LOW INCOME HOUSING TAX CREDIT STATUTORY, SECTION 42 OF THE INTERNAL REVENUE CODE

IRC Section 42—Low Income Housing Credit: Including Effective Dates and Related Provisions

Sec. 252 LOW-INCOME HOUSING TAX CREDIT

(a)
In General
For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to -
(1)
the applicable percentage of
(2)
the qualified basis of each qualified low-income building.
(b)
Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings
For purposes of this section -
(1)
Building placed in service during 1987
In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term "applicable percentage" means -
(A)
9 percent for new buildings which are not federally subsidized for the taxable year, or
(B)
4 percent for -
(i)
new buildings which are federally subsidized for the taxable year, and
(ii)
existing buildings.
(2)
Buildings placed in service after 1987
(A)
In general
In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the earlier of -
(i)
the month in which such building is placed in service, or
(ii)
at the election of the taxpayer -
(I)
the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or
(II)
in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued. A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.
(B)
Method of prescribing percentages
The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to -
(i)
70 percent of the qualified basis of a building described in paragraph (1)(A), and
(ii)
30 percent of the qualified basis of a building described in paragraph (1)(B).
(C)
Method of discounting
The present value under subparagraph (B) shall be determined -
(i)
as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),
(ii)
by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and
(iii)
by assuming that the credit allowable under this section for any year is received on the last day of such year.
(3)
Cross references

(A)
For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).
(B)
For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).
(C)
For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).
(c)
Qualified basis; qualified low-income building
For purposes of this section -
(1)
Qualified basis
(A)
Determination
The qualified basis of any qualified low-income building for any taxable year is an amount equal to -
(i)
the applicable fraction (determined as of the close of such taxable year) of
(ii)
the eligible basis of such building (determined under subsection (d)(5)).
(B)
Applicable fraction
For purposes of subparagraph (A), the term "applicable fraction" means the smaller of the unit fraction or the floor space fraction.
(C)
Unit fraction
For purposes of subparagraph (B), the term "unit fraction" means the fraction -
(i)
the numerator of which is the number of low-income units in the building, and
(ii)
the denominator of which is the number of residential rental units (whether or not occupied) in such building.
(D)
Floor space fraction
For purposes of subparagraph (B), the term "floor space fraction" means the fraction -
(i)
the numerator of which is the total floor space of the low-income units in such building, and
(ii)
the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.
(E)
Qualified basis to include portion of building used to provide supportive services for homeless
In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of -
(i)
so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or
(ii)
20 percent of the qualified basis of such building (determined without regard to this subparagraph).
(2)
Qualified low-income building
The term "qualified low-income building" means any building -
(A)
which is part of a qualified low-income housing project at all times during the period -
(i)
beginning on the 1st day in the compliance period on which such building is part of such a project, and
(ii)
ending on the last day of the compliance period with respect to such building, and
(B)
to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply. Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) (FOOTNOTE 1) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence)).
(FOOTNOTE 1) See References in Text note below.
(d)
Eligible basis
For purposes of this section -
(1)

New buildings
The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.
(2)
Existing buildings
(A)
In general
The eligible basis of an existing building is -
(i)
in the case of a building which meets the requirements of subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and
(ii)
zero in any other case.
(B)
Requirements
A building meets the requirements of this subparagraph if -
(i)
the building is acquired by purchase (as defined in section 179(d)(2)),
(ii)
there is a period of at least 10 years between the date of its acquisition by the taxpayer and the later of -
(I)
the date the building was last placed in service, or
(II)
the date of the most recent nonqualified substantial improvement of the building,
(iii)
the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and
(iv)
except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.
(C)
Adjusted basis
For purposes of subparagraph (A), the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.
(D)
Special rules for subparagraph (B)
(i)
Nonqualified substantial improvement
For purposes of subparagraph (B)(ii) -
(I)
In general
The term "nonqualified substantial improvement" means any substantial improvement if section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) was elected with respect to such improvement or section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.
(II)
Date of substantial improvement
The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III).
(III)
Substantial improvement
The term "substantial improvement" means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section 1016(a)) as of the 1st day of such period.
(ii)
Special rules for certain transfers
For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service -
(I)
in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,
(II)
by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),
(III)
by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with

respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV)

by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V)

of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(iii)

Related person, etc.

(I)

Application of section 179 For purposes of subparagraph (B)(i), section 179(d) shall be applied by substituting "10 percent" for "50 percent" in section (FOOTNOTE 2) 267(b) and 707(b) and in section 179(b)(7). (FOOTNOTE 2) So in original. Probably should be "sections".

(II)

Related person

For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the "related person") is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), "10 percent" shall be substituted for "50 percent".

(3)

Eligible basis reduced where disproportionate standards for units

(A)

In general

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B)

Exception where taxpayer elects to exclude excess costs

(i)

In general

Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if -

(I)

the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

(II)

the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii)

Excess

The excess described in this clause with respect to any unit is the excess of -

(I)

the cost of such unit, over

(II)

the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit. The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4)

Special rules relating to determination of adjusted basis

For purposes of this subsection -

(A)

In general

Except as provided in subparagraph (B) and (C), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B)

Basis of property in common areas, etc., included the adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C)
Inclusion Of Basis Of Property Used To Provide Services For Certain Nontenants
(i)
In general
The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.
(ii)
Limitation
The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.
(iii)
Community service facility
For purposes of this subparagraph, the term "community service facility" means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).
(D)
No reduction for depreciation
The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).
(5)
Special rules for determining eligible basis
(A)
Eligible basis reduced by Federal grants
If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.
(B)
Eligible basis not to include expenditures where section 167(k) elected The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).
(C)
Increase in credit for buildings in high cost areas
(i)
In general
In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph -
(I)
in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and
(II)
in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.
(ii)
Qualified census tract
(I)
In general
The term "qualified census tract" means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.
(II)
Limit on MSA's designated
The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the

population of such metropolitan statistical area.

(III)

Determination of areas

For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii)

Difficult development areas

(I)

In general

The term "difficult development areas" means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II)

Limit on areas designated

The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv)

Special rules and definitions

For purposes of this subparagraph -

(I)

population shall be determined on the basis of the most recent decennial census for which data are available,

(II)

area median gross income shall be determined in accordance with subsection (g)(4),

(III)

the term "metropolitan statistical area" has the same meaning as when used in section 143(k)(2)(B), and

(IV)

the term "nonmetropolitan area" means any county (or portion thereof) which is not within a metropolitan statistical area.

(6)

Credit allowable for certain federally-assisted buildings acquired during 10-year period described in paragraph (2)(B)(ii)

(A)

In general

On application by the taxpayer, the Secretary (after consultation with the appropriate Federal official) may waive paragraph (2)(B)(ii) with respect to any federally-assisted building if the Secretary determines that such waiver is necessary -

(i)

to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration, or

(ii)

to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured. The preceding sentence shall not apply to any building described in paragraph (7)(B).

(B)

Federally-assisted building

For purposes of subparagraph (A), the term "federally-assisted building" means any building which is substantially assisted, financed, or operated under -

(i)

section 8 of the United States Housing Act of 1937,

(ii)

section 221(d)(3) or 236 of the National Housing Act, or

(iii)

section 515 of the Housing Act of 1949, as such Acts are in effect on the date of the enactment of the Tax Reform Act of 1986.

(C)

Low-income buildings where mortgage may be prepaid A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if -

(i)

the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver,

(ii)

the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and

(iii)

the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

(D)

Buildings acquired from insured depository institutions in default

A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(E)

Appropriate Federal official

For purposes of subparagraph (A), the term "appropriate Federal official" means -

(i)

the Secretary of Housing and Urban Development in the case of any building described in subparagraph (B) by reason of clause (i) or (ii) thereof, and

(ii)

the Secretary of Agriculture in the case of any building described in subparagraph (B) by reason of clause (iii) thereof.

(7)

Acquisition of building before end of prior compliance period

(A)

In general

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer -

(i)

paragraph (2)(B) shall not apply, but

(ii)

the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B)

Description of building

A building is described in this subparagraph if -

(i)

a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii)

the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e)

Rehabilitation expenditures treated as separate new building

(1)

In general

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2)

Rehabilitation expenditures For purposes of paragraph (1) -

(A)

In general

The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B)

Cost of acquisition, etc, (FOOTNOTE 3) not included

(FOOTNOTE 3) So in original. Probably should be "etc.,". Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

(3)

Minimum expenditures to qualify

(A)

In general

Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if -

(i)

the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii)

the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I)

The requirement of this subclause is met if such

amount is not less than 10 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II)

The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $3,000 or more.

(B)

Exception from 10 percent rehabilitation

In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C)

Date of determination

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(4)

Special rules

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection -

(A)

such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B)

the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred. Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5)

No double counting

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6)

Regulations to apply subsection with respect to group of units in building

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f)

Definition and special rules relating to credit period

(1)

Credit period defined

For purposes of this section, the term "credit period" means, with respect to any building, the period of 10 taxable years beginning with -

(A)

the taxable year in which the building is placed in service, or

(B)

at the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified low-income building as of the close of the 1st year of such period.

The election under subparagraph (B), once made, shall be irrevocable.

(2)

Special rule for 1st year of credit period

(A)

In general

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction -

(i)

the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii)

the denominator of which is 12.

(B)

Disallowed 1st year credit allowed in 11th year

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3)

Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period

(A)

In general

In the case of any building which was a qualified low-

income building as of the close of the 1st year of the credit period, if -

(i)

as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii)

the qualified basis of such building as of the close of the 1st year of the credit period, the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B)

1st year computation applies

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4)

Dispositions of property

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5)

Credit period for existing buildings not to begin before rehabilitation credit allowed

(A)

In general

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B)

Acquisition credit allowed for certain buildings not allowed a rehabilitation credit

(i)

In general

In the case of a building described in clause (ii) -

(I)

subsection (d)(2)(B)(iv) shall not apply, and

(II)

the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

(ii)

Building described

A building is described in this clause if -

(I)

a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II)

a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if subsection (e)(3)(A)(ii)(II) were applied by substituting "$2,000" for "$3,000".

(g)

Qualified low-income housing project

For purposes of this section -

(1)

In general

The term "qualified low-income housing project" means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A)

20-50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B)

40-60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2)

Rent-restricted units

(A)

In general

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B)

Gross rent

For purposes of subparagraph (A), gross rent -

(i)

does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii)

includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii)

does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv)

does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949. For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C)

Imputed income limitation applicable to unit

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i)

In the case of a unit which does not have a separate bedroom, 1 individual.

(ii)

In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom. In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D)

Treatment of units occupied by individuals whose incomes rise above limit

(i)

In general

Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii)

Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting "170 percent" for "140 percent" and by substituting "any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income" for "any residential unit in

the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation".

