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 I, Section 42; 1.42-13)

Rev. Proc. 2007-54

SECTION 1. PURPOSE

This revenue procedure establishes a procedure for temporary relief from certain requirements of § 42 of the Internal Revenue Code for owners of low-income housing buildings (Owners) and housing credit agencies of States or possessions of the United States (Agencies) in major disaster areas declared by the President. This revenue procedure supersedes the relief provisions of Rev. Proc. 95-28, 1995-1 C.B. 704.

SECTION 2. CHANGE

.01 Under §1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal

Revenue Bulletin. Rev. Proc. 95-28 provided a procedure for temporary relief from certain requirements under § 42 in major disaster areas. Sections 5 and 6 of Rev. Proc. 95-28 provided certain relief from the carryover allocation provisions under § 42(h)(1)(E) and § 1.42-6. The carryover allocation provisions were later amended by section 135(a)(1) of the Community Renewal Tax Relief Act of 2000 (Public Law 106-554) to allow a building that receives an allocation of credit in the second half of a calendar year to qualify for the carryover allocation of credit if the taxpayer expends an amount equal to 10 percent or more of the taxpayer' s reasonably expected basis in the building within six months of receiving the allocation. In addition, § 1.42-6 was modified under T.D. 9110 on December 31, 2003, to reflect the amendments to § 42(h)(1)(E). This revenue procedure makes changes to the provisions of Rev. Proc. 95-28 to extend temporary relief in major disaster areas to the carryover allocation provisions taking into account the amendments to § 42 and changes to the regulations.

.02 Section 8 of Rev. Proc. 95-28 provided certain relief to Agency compliance monitoring requirements under § 1.42-5. Several provisions of § 1.42-5 were subsequently modified under T.D. 8859 on January 13, 2000. This revenue procedure incorporates the modified compliance monitoring requirements under T.D. 8859.

.03 The Internal Revenue Service (Service) has issued several Notices suspending certain § 42 requirements for Owners that provide temporary housing to individuals residing in certain major disaster areas who have been displaced because their residences have been destroyed or damaged as a result of the disaster. See Notice 2004-74, 2004-2 C.B. 875; Notice 2004-75, 2004-2 C.B. 876; and Notice 2004-76, 2004-2 C.B. 878; Notice 2005-69, 2005-2 C.B. 622; and Notice 2006-11, 2006-7

I.R.B. 457. This revenue procedure provides a procedure for Owners to rent on a temporary basis vacant low-income units to certain displaced low-income individuals that resided in major disaster areas described in section 4 of this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to Agencies and Owners in major disaster areas, as defined in section 4 of this revenue procedure.

SECTION 4. MAJOR DISASTER AREA

When a disaster occurs that warrants assistance from the federal government, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), Title 42 U.S.C. 5121-5206 (2000 and Supp. IV 2004) authorizes the President to issue a major disaster declaration for the affected area. When the President issues such a declaration, the Federal Emergency Management Agency (FEMA) publishes a notice in the Federal Register designating particular cities and/or counties or other local jurisdictions covered by the President' s major disaster declaration as eligible for Individual Assistance and/or Public Assistance. A city and/or county or other local jurisdiction so designated by FEMA for Individual Assistance and/or Public Assistance under the President' s disaster declaration is a major disaster area for purposes of the relief provisions under sections 5, 6, 7, 8, 9, 10, and 12 of this revenue procedure. The emergency housing relief of section 11 of this revenue procedure applies only in States or possessions where FEMA designates cities and/or counties or other local jurisdictions for Individual Assistance.

SECTION 5. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is an allocation of low-income housing credits made in a year before the project is placed in service.

.02 If an Owner has a carryover allocation for a building located in a major disaster area, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner' s reasonably expected basis in the project (land and depreciable basis) no later than six months after the date that Owners would otherwise be required to meet the 10-percent basis requirement under § 1.42-6(a)(2)(i) and (ii). See § 1.42-6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a major disaster area and the area is declared a major disaster area during the 2-year period described in § 42(h)(1)(E)(i), the Service will treat the Owner as having satisfied the applicable placed in service requirement if the Owner places the building in service no later than December 31 of the year following the end of the 2-year period. See § 1.42-6 for specific rules on carryover allocations.

