

Rev. Rul. 97-4, 1997-1 CB 5, IRC Section 42

Issue

Does section 502(e)(3) of the Tax Reform Act of 1986 (Act) prevent a taxpayer from claiming a low-income housing tax credit under section 42 of the Internal Revenue Code for a building whose credit period begins after 1995?

Facts

On January 1, 1995, taxpayer, T, purchased a residential rental building (Building) from seller, S. S was allowed the transition-rule benefits under Act section 502(a). T intends to substantially rehabilitate the Building and qualify the Building for a low-income housing tax credit under section 42. The credit period for the Building will begin in 1996.

Law and Analysis

Act section 502 contains a transition rule for taxpayers investing in certain low-income housing properties that exempts them from the passive-loss rules under section 469. The rule applies for investments made after 1983 in housing property constructed or acquired pursuant to a binding written contract entered into by August 16, 1986. If a binding contract existed by that date, taxpayers who purchased an interest in the property by the close of 1986 (1988 if the interest was held through certain partnerships), and who had not contributed more than 50 percent of their capital obligation, could qualify for the transition rule. These taxpayers could claim passive losses on new low-income housing investments for a limited period of time if the properties were placed in service prior to January 1, 1989. After 1995, the transition-rule benefits of Act section 502 are no longer available to any taxpayer.

Section 42 provides a tax credit for investment in qualified low-income buildings placed in service after December 31, 1986.

A taxpayer may not claim a section 42 credit before the start of a building's 10-year credit period. Section 42(f) provides that the 10-year credit period for a building begins with the taxable year the building is placed in service, or, at the election of the taxpayer, the succeeding taxable year.

Act section 502 and section 42 can apply to the same type of property. To prevent a taxpayer from obtaining a simultaneous tax benefit under both sections, Act section 502(e)(3), provides that no low-income housing credit under section 42 is available "with respect to any project with respect to which any person has been allowed any benefit under [Act section 502]."

The transition-rule benefits under Act section 502 are not available to S in 1996 and future years. Thus, no simultaneous tax benefit under Act section 502 and section 42 is available after that date. Therefore, Act section 502(e)(3) does not prohibit T from claiming a section 42 low-income housing credit for the Building whose credit period begins after 1995.

Holding

Act section 502(e)(3) does not prevent a taxpayer from claiming a low-income housing tax credit under section 42 for a building whose credit period begins after 1995.

Drafting Information

The principal author of this revenue ruling is Christopher J. Wilson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Wilson on (202) 622-3040 (not a toll-free call).