(E)

Units where Federal rental assistance is reduced as tenant's income increases If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if -

(i)

a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii)

the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if -

(I)

the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II)

such units were rent-restricted within the meaning of subparagraph (A). The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3)

Date for meeting requirements

(A)

In general

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B)

Buildings which rely on later buildings for qualification

(i)

In general

In determining whether a building (hereinafter in this subparagraph referred to as the "prior building") is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii)

Treatment of elected buildings

In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii)

Date prior building is treated as placed in service

For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C)

Special rule

A building -

(i)

other than the 1st building placed in service as part of a project, and

(ii)

other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building, shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D)

Projects with more than 1 building must be identified

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4)

Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term "gross rent" shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5)

Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6)

Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if -

(A)

all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B)

the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located. Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent- restricted.

(7)

Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8)

Waiver of certain de minimis errors and recertifications

On application by the taxpayer, the Secretary may waive -

(A)

any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B)

any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

(h)

Limitation on aggregate credit allowable with respect to projects located in a State

(1)

Credit may not exceed credit amount allocated to building

(A)

In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B)

Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C)

Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D)

Exception where increase in qualified basis

(i)

In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii)

Limitation
The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of -
(I)
the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over
(II)
the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.
(iii)
Housing credit dollar amount reduced by full allocation
Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).
(E)
Exception where 10 percent of cost incurred
(i)
In general
An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.
(ii)
Qualified building
For purposes of clause (i), the term "qualified building" means any building which is part of a project if the taxpayer's basis in such project (as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.
(F)
Allocation of credit on a project basis
(i)
In general
In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if -
(I)
the allocation is made to the project for a calendar year during the project period,
(II)
the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and
(III)
the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.
(ii)
Project period
For purposes of clause (i), the term "project period" means the period -
(I)
beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and
(II)
ending with the calendar year the last building is placed in service as part of such project.
(2)
Allocated credit amount to apply to all taxable years ending during or after credit allocation year
Any housing credit dollar amount allocated to any building for any calendar year -
(A)
shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and
(B)
shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.
(3)
Housing credit dollar amount for agencies
(A)
In general
The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar

year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B)

State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C)

State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of -

(i)

the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii)

the greater of--

(I)

$1.75 ($1.50 for 2001) multiplied by the State population, or

(II)

$2,000,000,

(iii)

the amount of State housing credit ceiling returned in the calendar year, plus

(iv)

the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (i)[(ii)] through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D)

Unused housing credit carryovers allocated among certain States

(i)

In general

The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii)

Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is subparagraph (C)(i) - the excess (if any) of -

(I)

the unused State housing credit ceiling for the year preceding such year over

(II)

the aggregate housing credit dollar amount allocated for such year

(iii)

Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv)

Qualified State

For purposes of this subparagraph, the term "qualified State" means, with respect to a calendar year, any State -

(I)

which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II)

for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E)

Special rule for States with constitutional home rule

cities
For purposes of this subsection -
(i)
In general
The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as -
(I)
the population of such city, bears to
(II)
the population of the entire State.
(ii)
Coordination with other allocations
In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.
(iii)
Constitutional home rule city
For purposes of this paragraph, the term "constitutional home rule city" has the meaning given such term by section 146(d)(3)(C).
(F)
State may provide for different allocation
Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.
(G)
Population
For purposes of this paragraph, population shall be determined in accordance with section 146(j).
(H)
Cost-of-living adjustment
(i)
In general.
In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an
amount equal to--
(I)
such dollar amount, multiplied by
(II)
the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.
(ii)
Rounding
(I)
In the case of the $2,000,000 amount, any increase under clause (I) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.
(II)
In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.
(4)
Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account
(A)
In general
Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if -
(i)
such obligation is taken into account under section 146, and
(ii)
principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.
(B)
Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap
For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.
(5)
Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations
(A)
In general
Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be

allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B)

Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C)

Qualified nonprofit organization

For purposes of this paragraph, the term "qualified nonprofit organization" means any organization if -

(i)

such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

(ii)

such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; (FOOTNOTE 4) and (FOOTNOTE 4) So in original. The semicolon probably should be a comma.

(iii)

1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D)

Treatment of certain subsidiaries

(i)

In general

For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii)

Qualified corporation

For purposes of clause (i), the term "qualified corporation" means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E)

State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6)

Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A)

In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B)

Extended low-income housing commitment

For purposes of this paragraph, the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency -

(i)

which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii)

which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii)

which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv)

which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v)

which is binding on all successors of the taxpayer, and

(vi)

which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C)

Allocation of credit may not exceed amount necessary to support commitment

(i)

In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii)

Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D)

Extended use period

For purposes of this paragraph, the term "extended use period" means the period -

(i)

beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii)

ending on the later of -

(I)

the date specified by such agency in such agreement, or

(II)

the date which is 15 years after the close of the compliance period.

(E)

Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i)

In general

The extended use period for any building shall terminate -

(I)

on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II)

on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building. Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii)

Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination -

(I)

the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II)

any increase in the gross rent with respect to such unit not otherwise permitted under this section.

(F)

Qualified contract

For purposes of subparagraph (E), the term "qualified contract" means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of -

(i)

the sum of -

(I)

the outstanding indebtedness secured by, or with respect to, the building,

(II)

the adjusted investor equity in the building, plus

(III)

other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii)

cash distributions from (or available for distribution from) the project. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to

prevent the manipulation of the amount determined under the preceding sentence.

(G)

Adjusted investor equity

(i)

In general

For purposes of subparagraph (E), the term "adjusted investor equity" means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to -

(I)

such amount, multiplied by

(II)

the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for "calendar year 1987". An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii)

Cost-of-living increases in excess of 5 percent not taken into account

Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

(iii)

Base calendar year

For purposes of this subparagraph, the term "base calendar year" means the calendar year with or within which the 1st taxable year of the credit period ends.

(H)

Low-income portion

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I)

Period for finding buyer

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J)

Effect of noncompliance

If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K)

Projects which consist of more than 1 building

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7)

Special rules

(A)

Building must be located within jurisdiction of credit agency

A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B)

Agency allocations in excess of limit

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C)

Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i)

In general

The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be

determined under this section with respect to such building.

(ii)

Determination of percentage

For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which -

(I)

the housing credit dollar amount allocated to such building bears to

(II)

the credit amount determined in accordance with clause (iii).

(iii)

Determination of credit amount

The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if -

(I)

this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II)

subsection (f)(3)(A) were applied without regard to "the percentage equal to 2/3 of".

(D)

Housing credit agency to specify applicable percentage and maximum qualified basis In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(8)

Other definitions

For purposes of this subsection -

(A)

Housing credit agency

The term "housing credit agency" means any agency authorized to carry out this subsection.

(B)

Possessions treated as States

The term "State" includes a possession of the United States.

(i)

Definitions and special rules

For purposes of this section -

(1)

Compliance period

The term "compliance period" means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2)

Determination of whether building is federally subsidized

(A)

In general

Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103, or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B)

Election to reduce eligible basis by balance of loan or proceeds of obligations A loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) -

(i)

in the case of a loan, the principal amount of such loan, and

(ii)

in the case of a tax-exempt obligation, the proceeds of such obligation.

(C)

Special rule for subsidized construction financing

Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if -

(i)

such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and

(ii)

such obligation is redeemed, and such loan is repaid, before such building is placed in service.

(D)

Below market Federal loan
For purposes of this paragraph, the term "below market Federal loan" means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).

(E)
Buildings receiving HOME assistance or Native American housing assistance

(i)
In general
Assistance provided under the HOME Investment Partnerships Act (as in effect on the date of the enactment of this subparagraph or the Native American Housing Assistance and Self-Determination Act of 1996 (25 USC 4101 et seq.) (as on effect on October 1, 1997)) with respect to any building shall not be taken into account under subparagraph (D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of area median gross income. Subsection (d)(5)(C) shall not apply to any building to which the preceding sentence applies.

(ii)
Special rule for certain high-cost housing areas
In the case of a building located in a city described in section 142(d)(6), clause (i) shall be applied by substituting "25 percent" for "40 percent".

(3)
Low-income unit

(A)
In general
The term "low-income unit" means any unit in a building if -

(i)
such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii)
the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B)
Exceptions

(i)
In general
A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii)
Suitability for occupancy
For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii)
Transitional housing for homeless
For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building -

(I)
which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II)
in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv)
Single-room occupancy units
For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C)
Special rule for buildings having 4 or fewer units
In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by -

(i)
any individual who occupies a residential unit in such building, or

(ii)

any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D)

Certain students not to disqualify unit

A unit shall not fail to be treated as a low-income unit merely because it is occupied -

(i)

by an individual who is -

(I)

a student and receiving assistance under title IV of the Social Security Act, or

(II)

enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii)

entirely by full-time students if such students are -

(I)

single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

(II)

married and file a joint return.

(E)

Owner-occupied buildings having 4 or fewer units eligible for credit where development plan

(i)

In general

Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii)

Limitation on credit

In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii)

Certain unrented units treated as owner-occupied

In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4)

New building

The term "new building" means a building the original use of which begins with the taxpayer.

(5)

Existing building

The term "existing building" means any building which is not a new building.

(6)

Application to estates and trusts

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7)

Impact of tenant's right of 1st refusal to acquire property

(A)

In general

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B)

Minimum purchase price

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of -

(i)

the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii)

all Federal, State, and local taxes attributable to such sale. Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(j)

Recapture of credit

(1)

In general

If -

(A)
as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than
(B)
the amount of such basis as of the close of the preceding taxable year, then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.
(2)
Credit recapture amount
For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of -
(A)
the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus
(B)
interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved. No deduction shall be allowed under this chapter for interest described in subparagraph (B).
(3)
Accelerated portion of credit
For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of -
(A)
the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over
(B)
the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.
(4)
Special rules
(A)
Tax benefit rule
The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.
(B)
Only basis for which credit allowed taken into account
Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.
(C)
No recapture of additional credit allowable by reason of subsection (f)(3) Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).
(D)
No credits against tax
Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, D, or G of this part.
(E)
No recapture by reason of casualty loss
The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.
(F)
No recapture where de minimis changes in floor space
The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if -
(i)
such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and
(ii)
the building is a qualified low-income building after such change.
(5)
Certain partnerships treated as the taxpayer

(A)
In general
For purposes of applying this subsection to a partnership to which this paragraph applies -
(i)
such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,
(ii)
the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,
(iii)
paragraph (4)(A) shall not apply, and
(iv)
the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.
(B)
Partnerships to which paragraph applies
This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.
(C)
Special rules
(i)
Husband and wife treated as 1 partner
For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.
(ii)
Election irrevocable
Any election under subparagraph (B), once made, shall be irrevocable.
(6)
No recapture on disposition of building (or interest therein) where bond posted In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if -
(A)
the taxpayer furnishes to the Secretary a bond in an amount satifactory (FOOTNOTE 5) to the Secretary and for the period required by the Secretary, and (FOOTNOTE 5) So in original. Probably should be "satisfactory".
(B)
it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.
(k)
Application of at-risk rules
For purposes of this section -
(1)
In general
Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.
(2)
Special rules for determining qualified person
For purposes of paragraph (1) -
(A)
In general
If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization -
(i)
is actively and regularly engaged in the business of lending money, or
(ii)
is a person described in section 49(a)(1)(D)(iv)(II).
(B)
Financing secured by property
The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if -
(i)
a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and
(ii)
the proceeds from the financing (if any) are applied to acquire or improve such building.. (FOOTNOTE 6)

(FOOTNOTE 6) So in original.

