

IRS Information Letter: INFO 2000-0088 - IRC Section 42

Document Date: June 2, 2000

Internal Revenue Service

Department of the Treasury

P.O. Box 7604

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Washington, DC 20044

Date: June 2, 2000

Number: INFO 2000-0088

Release Date: 6/30/2000

The Honorable Michael B. Enzi

United States Senate

Washington, D.C. 20510

Dear Senator Enzi:

Thank you for your letter of May 4, 2000, on behalf of you constituent, who seeks your assistance concerning the operation of the low- income housing tax credit rules under section (§) 42 of the Internal Revenue Code as they apply to full-time students.

Building owners get tax credits if they incur certain building costs and comply with the various requirements of § 42, including renting units to qualifying low-income tenants at affordable rents.

They get no credit for a unit if the unit is fully occupied by students, no one of whom is entitled to file a joint income tax return. A student, for purposes of § 42, is an individual who during each of 5 months of the calendar year is a full-time student at an educational organization with a regular faculty, a curriculum and regularly enrolled students, and educational facilities.

A number of exceptions to the student rule exist. One exception says a unit may qualify for a low-income housing credit if it is occupied entirely by full-time students who are:

- (1) single parents and their children; and, neither the parent nor any child is a dependent of another individual, or
- (2) married and file a joint return.

Although a violation of a § 42 rule may result in loss of credit to a specific unit or to the building, no rule under § 42 requires the eviction of a tenant.

If you have any questions, please call me or Chris Wilson at (202) 622-3040.

Sincerely,
Susan Reaman
Chief, Branch 5 Office of the Assistant
Chief Counsel