

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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(Small Business/Self-Employed)

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subject: Computation of the recapture interest amount under § 42(j)(2)(B)

This Chief Counsel Advice responds to your request for assistance. In accordance with § 6110, this advice may not be used or cited as precedent.

ISSUE

For purposes of the low-income housing credit under § 42 of the Internal Revenue Code, on recapture of the credit under § 42(j), is the amount of interest under § 42(j)(2)(B) computed based on:

1. The amount of the credit recaptured under § 42(j)(2)(A) (the accelerated portion of the credit) for each of the prior taxable years involved and related to the period beginning on the due date for filing the return for the prior taxable year involved; or
2. The accumulated amount of the credits recaptured under § 42(j)(2)(A) for all prior taxable years of the credit recapture period related to the period beginning on the due date for filing the return for the prior taxable year involved; or
3. The accumulated interest amount for all prior taxable years of the credit recapture period related to the period beginning on the due date for filing the return for the prior taxable year involved?

CONCLUSION

The proper method for computing the amount of interest on recapture under § 42(j)(2)(B) is above option number 1. The interest under § 42(j)(2)(B) is computed at the overpayment rate established under § 6621 based on the amount of the credit recaptured under § 42(j)(2)(A) for each of the prior taxable years involved and related to the period beginning on the due date for filing the return for the prior taxable year involved.

LAW AND ANALYSIS

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

Section 42(c) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to the applicable fraction (determined as of the close of such taxable year) of the eligible basis of such building (determined under § 42(d)(5)).

Section 42(j) provides rules for the recapture of the low-income housing credit. Specifically, § 42(j) states, in part, that:

(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.

Section 6621 establishes the rates of interest on tax overpayments and tax underpayments. Under § 6621(a)(1), the overpayment rate is the sum of the federal

short-term rate plus 3 percentage points (2 percentage points in the case of a corporation). Section 6621(b) provides that the Secretary shall determine the Federal short-term rate for the first month in each calendar quarter. Section 6622 states that interest on tax liabilities should compound daily.

The U.S. Supreme Court has stated that interest is charged on taxes “to compensate the delay in payment of the tax—the detriment of its nonpayment, to be continued during its nonpayment—compensation, not punishment.” *United States v. Childs*, 266 U.S. 304 (1924).

Interest is included in the “credit recapture amount” under § 42(j)(2)(B) in order to compensate the government for the time value of the money associated with the taxpayer claiming the accelerated portion of the credits but not ultimately earning the credits. Consistent with this intent, the credit recapture amount for each year should be tied to the amount of the accelerated portion of the credit claimed for that year and the interest accumulated on that amount from the due date of the return for that year. To use an otherwise accumulated amount may result in double counting and result in too much interest being paid to the government.

Therefore, interest under § 42(j)(2)(B) must be computed separately for each taxable year for which the accelerated portion of the credit is recaptured at the overpayment rate under § 6621, and compounded daily, when computing the credit recapture amount under § 42(j)(2). For example, if the credits claimed in three prior taxable years are recaptured, the Internal Revenue Service examiner will need to make three different interest computations under § 42(j)(2)(B), one for each of the three prior taxable years. Each computation will have a different start date for interest but will have the same ending date (the due date of the return for the taxable year under examination). From that point forward, underpayment interest under § 6621(a)(2) will apply to the credit recapture amount under § 42(j)(2), as it would for any other adjustment that the examiner makes during the examination that results in an underpayment of tax.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Dillon Taylor at (202) 317-3734, or, Casey Conrad at (202) 317-5154, if you have any further questions about this matter.