(C)

Portion of building attributable to financing

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D)

Repayment of principal and interest

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of -

(i)

the date on which such financing matures,

(ii)

the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii)

the date of its refinancing or the sale of the building to which such financing relates. In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3)

Present value of financing

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4)

Failure to fully repay

(A)

In general

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period -

(i)

beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii)

ending with the due date for the taxable year in which such failure occurs, determined by using the underpayment rate and method under section 6621.

(B)

Applicable portion

For purposes of subparagraph (A), the term "applicable portion" means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C)

Certain rules to apply

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(l)

Certifications and other reports to Secretary

(1)

Certification with respect to 1st year of credit period

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes) -

(A)

the taxable year, and calendar year, in which such building was placed in service,

(B)

the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C)

the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D)

the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E)

such other information as the Secretary may require. In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2)

Annual reports to the Secretary

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth -

(A)

the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B)

the information described in paragraph (1)(C) for the taxable year, and

(C)

such other information as the Secretary may require. The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3)

Annual reports from housing credit agencies

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying -

(A)

the amount of housing credit amount allocated to each building for such year,

(B)

sufficient information to identify each such building and the taxpayer with respect thereto, and

(C)

such other information as the Secretary may require. The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m)

Responsibilities of housing credit agencies

(1)

Plans for allocation of credit among projects

(A)

In general

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless -

(i)

such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part, and

(ii)

such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.

(iii)

a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv)

a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B)

Qualified allocation plan

For purposes of this paragraph, the term "qualified allocation plan" means any plan -

(i)

which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii)

which also gives preference in allocating housing credit dollar amounts among selected projects to -

(I)

projects serving the lowest income tenants, and

(II)

projects obligated to serve qualified tenants for the longest periods, and

(III)

projects which are located in qualified census tracts (as defined in subsection (d)(5)(C) and the development of which contributes to a concerted community revitalization plan

(iii)

which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(C)

Certain selection criteria must be used

The selection criteria set forth in a qualified allocation plan must include

(i)

project location,

(ii)

housing needs characteristics,

(iii)

project characteristics including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv)

sponsor characteristics,

(v)

tenant populations with special housing needs, and

(vi)

public housing waiting lists.

(vii)

tenant populations of individuals with children, and

(viii)

project intended for eventual tenant ownership

(D)

Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2)

Credit allocated to building not to exceed amount necessary to assure project feasibility

(A)

In general

The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B)

Agency evaluation

In making the determination under subparagraph (A), the housing credit agency shall consider -

(i)

the sources and uses of funds and the total financing planned for the project,

(ii)

any proceeds or receipts expected to be generated by reason of tax benefits,

(iii)

the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv)

the reasonableness of the developmental and operational costs of the project. Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C)

Determination made when credit amount applied for and when building placed in service

(i)

In general

A determination under subparagraph (A) shall be made as of each of the following times:

(I)

The application for the housing credit dollar amount.

(II)

The allocation of the housing credit dollar amount.

(III)

The date the building is placed in service.

(ii)

Certification as to amount of other subsidies

Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.
(D)
Application to bond financed projects
Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).
(n)
Regulations
The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations -
(1)
dealing with -
(A)
projects which include more than 1 building or only a portion of a building,
(B)
buildings which are placed in service in portions,
(2)
providing for the application of this section to short taxable years,
(3)
preventing the avoidance of the rules of this section, and
(4)
providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

Sec. 42(O)
(O) TERMINATION*--

SECTION 13142(b)(6) and (e) OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993
(6) EFFECTIVE DATES---
(A) IN GENERAL---Except as provided in subparagraphs (B) and (C), the amendments made by this subsection shall apply to---
(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

*Section 13142(a) of the Omnibus Budget Reconciliation Act of 1993 states:

SEC. 13142. LOW-INCOME HOUSING CREDIT.
(a)
PERMANENT EXTENSION---
(1)
IN GENERAL---Section 42 (relating to low-income housing credit) is amended by striking subsection (o).
(2)
EFFECTIVE DATE---The amendments made by paragraph (1) shall apply to periods ending after June 30, 1992.
(ii)
Buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph
(4)
Thereof, but only with respect to bonds issued after such date.
(B)
WAIVER AUTHORITY AND PROHIBITED DISCRIMINATION---The amendments made by paragraphs (3) and (4) shall take effect on the date of the enactment of this Act.
(C)
HOME ASSISTANCE---The amendment made by paragraph (2) shall apply to periods after the date of the enactment of this Act.
(c)
ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND DEEP RENT SKEWING---
(1)
In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.
(2)

In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

(3)

In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of low-income tenants in such building do not increase as a result of such election.

(4)

An election under this subsection may be made only during the 180-day period beginning on the date of the enactment of this Act and, once made, shall be irrevocable.

SECTIONS 11407(b)(1) AND (e) OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

(b)(10) EFFECTIVE DATES--

(A)

IN GENERAL---Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to---

(i)

Determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

(ii)

Buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B)

TENANT RIGHTS, ETC.---The amendments made by paragraphs (1), (6), (8), and (9) shall take effect on the date of the enactment of this Act.

(C)

MONITORING---The amendment made by paragraph (2) shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

(D)

STUDY---The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of' the amendment made by paragraph (5) [restricting credit for Section 8 Moderate Rehabilitation projects] in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(c)

ELECTION TO ACCELERATE CREDIT INTO 1990---

(1)

IN GENERAL---At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

(2)

REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT---The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year.

(3)

ELECTION---The election under paragraph (1) s be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.

RELATED SECTIONS OF INTERNAL REVENUE CODE OF 1986 PERTAINING TO THE LOW-INCOME HOUSING TAX CREDIT

Sec. 39 CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS

(d)

TRANSITIONAL RULES--

(4)

NO CARRYBACK OF LOW-INCOME HOUSING CREDIT BEFORE 1987---No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 42

(relating to low- income housing credit) may be carried back to a taxable year ending before January 1, 1987.

See. 55 ALTERNATIVE MINIMUM TAX

(c)
REGULAR TAX-
(1)
IN GENER.AL---For purposes of this section, the term “regular tax” means the regular tax liability for the taxable year (as defined in section 26(b)) reduced by the foreign tax credit allowable under section 27(a) and the section 936 credit allowable under section 27(b). Such term shall not include any tax imposed by section 402(e) and shall not include any increase in tax under section 49(b) or 50(a) or subsection 0) or (k) of section 42.

Sec. 142(d) TAX-EXEMPT BONDS: DEEP RENT SKEWED PROJECT RULES
(d)
QUALIFIED RESIDENTIAL RENTAL PROJECT--For purposes of this section---
(1)
IN GENERAL---The term "qualified residential rental project” means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:
(A)
20-50 TEST---The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.
(B)
40-60 TEST---The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.
(2)
DEFINITIONS AND SPECIAL RULES---For purposes of this subsection---
(A)
QUALIFIED PROJECT PERIOD---The term "qualified project period' means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of---
(i)
The date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,
(ii)
The 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or
(iii)
The date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.
(B)
INCOME OF INDIVIDUALS; AREA MEDIAN GROSS INCOME---The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing,, Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Section 7872(g) shall not apply in determining the income of individuals under this subparagraph.
(3)
CURRENT INCOME DETERMINATIONS---For purposes of this subsection---
(A)
IN GENEPAL---The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident.
(B)
CONTINUING RESIDENTS INCOME MAY INCREASE ABOVE THE APPLICABLE LIMIT---If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such

unit (or as of any prior detern3ination under subparagraph (A)) the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(4)

SPECIAL RULE IN CASE OF DEEP RENT SKEWING---

(A)

IN GENEPAL---in the case of any project described in subparagraph (E) the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting---

(i)

"170 percent' for "140 percent', and

(ii)

"any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income' for "any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(B)

DEEP RENT SKEWED PROJECT.---A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii).

(i)

The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

(ii)

The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the 'unit.

(iii)

The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 1/2 of the average gross rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

(C)

DEFINITIONS APPLICABLE TO SUBPARAGRAPH (B)---For purposes of subparagraph (B)---

(i)

LOW-INCOME UNIT.---The term "low-income unit' means any unit which is required to be occupied by individuals who meet the applicable income limit.

(ii)

GROSS RENT---The term "gross rent' includes---

(I)

Any payment under section 8 of the United States Housing Act of 1937, and

(II)

Any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

(5)

APPLICABLE INCOME LIMIT---For purposes of paragraphs (3) and (4), the term "applicable income limit' means---

(A)

The limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or

(B)

In the case of a- unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

(6)

SPECIAL RULE FOR CERTAIN HIGH COST HOUSING AREA--In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000 subparagraph (B) of paragraph (1) shall be applied by substituting "25 percent" for "40 percent."

(7)

CERTIFICATION TO SECRETARY---The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall

subject the operator to penalty, as provided in section 66526).

Sec. 469(i) PASSIVE LOSS RULES: $25,000 EXCEPTION

(i)

$25,000 OFFSET FOR RENTAL REAL ESTATE ACTIVITIES-

(1)

IN GENERAL---In the case of any natural person, subsection (a) shall not apply to that portion of the passive activity loss or the deduction equivalent (within the meaning of subsection 6)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year).

(2)

DOLLAR -LIMITATION---The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed $25,000.

(3)

PHASE-OUT EXEMPTION---

(A)

IN GENERAL---In the case of any taxpayer, the $25,000 amount under paragraph (2) shall be reduced (but not below- zero) by 5O percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $I 00,000.

(B)

SPECIAL PHASE-OUT OF REHABILITATION CREDIT---In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined tinder section 47, subparagraph (A) shall be applied by substituting '"$200,000" for "$100,000".

(C)

EXCEPTION FOR LOW-INCOME HOUSING CREDIT--Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42.

(D)

ORDERING RULES TO REFLECT EXCEPTION AND SEPARATE PHASE-OUT--If subparagraph (B) or (C) applies for any taxable year, paragraph (1) shall be applied---

(i)

First to the passive activity loss,

(ii)

Second to the portion of the passive activity credit to which subparagraph (B) or (C) does not apply,

(iii)

Third to the portion of such credit to which subparagraph (B) applies, and

(iv)

Then to the portion of such credit to which subparagraph (C) applies.

(E)

ADIUSTED GROSS INCOME---For purposes of this paragraph, adjusted gross income shall be determined without regard to---

(i)

Any amount includible in gross income under section 86,

(ii)

The amount excludible from gross income under section 135,

(iii)

Any amount allowable as a deduction under section 219, and

(iv)

Any passive activity loss or any loss allowable by reason of subsection (c)(7).

(4)

SPECIAL RULE FOR ESTATES---

(A)

IN GENERAL---In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death.