.04 If an Owner obtains the relief provided in section 5.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) by the extension period granted under the authority of section 5.02, the Service will treat the carryover allocation under § 1.42-6(a)(2)(i)(ii) as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 5.02, provided the Agency complies with the requirements of § 1.42-14(d)(3). See § 1.42-14 for specific rules on returned credits.

.05 If an Owner obtains the relief provided in section 5.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) by the close of the calendar year following the end of the 2-year period of § 42(h)(1)(E)(i), the Service will treat the carryover allocation credit amount as a credit returned to the Agency on January 1 of the second year following the two year period of § 42(h)(1)(E)(i), provided the Agency complies with the requirements of § 1.42-14(d)(3).

SECTION 6. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in sections 5.02 or 5.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation.

.02 The Agency may approve the carryover allocation relief provided in sections 5.02 and 5.03 of this revenue procedure only for projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a disaster that led to a major disaster declaration under the Stafford Act. An Agency may make this determination on an individual project basis or may determine, because of the extent of the damage in a major disaster area that all Owners or a certain group of Owners in the major disaster area warrant the relief provided in sections 5.02 and 5.03 of this revenue procedure. An Agency has the discretion to provide less than the full amount of relief allowed under sections 5.02 and 5.03 or no relief based upon all the facts and circumstances.

.03 An Agency that chooses to approve the relief provided in sections 5.02 and 5.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The

Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that provides the relief in sections 5.02 and 5.03 of this revenue procedure must report to the Service projects granted relief by attaching the required documentation as provided in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that had received its approval of the carryover allocation relief provided in sections 5.02 and 5.03 of this revenue procedure since the Agency last filed the Form 8610.

SECTION 7. RECAPTURE RELIEF

.01 Under § 42(j)(4)(E), a building (1) that is beyond the first year of the credit period and (2) that, because of a disaster that led to a major disaster declaration, has suffered a reduction in qualified basis that would cause it to be subject to recapture or loss of credit will not be subject to recapture or loss of credit if the building' s qualified basis is restored within a reasonable restoration period. The Agency that monitors the building for compliance with § 42 shall determine what constitutes a reasonable restoration period, not to exceed 24 months after the end of the calendar year in which the President issued a major disaster declaration for the area where the building is located. If the Owner of the building fails to restore the building within the reasonable restoration period determined by the Agency, the Owner shall lose all credit claimed during the restoration period and suffer recapture for any prior years of claimed credit under the provisions of § 42(j)(1).

.02 To determine the credit amount allowable during the reasonable restoration period, an Owner described in section 7.01 of this revenue procedure must use the building' s qualified basis at the end of the taxable year that preceded the President' s major disaster declaration.

.03 Section 1.42-5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency that monitors the building for compliance with § 42 whether or not an Owner obtains the relief provided in section 7.01 of this revenue procedure.

.04 As part of its review procedure adopted under § 1.42-5(c)(2), an Agency must determine whether the Owner described in section 7.01 of this revenue procedure has restored the building' s qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agency Report of Noncompliance, any failure to restore qualified basis within such period.

SECTION 8. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date the building is restored and placed back into service under section 7.01 of this revenue procedure.

.02 The granting of compliance monitoring relief to an Agency does not extend the compliance monitoring deadlines for Owners in major disaster areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a major disaster, the Agency must report on the Form 8823 how the major disaster contributed to the noncompliance.

SECTION 9. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings in the first year of the credit period that are located in a major disaster area and are severely damaged or destroyed as a result of a major disaster, an Agency has the discretion to treat the allocation as returned credit to the Agency in accordance with the requirements of § 1.42-14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1) until the project is restored. The tolling time period shall not extend more than 24 months after the end of the calendar year in which the President declared the area a major disaster area under the Stafford Act. No qualified basis shall be established until the building is restored and no low-income housing credit shall be claimed during the restoration period of such first-year buildings.

