

Rev. Proc. 95-28, 1995-1 CB 704--IRC Sec(s). 42

May 31, 1995

1. Purpose

This revenue procedure establishes the process under which temporary relief will be granted from certain provisions of section 42 of the Internal Revenue Code to owners of low-income housing projects (owners) and housing credit agencies (Agencies) in major disaster areas.

2. Background

Under section 1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of section 42 through various publications in the Internal Revenue Bulletin. In the past, for owners and Agencies in certain major disaster areas, the Service has published notices that granted temporary relief from specific requirements of section 42. See Notice 92-43, 1992-2 C.B. 373; Notice 94-63, 1994-1 C.B. 373; and Notice 94-94, 1994-2 C.B. 564. To further the purposes of section 42, this revenue procedure establishes a procedure that provides for temporary relief from certain requirements of section 42 for owners and Agencies in major disaster areas.

3. Scope

This revenue procedure applies to Agencies and owners of low-income housing projects in major disaster areas.

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. 5121-5201 (1988 & Supp. IV 1992), 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 the particular cities and/or counties covered by the President's major disaster declaration. Under this revenue procedure, a city and/or county so designated by FEMA under the President's major disaster declaration is a major disaster area.

5. Relief for Carryover Allocations

A carryover allocation is an allocation of housing tax credits made in a year before the project is placed in service.

.01 If an owner of a project located in a major disaster area has a carryover allocation during the year in which the area is declared a major disaster area, the Service will treat the owner as having satisfied the 10 percent basis requirement of section 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) by June 30 of the year following the year in which the carryover allocation for the project is made. See section 1.42-6 for specific rules on carryover allocations.

.02 If an owner of a project located in a major disaster area has a carryover allocation and the area is declared a major disaster area during the 2-year period described in section 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 project in service by December 31 of the year following the end of the 2-year period. See section 1.42-6 for specific rules on carryover allocations.

.03 If an owner obtains the relief provided in section 5.01 of this revenue procedure but fails to satisfy the 10 percent basis requirement of section 42(h)(1)(E)(ii) by June 30 of the year following the year in which the Agency issued the carryover allocation for the project, the Service will treat the carryover allocation credit amount as a credit returned to the Agency on July 1 of the year following the year in which the carryover allocation was made.

.04 If an owner obtains the relief provided in section 5.02 of this revenue procedure but fails to satisfy the placed in service requirement of section 42(h)(1)(E)(i) by the close of the calendar year following the end of the 2-year period of section 42(h)(1)(E)(i), the Service will treat the carryover allocation credit amount as a credit returned to the allocating Agency on January 1 of the second year following the 2-year period of section 42(h)(1)(E)(i). See section 1.42-14 for specific rules on returned credits.

Sec. 6 Procedure to Obtain Carryover Allocation Relief

.01 An owner of a project may obtain the carryover allocation relief described in section 5.01 or 5.02 of this revenue procedure only if the owner receives approval for the relief from the Agency that issued the carryover allocation for the owner's project.

.02 The Agency may approve the carryover allocation relief provided in section 5.01 and 5.02 of this revenue procedure only for projects whose owners cannot reasonably satisfy the deadlines of section 42(h)(1)(E) because of a disaster that caused 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 project owners or a group of project owners in the major disaster area warrant the relief provided in section 5.01 and 5.02 of this revenue procedure.

.03 An Agency that chooses to approve the relief provided in section 5.01 and 5.02 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 approves the relief provided in section 5.01 and 5.02 of this revenue procedure must attach to the Form 8610 a list of the projects for which it has approved relief. The Agency should list only those projects, including projects 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 section 5.01 and 5.02 of this revenue procedure since the Agency last filed the Form 8610.

7. Recapture Relief

.01 Under section 42(j)(4)(E), an owner of a building (1) that is beyond the first year of the credit period and (2) that, because of a disaster that caused the President to issue 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 period. The Agency that monitors the project for compliance with section 42 may determine what constitutes a reasonable period, but in no instance will it end later than 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.

.02 To determine the credit amount allowable during the reconstruction or replacement period, an owner of a building 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 section 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 section 1.42- 5(c)(2), an Agency must determine whether the owner of a building described in section 7.01 of this revenue procedure has restored its project's qualified basis by the end of the reasonable period determined 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.

8. Compliance Monitoring Relief

An Agency will have until December 31 of the second year following the end of the calendar year in which a major disaster occurred to meet the section 1.42-5 compliance monitoring requirements applicable to it for an owner affected by the major disaster. The granting of compliance monitoring relief to an Agency does not extend the compliance monitoring deadlines for owners of projects in major disaster areas. If an Agency discovers that an owner has failed to comply with the rules of section 42 because of a major disaster, the Agency must report on the Form 8823 how the major disaster contributed to the noncompliance.

9. Other Relief

Under the authority granted in section 42(n) and in accordance with section 1.42-13(a), the Service will consider granting relief similar to that described in section 5.01, 5.02, or 7.01 of this revenue procedure for situations that are brought to its attention and not covered by this revenue procedure.

10. Effective Date

This revenue procedure is effective for a major disaster declaration issued by the President under the Stafford Act on or after January 1, 1995.

Drafting Information

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Jack Malgeri at (202) 622-3040 (not a toll free call).