(B)

REDUCTION FOR SURVIVING SPOUSE'S EXEMPTION---For purposes of subparagraph (A), the $25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

(5)

MARRIED INDIVIDUALS FILING SEPARATELY---

(A)

IN GENERAL---Except as provided in subparagraph (B), in the case of any married individual filing a separate return, this subsection shall be applied by substituting---

(i)

"$12,500" for "$25,000" each place it appears,

(ii)

"$50,000" for "$100,000" in paragraph (3)(A), and

(iii)

"$100,000" for "$200,000" in paragraph (3)(B).

(B)

TAXPAYERS NOT LIVING APART---This subsection shall not apply to a taxpayer who---

(i)

is a married individual filing a separate return for any taxpayer year, and

(ii)

Does not live apart from his spouse at all times during such taxable year.

(6)

ACTIVE PARTICIPATION---

(A)

IN GENERAL---An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of 'the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.

(B)

NO PARTICIPATION REQUIREMENT FOR LOW- INCOME HOUSING OR REHABILITATION CREDIT--- Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of---

(i)

Any credit determined under section 42 for any taxable year, or

(ii)

Any rehabilitation credit (determined under section 47).

(C)

INTEREST AS A LIMITED PARTNER---Except as provided in regulations, no interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively participates.

(D)

PARTICIPATION BY SPOUSE---In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.

SECTION 7108 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1989

(r)(8) GUIDANCE ON DIFFICULT DEVELOPMENT AREAS AND. POSTING OF BOND TO AVOID RECAPTURE---Not less than 180 days after the date of the enactment of this Act---

(A)

The Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section (42)(d)(5)(C)(iii) of such Code, as added by this section, and

(B)

The Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted).

EFFECTIVE DATES OF AMENDMENTS MADE BY THE OMNIBUS BUDGET RECONCILIATION ACT OF 1989.

In general, the amendments contained in the Omnibus Budget Reconciliation Act of 1989, apply to low-income buildings that receive tax credit allocations for calendar year 1990. In the case of projects not subject to the state volume caps, and not requiring a credit allocation, by virtue of being bond-financed and qualifying under Sec. 42(h)(4), the amendments will apply to buildings placed in service after December 31, 1989 but only with respect to bonds issued after such date. Exceptions are duly footnoted in the text. *

*Amendment limiting 1989 tax act amendments to bond-financed projects where bonds were issued after 1989 made by section 11701(a)(11) of the Omnibus Budget Reconciliation Act of 1990.

IRS RULING 90-89
GUIDANCE ON TAX CREDIT ELIGIBILITY

APPENDIX 19

IRS Revenue Ruling 90-89: Guidance on Tax Credit Edibility and Maximum Combined Annual Income of Unrelated Occupants

LOW-INCOME HOUSING CREDIT; MINIMUM SET-ASIDE REQUIREMENTS
Published: October 29, 1990
(See Also Section 142.)

Low-income housing credit; minimum set-aside requirements. For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Code, the combined income of all occupants of an apartment, whether or not legally related, is compared to the appropriate percentage of the median family income for a family with the same number of members.

Rev. Rul. 90-89

ISSUE

For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Internal Revenue Code, how is the appropriate percentage of the area median gross income determined for occupants of an apartment when those occupants are not legally related?

FACTS

The owner of a newly constructed building wants to qualify the building for the low-income housing credit under section 42(a) of the Code. The owner has elected to qualify under the 40-60 minimum set-aside requirement of section 42(g)(1)(B), under which 40 percent or more of the building's aggregate residential rental units must be occupied by individuals with incomes of 60 percent or less of the area median gross income.

A and B are unrelated individuals who want to rent a two-bedroom apartment in the building. A and B each has income that does not exceed 60 percent of the area median gross income for one individual. However, A and B's combined income exceeds 60 percent of the area median gross income for a two-individual family.

LAW AND ANALYSIS

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low- income housing credit determined under section 42(a).

Section 42(a) of the Code provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any tax year in the credit period shall be an amount equal to the 'applicable percentage' of the qualified basis of each qualified low-income building.

Section 42(c)(2) of the Code defines the term 'qualified low-income building' as any building: (A) that is part of a qualified low-income housing project at all times during the period (i) beginning on the first day in the compliance period on which the building is part of such a project, and (ii) ending on the last day of the compliance period with respect to the building, and (B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Section 42(g)(1) of the Code defines the term 'qualified low-income housing project' as any project for residential rental property if the project meets the requirements of subparagraphs (A) and (B), whichever the taxpayers elects. The election is irrevocable. The project meets the requirements of section 42(g)(1)(A) if 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income. The project meets the requirements of section 42(g)(1)(B) if 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. This rule is known as the 'minimum set-aside' requirement. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-92 (1986), 1986-3 (Vol. 4) C.B. 92.

Section 42(g)(4) of the Code provides, in part, that section 142(d)(2)(B) applies for purposes of determining whether any project is a low-income housing project and whether any unit is a low-income unit. Section 142(d)(2)(B) states that the income of individuals and area median gross income shall be determined in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if the program is terminated, under the program as in effect immediately before such termination). Determinations of area median gross income under the preceding sentence are adjusted for family size. The determination of an individual's or family's income for purposes of section 8 of the Housing Act of 1937 may differ materially from that individual's or family's income for federal income tax purposes.

In order to satisfy the minimum set-aside requirements of section 42(g)(1) of the Code, a specified percentage of apartments in a low-income housing project must be occupied by low-income tenants who meet the income limits of section 42(g)(1). Under sections 42(g)(1) and 142(d)(2)(B), tenants are considered low- income by reference to the area median gross income as adjusted for family size. These sections require that the income of all individuals in a family that share an apartment be aggregated and compared to the area median gross income for a family of the same size to determine if the minimum set-aside requirement is satisfied. Similarly, the income of all unrelated individuals who share an apartment should be aggregated and compared to the area median gross income for a family of the same size to determine if the minimum set-aside requirement is satisfied.

In this case, if A and B rent the apartment, that apartment does not count towards satisfying the minimum set-aside requirement of section 42(g)(1)(B) because A and B's combined income exceeds 60 percent of the area median gross income for a two-individual family.

HOLDING

For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Code, the combined income of all occupants of an apartment, whether or not legally related, is compared to the appropriate percentage of the median family income for a family with the number of members.

DRAFTING INFORMATION

The principal author of this revenue ruling is Paul F. Handleman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Handleman on (202) 377-6349 (not a toll-free call).

IRS RULING 91-38
ANSWERS TO 12 FREQUENTLY ASKED QUESTIONS ABOUT THE LOW INCOME HOUSING TAX CREDIT

REVENUE RULE 91-38

Published: July 1, 1991

Section 42 Low-Income Housing Credit

(See Also Sections 38, 167; 1.167(k)-1.)

LOW-INCOME HOUSING CREDIT. This ruling answers 12 frequently asked questions about the low-income housing credit provisions of section 42 of the Code.

PURPOSE

This revenue ruling answers certain questions about the low-income housing credit provided for in section 42 of the Internal Revenue Code.

LAW

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low- income housing credit determined under section 42(a). The low-income housing credit that may be claimed in any year is subject to the general business tax credit limitation of section 38(c).

Section 42(a) of the Code, added by section 252 of the Tax Reform Act of 1986 (the "1986 Act"), 1986-3 (Vol. 1) C.B. 106, provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any tax year in the credit period shall be an amount equal to the "applicable percentage" of the qualified basis of each qualified low-income building.

Credit Period

Section 42(f)(1) of the Code, as amended by section 1002(1)(2)(B) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), 1988-3 C.B. 1, 34, defines the credit period of any building as the period of 10 tax years beginning with the tax year in which the building is placed in service, or at the taxpayer's irrevocable election, the succeeding tax year, but in either case only if the building is qualified low-income building as of the close of the first year of the credit period.

For purposes of calculating the credit allowable for the first tax year of the credit period, section 42(f)(2) of the Code reduces the credit by applying the following first-year convention: the fraction used to determine qualified basis at the end of the first year is the sum of applicable fractions determined at the end of each full month the building was in service during that year, divided by 12. In the first tax year following the credit period, a taxpayer may recover any reduction in credit caused by applying the first-year convention during the first year of the credit period.

Applicable Percentage

In the case of any qualified low-income building placed in service by the taxpayer after 1987, section 42(b)(2)(A) of the Code provides that the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the earlier of (i) the month in which the building is placed in service, or (ii) at the election of the taxpayer (I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to the building (which is binding on the agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to the building, or (II) in the case of any building to which section 42(h)(4)(B) applies, the month in which the tax-exempt obligations are issued. Section 42(b)(2)(B) provides that the percentages prescribed by the Secretary for any month shall be percentages that will yield over a 10-year period amounts of credit that have a present value equal to: (i) 70 percent of the qualified basis, in the case of new buildings that are not federally subsidized for the tax year (70 percent present value credit), and (ii) 30 percent of the qualified basis, in the case of new buildings that are federally subsidized for the tax year and existing buildings (30 percent present value credit). The appropriate credit percentages for each month are published monthly in the revenue ruling containing the applicable federal rates.

Section 42(i)(2)(A) of the Code provides, in part, that for purposes of section 42(b)(1), a new building shall be treated as federally subsidized for any tax year if, at any

time during the tax year or any prior tax year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103, or any below market federal loan (as defined in section 42(i)(2)(D)), the proceeds of which are or were used (directly or indirectly) with respect to the building or its operation.

Under section 42(b)(1) of the Code, for any qualified low-income building placed in service by the taxpayer during 1987, the applicable percentage for new buildings not federally subsidized is 9 percent and the applicable percentage for existing or federally subsidized buildings is 4 percent.

After calendar year 1989, existing buildings that receive moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937, 42 U.S.C. 1437f (1988), at any time during the credit period, generally are not eligible for an allocation of credit. See section 7108(h)(5) of the Revenue Reconciliation Act of 1989 (the "1989 Act"), 1990-1 C.B. 214, 222. The provisions of the 1989 Act generally are effective for buildings allocated housing credit dollar amounts after calendar year 1989. If no allocation is necessary by reason of section 42(h)(4) of the Code because the building is substantially financed with certain tax-exempt obligations, the provisions are generally effective for buildings placed in service after December 31, 1989.
The Revenue Reconciliation Act of 1990 (the "1990 Act"), (Pub. L. No. 101- 508), provides a limited exception from the exclusion of buildings receiving moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937. Beginning with allocations made after 1990, buildings receiving assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of enactment of the 1990 Act) may be eligible for an allocation of credit.

