

Rev. Proc. 91-7, 1991-1 CB 416--IRC Sec(s). 42

1. PURPOSE

This revenue procedure informs taxpayers how to make the election under section 11407(c) of the Revenue Reconciliation Act of 1990, Pub. L. No. 101- 508 (the 1990 Act), to accelerate into the first tax year ending on or after October 25, 1990, low-income housing credit amounts otherwise allowable in future years under section 42 of the Internal Revenue Code.

2. BACKGROUND

01. Section 11407(c)(1) of the 1990 Act generally provides that, at the election of an individual, the credit determined under section 42 of the Code for the taxpayer's first tax year ending on or after October 25, 1990, is increased by 50 percent of the amount that would (but for section 11407(c)) be allowable with respect to investments held by the individual on or before October 25, 1990.

02. Section 11407(c)(2) of the 1990 Act provides that the aggregate credit allowable to any person under section 42 of the Code with respect to any investment for tax years after the first tax year ending on or after October 25, 1990, is reduced on a pro rata basis by the amount of the increased credit allowable by reason of section 11407(c)(1) with respect to the first tax year.

03. Section 11407(c)(3) of the 1990 Act provides that the election under section 11407(c)(1) is made at the time and in the manner prescribed by the Secretary and, once made, is irrevocable. It also provides that, in the case of a partnership, the election shall be made by the partnership.

3. ELIGIBLE PERSONS

01. The election described in this revenue procedure may be made only by qualifying individuals, qualifying partnerships, and qualifying S corporations (eligible persons). Eligible persons may make the election only for their first tax year ending on or after October 25, 1990 (election year).

02. A qualifying individual is an individual who held an ownership interest, either directly or through a grantor trust (a trust to which subpart E of part I of subchapter J of the Code applies), in a low-income housing building on or before October 25, 1990, and to whom a low-income housing credit under section 42 of the Code is allowable for the election year with respect to the building.

03. A qualifying partnership is a partnership (1) that directly held an ownership interest in a low-income housing building on or before October 25, 1990, and (2) that has at least one qualifying partner. A qualifying partner is an individual or an S corporation (with at least one qualifying S corporation shareholder) that held an interest in the partnership (either directly or through one or more grantor trusts or other partnerships) on or before October 25, 1990, and to whom, by reason of holding the partnership interest, a low-income housing credit under section 42 of the Code is allowable for the election year with respect to the building.

04. A qualifying S corporation is an S corporation (1) that directly held an ownership interest in a low-income housing building on or before October 25, 1990, and (2) that has at least one qualifying S corporation shareholder. A qualifying S corporation shareholder is an individual who held shares (either directly or through a grantor trust) in an S corporation (including an S corporation that is a qualifying partner) on or before October 25, 1990, and to whom, by reason of holding the S corporation shares, a low-income housing credit under section 42 of the Code is allowable for the election year with respect to the building.

4. EFFECT OF ELECTIONS MADE BY QUALIFYING INDIVIDUALS

For a qualifying individual, the election increases by 50 percent the credit otherwise allowable for the election year. Thereafter, the low-income housing credit otherwise allowable for tax years after the election year is ratably reduced by the increased amount of the credit allowable for the election year.

5. EFFECT OF ELECTIONS MADE BY QUALIFYING PARTNERSHIPS

01. For a qualifying partnership, the election is made by the qualifying partnership and increases by 50 percent the credit otherwise allowable for the election year for all qualifying partners. Thereafter, the low-income housing credit otherwise allowable for tax years after the election year is ratably reduced by the increased amount of the credit allowable for the election year.

02. In calculating the portion of the partnership's credit that may be increased by 50 percent pursuant to the election, the partnership takes into account only the amount of the credit allocated to qualifying partners. Accordingly, the credit for the election year is not increased for partners that are not qualifying partners, and to the extent their credit is not increased, their credit is not reduced for tax years after the election year. The low-income housing credit otherwise allowable to qualifying partners **<Page 417>** for tax years after the election year is ratably reduced by the increased amount of the credit allowable for the election year. Appropriate adjustments must be made for transfers and issuances of partnership interests.

03. For all purposes under section 11407(c) of the 1990 Act, if a qualifying partner owns an interest in an electing qualifying partnership through one or more grantor trusts or other partnerships (tiered arrangements), the qualifying partner is treated as if the qualifying partner directly held an interest in the electing qualifying partnership.

04. If a qualifying partner is an S corporation, the increased credit for all the S corporation shareholders is determined in the manner described in section 7 of this revenue procedure.

6. EFFECT OF ELECTIONS MADE BY QUALIFYING S CORPORATIONS

For a qualifying S corporation, the election is made by the qualifying S corporation and increases by 50 percent the credit otherwise allowable for the election year for S corporation shareholders. Thereafter, the low-income housing credit otherwise allowable for tax years after the election year is ratably reduced by the increased amount of the credit allowable for the election year.

7. TREATMENT OF INCREASED CREDIT FOR S CORPORATION SHAREHOLDERS

Although the credit is increased for all S corporation shareholders of qualifying S corporations and for all S corporations that are qualifying partners, shareholders who are not qualifying S corporation shareholders (non-qualifying shareholders) are not permitted to claim on their tax returns their pro rata share of the increased credit. Instead, each non-qualifying shareholder's pro rata share of the increased credit for the election year is maintained in a suspense account. In tax years after the election year, the suspended credit is used to offset the non-qualifying shareholder's pro rata share of the reduction in credit required by section 11407(c)(2) of the 1990 Act.

8. ELECTION PROCEDURE

01. Eligible persons described in section 3 of this revenue procedure make the election by completing new line 17 on Schedule A (Form 8609), Annual Statement, Revised January 1991, for the election year. The election on Schedule A (Form 8609) must be made by the due date (including extensions thereof) of the eligible person's election year tax return.

02. An election pursuant to this revenue procedure must be made separately for each low-income housing building for which credit is allowable under section 42 of the Code. Eligible persons must be eligible persons as to each low-income housing building for which the election is made and must make the election on a building by building basis.

03. An election pursuant to this revenue procedure becomes irrevocable at the time the electing person's election year tax return is filed and is binding on the electing person and all the electing person's successors in interest for all tax years in which a credit under section 42 of the Code is allowable for the low-income housing building. An error as to the amount of the increased credit does not affect the validity of the election.

9. EFFECTIVE DATE

This revenue procedure applies to all low-income housing credits otherwise allowable under section 42 of the Code, for the first tax year ending on or after October 25, 1990.