Notice are in the section of this Notice entitled "Transient Basis Requirement". The collections of information are required for compliance with § 856(d)(9)(D). The collections of information are required to obtain a benefit. The likely respondents are corporations.

The estimated total annual reporting burden is 500 hours.

The estimated annual burden per respondent varies from 25-75 hours, depending on the circumstances, with an average of 50 hours. The estimated number of respondents is 10.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this Notice is Jonathan D. Silver of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this Notice contact Mr. Silver at (202) 622-3930 (not a toll-free call).