Rehabilitation Expenditures

Under section 42(e)(3)(A) of the Code as in effect prior to the 1989 Act, rehabilitation expenditures paid incurred by the taxpayer with respect to any building could be treated as a separate new building only if the qualified basis attributable to rehabilitation expenditures incurred during any 24-month period, when divided by the number of low-income units in the building, was $2,000 or more. For calendar years after 1989, rehabilitation expenditures with respect to a building may be treated as a separate new building eligible for the credit under section 42(e)(3)(A) only if (i) the expenditures are allocable to one or more low-income units or substantially benefit such units, and (ii) the amount of such expenditures during any 24-month period meets the greater of the following requirements: (I) the amount is not less than 10 percent of the adjusted basis of the building, or (II) the qualified basis attributable to such expenditures, when divided by the number of low-income units in the building, is $3,000 or more. Under section 42(e)(2)(B), as in effect both before and after the 1989 Act, the term "rehabilitation expenditures" does not include the cost of acquisition of any building.

Former section 42(d)(5)(C) of the Code, which was added by TAMRA, and which is now section 42(d)(5)(B), provides that the eligible basis of any building shall not include any portion of the building's adjusted basis attributable to amounts with respect to which an election is made under section 167(k). The election under section 167(k) is an election to depreciate rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1987, under a straight line method using a useful life of 60 months. If no election is made under section 167(k), rehabilitation expenditures incurred by a taxpayer with respect to a low-income rental housing building may be included in the building's eligible basis. Section 1.167(k)-1(b)(1) of the Income Tax Regulations provides rules governing when a taxpayer will be treated as having paid or incurred rehabilitation expenditures.

Under section 1.167(k)-1(b)(1) of the regulations, a taxpayer generally is treated as having paid or incurred rehabilitation expenditures if the rehabilitation is performed by or for the taxpayer or in accordance with the taxpayer's specifications, or if the taxpayer acquires the property attributable to the expenditures (or an interest therein) before the property is placed in service. Section 1.167(k)-1(b)(2) provides that the amount of rehabilitation expenditures treated as paid or incurred by the taxpayer is the lesser of (i) the rehabilitation expenditures paid or incurred before the date on which the taxpayer acquired an interest in the property attributable to the expenditures, or (ii) the taxpayer's cost or other basis for the property attributable to the rehabilitation expenditures paid or

incurred before such date. Rehabilitation expenditures treated as having been paid or incurred by the taxpayer are deemed to have been paid or incurred on the date on which the expenditures were actually paid or incurred, determined in accordance with the method of accounting used by the person that actually paid or incurred the expenditures.

A taxpayer acquiring a building from a governmental unit may elect, under section 42(e)(3)(B) of the Code, to meet only the requirement that the qualified basis attributable to the rehabilitation expenditures incurred with respect to the building will be $3,000 or more when divided by the number of low-income units in the building. A taxpayer making this election may claim only the 30 percent present value credit on those expenditures.

Section 42(e)(4)(A) of the Code provides, in part, that expenditures treated as a separate new building under section 42(e) are considered placed in service at the close of the 24-month period during which the expenditures were incurred. According to section 42(e)(4)(B), the applicable fraction for the rehabilitation expenditures is the applicable fraction for the building with respect to which the expenditures were incurred.

Qualified Basis

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any tax year as an amount equal to (i) the "applicable fraction" (determined as of the close of the tax year) of (ii) the eligible basis of the building (determined under section 42(d)). Under section 42(c)(1)(B), the "applicable fraction" is the smaller of the unit fraction (the number of low-income units divided by the number of all residential rental units) or the floor space fraction (the floor space of the low-income units divided by the floor space of all residential rental units).

In general, the eligible basis of a building under section 42(d) of the Code is its adjusted basis at the close of the first tax year of the credit period. However, a number of limitations apply. For example, if an existing building does not meet the requirements of section 42(d)(2)(B) (as described below), its eligible basis is zero under section 42(d)(2)(A)(ii). In addition, under section 42(e)(5), rehabilitation expenditures that a taxpayer elects to treat as a separate new building under section 42(e) may not be considered part of the eligible basis of an existing building under section 42(d)(2)(A)(i).

Requirements for Existing Buildings

Section 42(d)(2)(A) and (B) of the Code provides that the eligible basis of an existing building will be zero unless the building meets the following requirements: (i) the building is acquired by purchase (as defined in section 179(d)(2)); (ii) there is a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of (I) the date the building was last placed in service, or (II) the date of the building's most recent nonqualified substantial improvement (as defined in section 42(d)(2)(D)(i)); and (iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time the building was previously placed in service. Furthermore, existing buildings are eligible for a credit allocation after calendar year 1989 only if a credit is allowable by reason of substantial rehabilitation of the building under section 42(e).

In determining when a building was last placed in service for purposes of satisfying the requirement in section 42(d)(2)(B)(ii) of the Code, section 42(d)(2)(D)(ii) provides that certain placements in service are not taken into account. The 1990 Act provides that as of November 5, 1990 (the date of its enactment), any placement in service of a single-family residence by any individual who owned and used the residence for no other purpose than as a principal residence is not taken into account for purposes of determining whether the 10-year requirement is met. See section 42(d)(2)(D)(ii)(V).

Transfers During the Compliance Period

Section 42(d)(7)(A) and (B) of the Code provides, in general, that the requirements of section 42(d)(2)(B) do not apply if a taxpayer acquires an existing building (or interest therein) for which a credit was allowed to any prior owner under section 42(a) and the taxpayer acquires the building (or interest therein) before the end of the building's compliance period. In that case, section 42(d)(7)(A)(ii) provides that the credit allowable to the taxpayer for any

period after the acquisition is equal to the amount of credit that would have been allowable for that period to the prior owner had the owner not disposed of the building (or interest therein).

In general, a transfer of the property results in a new placed in service date if, on the date of the transfer the property is ready and available for its intended purpose. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II- 91 (1986), 1986-3 (Vol. 4) C.B. 91. However, if section 42(d)(7) of the Code applies to a transfer of the property, the fact that the transfer results in a new placed in service date does not jeopardize the purchaser's eligibility to claim the low-income housing credit, because the requirements of section 42(d)(2)(B) do not apply. According to section 42(f)(4), the credit will be allocated among the parties on the basis of the number of days the building (or interest) was held by each.

Definition of a Qualified Low-Income Housing Project

Under section 42(g)(1) of the Code, a "qualified low-income housing project" is any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income, as adjusted for family size, or (B) 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income, as adjusted for family size. Once the taxpayer elects which requirement the project will meet, the election is irrevocable.

For buildings not subject to the amendments of the 1989 Act, section 42(g)(2)(A) of the Code provides that a unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the income limits applicable to the occupants under section 42(g)(1). For buildings subject to the amendments of the 1989 Act, a residential rental unit is rent-restricted if the gross rent with respect to the unit does not exceed 30 percent of the imputed income limitation applicable to the unit under section 42(g)(2)(C). Furthermore, section 42(g)(2)(A) provides that for buildings subject to the amendments of the 1989 Act, the amount of the income limitation for any period shall not be less than the limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

Under section 42(i)(3)(B) of the Code, low-income units must be suitable for occupancy and used other than on a transient basis. Additionally, section 42(i)(3)(C) provides that no unit in a building that has four or fewer residential rental units shall be treated as a low-income unit if the owner of the units is (i) the occupant of a residential unit in the building, or (ii) is related to an occupant of a unit (as "related" is defined in section 42(d)(2)(D)(iii)). However, for calendar years after 1989, if a building is acquired or rehabilitated under a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in section 42(h)(5)(C)), the owner-occupant restriction of section 42(i)(3)(C) is inapplicable. In this case, the applicable fraction shall not exceed 80 percent of the unit fraction and any unit that is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

Recapture of Credit

According to section 42(j)(1) and (2) of the Code, if at the close of any tax year in the compliance period the building's qualified basis with respect to the taxpayer is less than the basis as of the close of the preceding tax year, then the taxpayer is liable for additional tax in an amount equal to the accelerated portion of credits allowed in earlier years with respect to the reduction in qualified basis, plus interest. The accelerated portion of the credit under section 42(j)(3) is the excess of (A) the aggregate credit allowed for those years for that basis, over (B) the aggregate credit that would be allowable for those years for that basis if the aggregate credit that would have been allowable for the entire compliance period were allowable ratably over 15 years, rather than 10 years.

If a building fails to remain part of a qualified low-income housing project (for example, because of non-compliance with the minimum set-aside requirement or the rent restrictions or other requirements imposed on the units constituting the set-

aside) during the building's 15-year compliance period, the taxpayer or taxpayers that owned the building (or interests therein) must repay the entire accelerated portion of the credit, with interest, for all prior years. Generally, any change in ownership of a building during the building's compliance period is also a recapture event. See 2 H.R. Conf. Rep. No. 841, at II-96.

Section 42(j)(6) of the Code permits the taxpayer to avoid recapture upon disposition of the building or an interest therein by furnishing a bond to the Secretary in an amount satisfactory to the Secretary and for the period required by the Secretary, if the building is reasonably expected to continue to be operated as a qualified low-income building. Furthermore, for partnerships consisting of 35 or more partners, unless the partnership elects otherwise, no change in ownership will be deemed to occur if within a 12-month period at least 50 percent (in value) of the original ownership is unchanged. See 2 H.R. Conf. Rep. No. 841, at II-96, and H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. II-83 (1988), 1988-3 C.B. 473, 573. A de minimis rule may apply to certain dispositions of interests in partnerships (other than large partnerships described in section 42(j)(5)) that own buildings for which a credit was claimed. See Rev. Rul. 90-60, 1990-2 C.B. 3, for additional information.

Allocation of Credit by Housing Credit Agencies

Under section 42(h)(1) of the Code, a taxpayer may not claim a credit on a qualified low-income building in excess of the housing credit dollar amount allocated to the building by the state or local housing agency in whose jurisdiction the building is located. However, under section 42(h)(4) a taxpayer need not obtain a credit allocation for the portion of a building's eligible basis financed by an obligation which is subject to the volume cap of section 146 and the interest on which is exempt from tax under section 103. Prior to the 1989 Act, if such an obligation financed 70 percent or more of the aggregate basis of the building and the land on which it was located, the entire building was exempt from the limits of section 42(h)(1). Under the 1989 Act, buildings placed in service after calendar year 1989 are exempt from the limits of section 42(h)(1) if 50 percent or more of the aggregate basis of the building and the land on which it is located are financed with such tax-exempt obligations.

Section 42(h)(2)(A) of the Code provides that the housing credit dollar amount allocated to a building for any calendar year applies to the building for all tax years in its compliance period that end during or after the year of allocation. However, under section 42(h)(1)(B), as amended by TAMRA, an allocation is taken into account only if it occurs not later than the close of the calendar year in which the building is placed in service, unless one of the exceptions in section 42(h)(1)(C), (D), (E), or (F) apply. Under section 42(h)(2)(B), the allocation reduces the credit agency's allocable housing credit dollar amount only for the year of the allocation.

QUESTIONS AND ANSWERS

A. DETERMINATION OF CREDIT PERIOD ISSUES

QUESTION 1.

How do taxpayers make the election under section 42(f)(1) of the Code to defer the start of the credit period?

ANSWER 1.