.02 An Agency that provides the relief in section 9.01 of this revenue procedure must report to the Service those projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

SECTION 10. AMOUNT OF CREDIT ALLOWABLE TO RESTORED BUILDING

.01 Except as provided in section 10.02 of this revenue procedure, in the case of a building for which a credit is allowed under § 42, no additional credit is permitted under § 42 for costs to restore, by reconstruction or replacement, the building to its pre-casualty condition under § 42(j)(4)(E).

.02 An Agency may allocate credits for rehabilitation expenditures, as defined under § 42(e), that are in excess of the eligible basis immediately prior to the casualty. For this purpose, the eligible basis immediately prior to the casualty includes the original eligible basis and any subsequent rehabilitation expenditures treated as a separate new building under § 42(e).

SECTION 11. EMERGENCY HOUSING RELIEF

.01 Approval of Housing Credit Agency. Without prior authorization from the Service, an Agency may permit some or all Owners within the Agency' s jurisdiction to provide temporary emergency housing after a major disaster to displaced low-income individuals that were living within the Agency' s jurisdiction at the time of the major disaster. Prior to housing any displaced low-income individuals, the Owner must obtain written approval from the Agency to participate in temporary emergency housing relief. For this purpose, temporary emergency housing means housing displaced low-income individuals for a period not to exceed 4 months beyond the date of the President' s major disaster declaration. An individual is a displaced individual if the individual was displaced from his/her principal place of residence as a result of a major disaster and the principal place of residence is in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the major disaster.

.02 Requirements for Owner. The temporary housing of displaced low-income individuals in low-income units without meeting the documentation requirements of § 1.42-5(b)(1)(vii) will not cause the building to suffer a reduction in qualified basis that would cause the recapture of low-income housing credits, provided the owner ensures the following requirements are met:

(1) Temporary Self-Certification of Income Requirements. An Owner may rely on a displaced low-income individual' s self-certification of income eligibility signed under penalties of perjury in applying for temporary tenancy in the building as a result of a major disaster declaration as defined in section 4 of this revenue procedure. The self-certification shall provide that such individual' s income will not exceed the applicable income limits of § 42 at the beginning of the individual' s tenancy. The self-certification

shall not extend for more than 4 months beyond the date of the President' s major disaster declaration. The self-certification may be relied on by the Owner for purposes of determining the building' s qualified basis under § 42(c)(1), and for purposes of satisfying the project' s 20-50 or 40-60 minimum set-aside requirement as elected by the Owner under § 42(g)(1). During the 4-month self-certification period, the self-certified tenant is deemed a qualified tenant. After the 4-month self-certification period, the Owner must obtain all required documentation required under § 42 to support the tenant' s continued status as a qualified low-income individual.

(2) Self-Certification of Status as Displaced Individual. An owner may rely on an individual' s certification signed under penalties of perjury that the individual was displaced from his/her principal place of residence as a result of a major disaster and the principal place of residence is in a city, county, or other local jurisdiction designated for Individual Assistance as a result of the major disaster.

(3) Recordkeeping. To comply with the requirements of § 1.42-5, Owners must maintain and certify certain information concerning each displaced low-income individual temporarily housed in the project, specifically: name, address of damaged residence, social security number, the temporary self-certification of income, and the self-certification of status as a displaced individual. The Owner must also maintain and report to the Agency at the end of the emergency housing period a list of the names of the displaced individuals, and the dates the displaced individuals began and ceased temporary occupancy. This information shall be provided to the Service upon request.

(4) Rent Restrictions. Rents for the low-income units housing displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

(5) Protection of Existing Tenants. Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

(6) Suspension of Non-Transient Requirements. The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the 4-month temporary emergency housing period described in this section 11 of this revenue procedure.

SECTION 12. OTHER RELIEF

Under the authority granted in § 42(n) and in accordance with § 1.42-13(a), the Service will consider granting relief similar to that described in sections 5.02, 5.03, 7.01, or section 11 of this revenue procedure for situations that are brought to its attention and not covered by this revenue procedure.

SECTION 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 95-28, 1995-1 C.B. 704, is superseded.

SECTION 14. EFFECTIVE DATE

This revenue procedure is effective for a major disaster declaration issued by the President under the Stafford Act on or after July 2, 2007.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jack Malgeri of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information

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