The building owner may elect under section 42(f)(1) of the Code to begin the credit period (and the compliance period) the year after the building is placed in service by checking the appropriate box on line 5a in Part II of Form 8609, Low-Income Housing Credit Allocation Certification. Form 8609 must be attached to the owner's federal income tax return for each year of the 15-year compliance period, which begins with the first year of the credit period. If the owner does not claim a low-income housing credit on its timely filed federal income tax return (taking any extensions into account) for the year in which the building is placed in service, or fails to timely file its federal income tax return for that year, the owner is deemed to have made the irrevocable election to begin the credit period (and the compliance period) the succeeding tax year. In the case of buildings held by flow-through entities, only the entity may file a Form 8609 to make the election under section 42(f)(1). Only one election may be made per building. If there are multiple owners that are not members of a flow-through entity, and each owner files a Form 8609 with respect to a building, all of the Form 8609s for that building must be

consistent with regard to whether the election is made. Unless all the owners of a particular building make the section 42(f)(1) election, the credit period and compliance period for that building will begin with the year in which the building is placed in service. Once made, an election under section 42(f)(1) is binding on the owner and all successors in interest.

QUESTION 2.

X, a calendar year corporation, was created on June 1, 1987. On July 1, 1987, X placed in service a qualified low-income building. If X chooses not to defer the beginning of the credit period under section 42(f)(1) of the Code, when does the credit period for the building begin?

ANSWER 2.

A building's credit period is the period of 10 years (120 months) beginning with the first day of the tax year in which the building is placed in service, or the succeeding tax year if the election under section 42(f)(1) of the Code is made. The tax year that a building is placed in service is determined, at the time of placement in service, by the tax year of the owner who placed the building in service and is not affected by subsequent changes in the tax year of that owner or by the introduction of subsequent owners with different tax years.

Each building has only one credit period. For purposes of section 42(f) of the Code, when the first tax year of the credit period is a short tax year, the credit period begins 12 months before the end of the short tax year. In other words, the credit period begins on what would have been the first day of the tax year, had the tax year not been a short tax year.

Because X came into existence on June 1, 1987, X had a short tax year for calendar year 1987. Because X did not elect to defer the start of the credit period to the succeeding year, which would have been its first full tax year, the building's credit period began 12 months before the end of X's short tax year. Therefore, the credit period began January 1, 1987, rather than the first day of the short tax year, June 1, 1987. The credit for the first year of the credit period is computed according to the first-year convention in section 42(f)(2) of the Code.

B. CREDIT COMPUTATION ISSUES

QUESTION 3.

X, a calendar year corporation, placed a newly constructed qualified low-income building in service on February 1, 1987. X received a $90,000 housing credit allocation for 1987 from the state Y housing credit agency based upon the 9 percent applicable credit percentage and had a qualified basis in the building as of December 31, 1987, of $1,000,000. X did not elect to defer the start of the credit period under section 42(f)(1) of the Code. For calendar year 1987, X claimed a credit using the first-year convention of section 42(f)(2).

During calendar year 1988 (the second year of the credit period), because of a change in annual accounting period permitted under section 442 of the Code, X made a short-period return for the 8-month period beginning January 1, 1988, and ending August 31, 1988. May X claim any low-income housing credit on its short-period return?

ANSWER 3.

Yes. As Answer 2 explains, the building's credit period is determined, at the time of placement in service, by reference to the tax year of the owner who placed the building in service, and is not affected by subsequent changes in the owner's tax year. The amount of credit that a particular owner may claim on its return for a tax year is determined on the last day of that owner's tax year. Because X was a calendar year taxpayer and did not elect to defer the start of the credit period, the building's credit period begins January 1, 1987, and ends December 31, 1996.

In accordance with section 42(a) of the Code, the amount of credit that X may claim on the short-period return is an amount equal to the product of the applicable percentage of 9 percent and 8/12 of the building's qualified basis as of August 31, 1988. X is entitled to only 8/12 of the applicable percentage of the qualified basis on the last day of the short-period tax year because the short period includes only 8 months. If the qualified basis was $1,000,000 on August 31, 1988, X would be allowed to claim a credit on its short-period return of $60,000 [(.09) x (8/12 x $1,000,000)]. Assuming X retains ownership of the building, continues to comply with the requirements of section 42 of the Code and remains on an

August 31 tax year, for each succeeding tax year in the credit period the credit is based upon the qualified basis as of August 3l of that tax year. If the qualified basis on August 31, 1989, is $1,000,000, X may claim a credit of $90,000 [(the applicable percentage, .09) x ($1,000,000)] on its federal income tax return for the tax year ending August 31, 1989.

The last 4 months in the credit period (September 1996 through December 1996) are included in X's tax year beginning September 1, 1996, and ending August 31, 1997. The credit for those 4 months is based upon 4/12 of the qualified basis as of August 31, 1997. The credit for X's tax year ending August 31, 1997, consists of the credit for the last 4 months of the credit period plus the disallowed first year credit amount that is carried over to the 11th year under section 42(f)(2)(B) of the Code. See Question and Answer 5 below.

C. AVAILABILITY OF CREDIT TO SUBSEQUENT PURCHASERS

QUESTION 4.

What is the meaning of the word "allowed" as used in section 42(d)(7)(B)(i) of the Code, which permits a subsequent owner to step into the shoes of a prior owner and claim a credit on a qualified low-income building, but only if the credit was "allowed" to a prior owner?

ANSWER 4.

For purposes of section 42(d)(7)(B)(i) of the Code, the term "allowed" may also mean "allowable." If a qualified low-income building is acquired during the building's compliance period, section 42(d)(7)(B)(i) requires that a credit must have been allowed to a prior owner of the building if the new owner is to continue claiming the credit. In this manner, credits may be transferred to the new purchaser of a building (or interest therein) during the period for which the property is eligible to receive the credit, with the new purchaser "stepping into the shoes" of the seller as to credit percentage, basis, and liability for compliance and recapture. See 2 H.R. Conf. Rep. No. 841, at II- 87. The purchaser's basis upon acquisition of the building (or interest therein) for section 42 purposes equals the eligible basis of the building (or interest therein) whether the purchase price is greater or less than that basis.

A credit need not actually have been claimed by a prior owner in order for a subsequent owner to claim the credit under section 42(d)(7) of the Code. If a taxpayer transfers a qualified low-income building (or an interest therein) before actually claiming a credit, but after having received an allocation or having qualified for the credit without an allocation (as provided in this ruling) under section 42(h)(4)(B), the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i). However, in order to be treated as having been allowed a credit, a prior owner must have actually received a low-income housing credit allocation for the building from a state housing credit agency before the transfer or must have actually qualified for the credit under section 42(h)(4)(B).

A state credit agency makes an allocation after reviewing the application submitted by the building owner and determining that the building will probably qualify as a qualified low-income building. A state credit agency may issue a reservation of a credit amount or a binding commitment to allocate credit in a later year as a preliminary step to issuing a credit allocation but, unlike a credit allocation, a reservation or a binding commitment may be revoked (for example, if specified conditions are not met by the building owner). Therefore, if a taxpayer transfers a qualified low-income building (or an interest therein) after the state agency reserves a low-income credit for that building but before the agency actually allocates that credit to that building, the credit will not be considered allowed to the prior owner within the meaning of section 42(d)(7)(B)(i) of the Code. If the credit is not considered allowed to the prior owner but the building has not been placed in service so that there is no violation of the 10-year rule in section 42(d)(2)(B)(ii) (and if the requirements of section 42 are otherwise met), the purchaser may apply to the state housing credit agency for an allocation of credit.

If a taxpayer receives an allocation with respect to a new building during the construction period of the building, as may be the case where the taxpayer expects to use the 10 percent carryover allocation rule in section 42(h)(1)(E) of the Code, and transfers the building (or an interest therein) before the building is placed in service, the purchaser will take an eligible basis in the building (or interest therein)

equal to the transferor's eligible basis in the building (or interest) at the time of transfer, whether the purchase price is greater or less than that basis. Because the property has not yet been placed in service, the eligible basis of the building has not yet been determined. The purchaser's eligible basis is determined at the end of the first tax year of the credit period. That eligible basis consists of both the transferor's eligible basis at the time of transfer and any additional costs incurred by the purchaser after the transfer, to the extent includible in eligible basis.

In the case of buildings placed in service after 1989 and financed with tax- exempt bonds issued after 1989, if a credit allocation is not necessary because the building meets the requirements of section 42(h)(4)(B) of the Code, the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i) when the following conditions are met: (1) the tax-exempt obligations have been issued; (2) the building has met the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located as required by section 42(m)(1)(D); (3) the governmental unit issuing the bonds has determined the credit dollar amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period as required by section 42(m)(2)(D); and (4) the state housing credit agency has assigned a building identification number (B.I.N.) to the building as is customarily done when an allocation of credit is made by the state housing credit agency.

In the case of buildings financed with tax-exempt bonds issued before 1990, if a credit allocation is not necessary because the building meets the requirements of section 42(h)(4)(B) of the Code, the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i) when the following conditions are met: (1) the tax-exempt obligations have been issued; and (2) the state housing credit agency has assigned a B.I.N. to the building as is customarily done when an allocation of credit is made by the state housing credit agency.

QUESTION 5.

On March 1, 1987, developer D, a calendar-year taxpayer, placed in service a newly completed qualified low-income building. The building consisted of 10 units, all of which were expected to be occupied by low-income tenants. The qualified basis of the building was $100,000. D received a $9,000 housing credit dollar amount allocation for 1987 from the state housing credit agency based upon the 9 percent applicable percentage for newly constructed non- federally-subsidized buildings. D chose not to make the election under section 42(f)(1) of the Code to defer the start of the credit period. On July 20, 1987, D sold the building to T, whose tax year ends August 31. At the time of sale, D had not yet claimed any credit with respect to the building for the period preceding the transfer. Table 1 shows the number of units in the building that were occupied by low-income tenants at the close of each full month between March 1, 1987, and December 31, 1987, the close of the tax year during which the building was placed in service. Is T eligible for the low-income housing credit under section 42 of the Code?

Rev. Rul. 91-38, Table 1

Month	Number of Occupied Low-income Units	Total Number of Units
March	2	10
April	2	10
May	2	10
June	2	10
July	4	10
August	6	10
Sept.	7	10
Oct.	9	10
Nov.	10	10
Dec.	10	10

ANSWER 5.

Yes. Although D had not claimed any of the low-income housing credit prior to the transfer, D received a housing credit dollar amount allocation before the sale of the property, and D would have been allowed to claim a credit if D had retained ownership of the property and had complied with the requirements of section 42 of the Code. Therefore, under section 42(d)(7), T may "step into the shoes" of D and may claim the tax credit that would have been allowable to D for

the period after the acquisition, provided that T complies with the requirements of section 42. See Question and Answer 4.

The building's credit period is determined by reference to the tax year (at the time of placement in service) of D, the owner who placed the building in service, and is not affected by differing tax years of succeeding owners. However, the amount of credit that a particular owner may claim on a return for a tax year is determined on the last day of that owner's tax year. Had D, a calendar-year taxpayer, chosen to make the election under section 42(f)(1) of the Code to defer the start of the credit period, T would have calculated the credit as of January 1, 1988, the first day of the first year of the building's credit period, even though T owned the building prior to the start of the credit period.

For purposes of section 42(f)(4) of the Code, the owner who has held the property for the longest period during the month in which a transfer occurs is deemed to have held the property for the entire month and may claim a credit accordingly. In cases in which the transferor and transferee have held the property for the same amount of time during the month of the transfer, the transferor is deemed to have held the property for the entire month and the transferee's ownership of the property is deemed to begin the first day of the following month. In this example, for purposes of calculating the credit that T is entitled to claim, T does not immediately "step into the shoes" of D when the transfer occurs on July 20, 1987. Instead, because D held the property for more than half of the month of July, T may not begin claiming the credit that would have been allowable to D until August 1, 1987. Thereafter, T may claim the credit that would have been allowable to D until the end of the credit period (assuming T retains ownership of the property and the requirements of section 42 of the Code are otherwise met).

Because D, the taxpayer that placed the building in service, was a calendar year taxpayer and because D chose not to make the election under section 42(f)(1) of the Code to defer the start of the credit period, the building's credit period begins the first day of calendar year 1987 (January 1, 1987) and continues for 120 months (until December 31, 1996). The first year of the building's credit period is the period from January 1, 1987, through December 31, 1987.

Under section 42(f)(2) of the Code, the applicable fraction used for determining the credit with respect to any building for the first tax year of the credit period is 1/12 of the sum of the applicable fractions determined under section 42(c)(1) as of the close of each full month of that year during which the building was in service. The sum of the applicable fractions determined under section 42(c)(1) for the period between March 1, 1987 (the date the building was placed in service), and July 31, 1987 (the date through which D is deemed to have owned the property), is 2/10 + 2/10 + 2/10 + 2/10 + 4/10, for a total of twelve-tenths (12/10), which when divided by 12, yields 1/10 or 0.1. Under section 42(f)(2), the credit amount that pertains to the portion of the tax year from March 1, 1987, to July 31, 1987, is $900 (the applicable fraction of 0.1 times the eligible basis of $100,000 times the applicable percentage of .09). Whether D may claim this credit amount will be determined under section 42(j) (relating to recapture of the credit and the posting of a bond). See Rev. Rul. 90-60, 1990-2 C.B. 3, for additional information on recapture of the credit and the posting of a bond. T is not entitled to claim this credit amount because T may claim the credit only for the period after T acquires the property. However, during the month that T owns the property during its tax year ending August 31, 1987, the applicable fraction is 6/10. Therefore, T may claim a credit on its federal income tax return for the tax year ending August 31, 1987, in the amount of $450 (the applicable fraction of 0.05 or (6/10 times 1/12) times the eligible basis of $100,000 times the applicable percentage of .09).

The credit for the first 4 months of T's succeeding tax year, which begins September 1, 1987, and ends August 31, 1988, still must be determined according to the first-year convention in section 42(f)(2) of the Code. This is because those months are still part of the first year of the building's credit period. The sum of the monthly applicable fractions determined under section 42(c)(1) for the period from September 1, 1987, to December 31, 1987, is 36/10 or 3.6, which, when divided by 12 and multiplied by the eligible basis of $100,000 and the applicable percentage of .09, yields a credit amount of $2,700.

If on August 31, 1988, in T's succeeding tax year, the applicable fraction under section 42(c)(1) of the Code is 10/10 or 1.0, then T's qualified basis at the end of that tax year is $100,000 (1.0 times $100,000 of eligible basis). The credit for

the remaining 8 months in T's tax year beginning September 1, 1987, and ending August 31, 1988, is $6,000 (8/12 times $100,000 of qualified basis times the applicable percentage of .09). T's total credit amount for the tax year beginning September 1, 1987, and ending August 31, 1988, is $8,700 ($2,700 + $6,000).

For each of T's succeeding tax years in the credit period, the credit is based upon the qualified basis as of the last day of T's tax year (August 31). The last 4 months in the credit period (September 1996 through December 1996) are included in T's tax year beginning September 1, 1996, and ending August 31, 1997. The credit for those 4 months is based upon 4/12 of the qualified basis as of August 31, 1997. The credit for T's tax year ending August 31, 1997, consists of the credit for the last 4 months of the credit period plus the disallowed first-year credit amount that is carried over to the 11th year under section 42(f)(2)(B) of the Code.

The disallowed first-year credit amount is calculated in the following manner: if the first-year convention of section 42(f)(2) of the Code had not applied to the calculation of the credit for the first year of the building's credit period, the credit amount would have been $9,000 based upon an applicable fraction for that building of 10/10 as of December 31, 1987, multiplied by the eligible basis on that date of $100,000, multiplied by the applicable percentage of .09. However, because of the first-year convention of section 42(f)(2), the allowable credit with respect to the building for the first tax year in the credit period was only $4,050 ($900 allowable to D for the period prior to T's acquisition of the building + $450 allowable to T for its tax year ending August 31, 1987, + $2,700 for the period between September 1, 1987, and December 31, 1987, allowable to T for part of its tax year ending August 31, 1988). Therefore, the carryover credit amount is $4,950 (the difference between $9,000 and $4,050).

This carryover credit is allowable for the first tax year ending after December 31, 1996, the date the credit period ends. Accordingly, for T's tax year ending August 31, 1997, T calculates the credit for the last 4 months of the credit period (the period between August 31, 1996, and December 31, 1996), and adds to this the carryover credit. For T's tax year ending August 31, 1997, T may claim $3,000 for the 4 month period between September 1, 1996, and December 31, 1996, plus the carryover amount of $4,950, for a total credit in that year of $7,950.

D. REHABILITATION EXPENDITURES ISSUES

QUESTION 6:

If a taxpayer begins the rehabilitation of an existing building in January 1987 and completes the rehabilitation in December 1987, less than 24 months after the rehabilitation began, must the taxpayer wait until December 1988, a 24-month period, before the rehabilitation expenditures are treated as placed in service under section 42(e)(4)(A) of the Code?

ANSWER 6.

No. Under section 42(e)(3)(A) of the Code, a taxpayer may aggregate all rehabilitation expenditures incurred during any 24-month period for purposes of meeting the minimum expenditures requirement of section 42(e)(3)(A). Although section 42(e)(4)(A) treats the expenditures aggregated under section 42(e)(3)(A) as placed in service at the close of the 24month period permitted for aggregating such expenditures, if the rehabilitation is completed and the minimum expenditures requirement of section 42(e)(3)(A) is met in less than 24 months, the expenditures may be treated as placed in service at the close of that period; however, in no event may the aggregation period exceed 24 months. Therefore, rehabilitation expenditures are treated as placed in service at the close of the 24-month or shorter aggregation period in which the rehabilitation is completed and the expenditures requirement of section 42(e)(3)(A) is met. Only those rehabilitation expenditures subject to the amendments made by section 201(a) of the 1986 Act (requiring 27.5 year depreciation of residential rental property) are eligible for the low-income housing credit under section 42. Expenditures incurred prior to 1987 and not placed in service prior to 1987 may be eligible for the credit, if the expenditures are subject to the amendments made by section 201(a) of the 1986 Act. See section 42(c)(2)(B).

QUESTION 7.

During the period from March 1, 1987, through December 31,

1987, A, the owner of an existing building, incurred substantial rehabilitation expenditures in amounts that met or exceeded the minimum expenditures requirement of section 42(e)(3)(A) of the Code. These expenditures were not federally subsidized. On January 1, 1988, A sold the building to B. On that date, the building did not meet the requirements for an existing building under section 42(d)(2)(B) (in particular, the 10-year requirement of section 42(d)(2)(B)(ii)); however, B bought the property before the rehabilitation expenditures were placed in service. May B receive a housing credit dollar amount in 1988 based upon the 9 percent applicable percentage (the 70 percent present value credit) for the rehabilitation expenditures?

ANSWER 7.

Yes. Because A had not received a housing credit dollar amount allocation for the rehabilitation expenditures A had incurred before selling the property to B, no credit was "allowed" to A as a prior owner and, therefore, the rules of section 42(d)(7) of the Code do not apply. See Question and Answer 4. However, section 1.167(k)-1(b)(1) of the regulations provides rules governing when a taxpayer is treated as having paid or incurred rehabilitation expenditures. Although the election under section 167(k) of the Code may no longer be made with respect to rehabilitation expenditures on a low-income rental housing building, rules similar to those of section 1.167(k)-1(b)(1) will generally still apply in determining when rehabilitation expenditures are treated as paid or incurred by the taxpayer under section 42. Because B acquired the property attributable to the rehabilitation expenditures before such property was placed in service, section 1.167(k)-1(b)(1) treats B as having paid or incurred the expenditures to the extent of the lesser of the rehabilitation expenditures paid or incurred before B's acquisition or B's cost or other basis attributable to the rehabilitation expenditures. Accordingly, for purposes of section 42, B's basis in the rehabilitation expenditures is the lesser of A's basis in the rehabilitation expenditures at the time of transfer (in general, A's actual cost paid or incurred for the rehabilitation expenses prior to January 1, 1988), or B's cost or other basis for the property attributable to the rehabilitation expenditures paid or incurred before that date. When B places the rehabilitated property in service, that property's original use is considered to begin with B.

If A had placed the rehabilitation expenditures in service for depreciation purposes before selling the building to B, B would not be treated as having paid or incurred the expenditures under section 42 of the Code or section 1.167(k)-1(b)(1) of the regulations because B would have acquired the the property attributable to the rehabilitation expenditures after that property was placed in service. In order for B to be eligible to receive a housing credit dollar amount for the cost of acquiring the building, the building would have to meet the requirements for an existing building under section 42(d)(2)(B) of the Code (including the requirement that there be a period of at least 10 years between the date of the building's acquisition and the later of (I) the date the building was last placed in service, or (II) the date of the most recent nonqualified substantial improvement of the building as defined in section 42(d)(2)(D)).

QUESTION 8.

Assume the same facts as in Question 7, except that A incurred rehabilitation expenditures that did not equal or exceed the minimum prescribed by section 42(e)(3)(A) of the Code. Is B eligible to receive an allocation of credit with regard to the rehabilitation expenditures that A incurred?

ANSWER 8.

Yes. Section 1.167(k)-1(b)(1) of the regulations treats B as having paid or incurred the expenditures, and a similar rule will be applied for purposes of section 42 of the Code. Under section 42(e)(5), B may elect to treat A's expenditures either as (a) part of the eligible basis of an existing building that meets the requirements of section 42(d)(2)(B), or (b) part of a series of expenditures treated as a separate new building under section 42(e).

(a) If the existing building that B purchased met the requirements of section 42(d)(2)(B) of the Code, B could include the rehabilitation expenditures in the building's eligible basis under section 42(d)(2)(A)(i) but only to the extent the cost of the expenditures is not already reflected in the purchase price for the building. B would be eligible to receive an allocation of credit, based upon the 30 percent present value credit for existing buildings, with respect to the building's entire eligible basis. However, see Note, below.
(b) Alternatively, regardless of whether the building meets the

requirements of section 42(d)(2)(B) of the Code, B may continue to make rehabilitation expenditures and may count the expenditures made by A toward the amount prescribed by section 42(e)(3). Because the expenditures were not federally subsidized, once the aggregate rehabilitation expenditures meet the requirements of section 42(e), B would be eligible to receive an allocation of credit, based upon the 70 percent present value credit for new buildings, with respect to the eligible basis attributable to the aggregate rehabilitation expenditures.

NOTE: Under section 7108(d)(1) of the 1989 Act, generally effective for allocations of credit after December 31, 1989, an existing building is not eligible for the credit unless an allocation of credit is allowable by reason of substantial rehabilitation of the building under section 42(e) of the Code. Therefore, the rehabilitation expenditures would have to equal at least the minimum amount prescribed by section 42(e)(3)(A) if the building is to be eligible for any credit.

E. 10-YEAR OWNERSHIP REQUIREMENT FOR EXISTING BUILDINGS

QUESTION 9.

Section 42(d)(2)(B)(ii)(I) of the Code requires that there be a minimum of 10 years between the date a taxpayer acquires an existing building and the date the building was last placed in service. Does this requirement apply only if the building was last placed in service as residential rental property?

ANSWER 9.

No. Except as provided in section 42(d)(2)(D)(ii) of the Code, for purposes of section 42(d)(2)(B)(ii)(I), there must be a minimum of 10 years between the date a taxpayer acquires an existing building and the date the building was last placed in service for any purpose, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

F. QUALIFIED RESIDENTIAL RENTAL PROPERTY

QUESTION 10.

If a taxpayer owned a home and used it as a personal residence can the taxpayer in 1987 convert the property into residential rental property for low- income housing and claim a tax credit for an existing building under section 42(d) of the Code without substantially rehabilitating the building as described in section 42(e)?

ANSWER 10.

No. In this situation, the taxpayer previously placed the building in service as a personal residence. Under section 42(d)(2)(A)(ii) and (B)(iii) of the Code, an existing building has an eligible basis of zero if it was previously placed in service by the taxpayer or by any person who was a related person (as defined in section 42(d)(2)(D)(iii)) with regard to the taxpayer as of the time the building was previously placed in service. This is the case regardless of whether the taxpayer placed the building in service as a personal residence more than 10 years ago (i.e., regardless of whether the 10-year requirement of section 42(d)(2)(B)(ii) is met).

However, if the taxpayer converts the property into residential rental property for low-income housing and, in so doing, incurs substantial rehabilitation expenditures in the amount prescribed by section 42(e)(3) of the Code, the taxpayer may treat the rehabilitation expenditures as a separate new building under section 42(e)(1). Because the requirements of section 42(d)(2)(B) do not apply to new buildings, the taxpayer would be eligible for a low-income housing credit allocation based on the qualified basis attributable to the aggregate rehabilitation expenditures.

QUESTION 11.

Taxpayer A bought a newly-constructed, single-family home in 1979 and placed it in service as residential rental property. The property was residential rental property from 1979 to 1985, when A sold the property to B who used it solely as a personal residence from 1985 to 1991. In 1991, if C purchases the property, substantially rehabilitates the property, and converts it into residential rental property for low-income housing, may C receive a tax credit for acquisition and rehabilitation of an existing building under section 42(d) of the Code?

ANSWER 11.

Yes. Although there has only been a period of 6 years between the date C acquired the property and the date the property was last placed in service by B, section 42(d)(2)(D)(ii)(V) of the Code, as added by the 1990 Act, provides that for allocations of credit made after 1990, there shall not be taken into account, in determining when a building was last placed in service, any placement in service of a single-family residence by any individual who owned and used such residence for no other purpose than as a principal residence. Under this provision, B's placement in service is not taken into account for purposes of the 10-year requirement of section 42(d)(2)(B)(ii). Therefore, there has been at least 10 years between the date C acquired the property in 1991, and the date the building was last placed in service by A in 1979 as residential rental property. Assuming the building meets the other requirements of section 42(d)(2)(B) applicable to existing buildings (including the requirement that a credit is allowable to the building for substantial rehabilitation under section 42(e), unless the exception in section 42(f)(5)(B) applies), C may be eligible to receive a housing credit dollar amount for acquisition and rehabilitation of the single-family home.

G. RENT-RESTRICTED RESIDENTIAL RENTAL UNIT

QUESTION 12.

Must the cost of meals provided in a common dining facility of a low- income project be included in gross rent under section 42(g)(2)(A) of the Code?

ANSWER 12.

Section 42(g)(2)(A) of the Code provides that a residential rental unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the income limits applicable to the tenants under section 42(g)(1).

Notice 89-6, 1989-1 C.B. 625, provides that the furnishing of services other than housing (whether or not such services are significant) will not prevent property from qualifying as residential rental property. However, any charges for services that are not optional to low-income tenants must be included in gross rent for purposes of section 42(g)(2)(A) of the Code. A service is optional if payment for the service is not required as a condition of occupancy.

In the case of a qualified low-income building with a common dining facility, if a practical alternative exists for tenants to obtain meals other than from the dining facility, and if payment for the meals in the facility is not required as a condition of occupancy, the cost of the meals will not be included in gross rent for purposes of section 42(g)(2)(A) of the Code.

The requirement that a practical alternative exists for tenants to obtain meals other than from the dining facility shall apply to projects receiving allocations of housing credit dollar amounts after calendar year 1991, and for projects not subject to the allocation limits, the requirement shall apply to projects placed in service after calendar year 1991.

EFFECTIVE DATE

The Internal Revenue Service may issue regulations addressing some of the points covered by this ruling. To the extent the regulations are inconsistent with the guidance provided by this ruling, the regulations will have prospective effect. Taxpayers may therefore rely on the provisions of this ruling until further guidance is published.

DRAFTING INFORMATION

The principal author of this revenue ruling is Donna Young of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Ms. Young on (202) 377-6349 (not a toll-free call).

IRS RULING 92-61
TREATMENT OF UNIT OCCUPIED BY FULL TIME MANAGER

REVENUE RULE 92-61

Internal Revenue Service
Revenue Ruling

FULL-TIME RESIDENT MANAGER IN BUILDING ELIGIBLE FOR LOW-INCOME HOUSING CREDIT

Published: August 10, 1992

Section 42. Low-Income Housing Credit

(See Also Sections 103, 142; 1.103-8.)

Full-time resident manager in building eligible for low-income housing credit. The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

ISSUE

If a unit in a qualified low-income building is occupied by a full-time resident manager, is the adjusted basis of that unit included in the building's eligible basis under section 42(d)(1) of the Internal Revenue Code and is that unit included in the applicable fraction under section 42(c)(1)(B) for determining the qualified basis of the building?

FACTS

At the beginning of 1990, LP, a limited partnership with a calendar tax year, placed in service a newly constructed apartment building that qualified for the low-income housing credit under section 42(a) of the Code. LP elected to meet the 40-60 test of section 42(g)(1)(B), which requires that at least 40 percent of the units in the building be rent-restricted and occupied by tenants whose incomes are 60 percent or less of area median gross income. Throughout 1990, the first year of the building's credit period, 69 of the 70 units in the building were rent-restricted and occupied by tenants whose incomes were 60 percent or less of area median gross income. The remaining unit in the building was occupied by a resident manager who was hired by LP to manage the building and to be on call to attend to the maintenance needs of the other tenants. All of the units in the building meet the same standard of quality and have the same amount of floor space.

LAW AND ANALYSIS

Section 42(a) of the Code provides that the amount of the low-income housing credit determined for any tax year in the credit period is an amount equal to the applicable percentage of the qualified basis of each low-income building.

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any tax year as an amount equal to the applicable fraction, determined as of the close of the tax year, of the eligible basis of the building, determined under section 42(d)(5).

Sections 42(c)(1)(B) of the Code defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(B) defines the unit fraction as the fraction the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential rental units, whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in

the building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building. In general, under section 42(i)(3)(B), a low-income unit is any unit that is rent-restricted and occupied by individuals meeting the income limitation applicable to the building.

Section 42(d)(1) of the Code provides that the eligible basis of a new building is its adjusted basis as of the close of the first tax year of the credit period. Section 42(d)(4)(A) provides that, except as provided in section 42(d)(4)(B), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes the adjusted basis of property of a character subject to the allowance for depreciation used in common areas or provided as comparable amenities to all residential rental units in the building.

The legislative history of section 42 of the Code states that residential rental property, for purposes of the low-income housing credit, has the same meaning as residential rental property within section 103. The legislative history of section 42 further states that residential rental property thus includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. 2 H.R.Conf.Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89. Under section 1.103- 8(b)(4) of the Income Tax Regulations, facilities that are functionally related and subordinate to residential rental units are considered residential rental property. Section 1.103-8(b)(4)(iii) provides that facilities that are functionally related and subordinate to residential rental units include facilities for use by the tenants, such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the project. The examples given by section 1.103-8(b)(4)(iii) of facilities reasonably required for a project specifically include units for resident managers or maintenance personnel.

Accordingly, the unit occupied by LP's resident manager is residential rental property for purposes of section 42 of the Code. The adjusted basis of the unit is includible in the building's eligible basis under section 42(d)(1). The inclusion of the adjusted basis of the resident manager's unit in eligible basis will not be affected by a later conversion of that apartment to a residential rental unit.

The term "residential rental unit" has a narrower meaning under section 42 of the Code than residential rental property. As noted above, under the legislative history of section 42, residential rental property includes facilities for use by the tenants and other facilities reasonably required by the project, as well as residential rental units. Under section 1.103-8(b)(4) of the regulations, units for resident managers or maintenance personnel are not classified as residential rental units, but rather as facilities reasonably required by a project that are functionally related and subordinate to residential rental units.

LP's resident manager's unit is properly considered a facility reasonably required by the project, not a residential rental unit for purposes of section 42 of the Code. Consequently, the unit is not included in either the numerator or denominator of the applicable fraction under section 42(c)(1)(B) for purposes of determining the qualified basis of the building for the first year of the credit period.

Therefore, as of the end of the first year of the credit period, the adjusted basis of the unit occupied by LP's resident manager is included in the building's eligible basis under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B). Because all of the residential rental units in LP's building are low-income units, the applicable fraction for the building is "one" (69/69, using the unit fraction).

If in a later year of the credit period, the resident manager's unit is converted to a residential rental unit, the unit will be included in the denominator of the applicable fraction for that year. If the unit also becomes a low-income unit in that year, the unit will be included in the numerator of the applicable fraction for that year. In this case, the applicable fraction will also be "one" (70/70, using the unit fraction).

HOLDING

The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

EFFECTIVE DATE

The Internal Revenue Service will not apply this revenue ruling to any building placed in service prior to September 9, 1992, or to any building receiving an allocation of credit prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling. Similarly, the Service will not apply this revenue ruling to any building described in section 42(h)(4)(B) of the Code with respect to which bonds were issued prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling.

DRAFTING INFORMATION

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