

## **Rev. Proc. 94-10, 1994-1 CB 556--IRC Sec(s). 42**

**December 16, 1993**

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Sections 42, 142.)

### **1. PURPOSE**

This revenue procedure informs owners of low-income buildings how to make the election provided by section 13142(c)(1) of the Revenue Reconciliation Act of 1993 (RRA 1993), Pub. L. No. 103-66, 107 Stat. 416, 439-40 (1993). The election is available to owners of "deep rent skewed projects" not covered by section 7108(n)(2) of the Revenue Reconciliation Act of 1989 (1989 Act), 1990-1 C.B. 210, 223, and allows these project owners to satisfy the 200 percent gross rent restriction for a deep rent skewed project for purposes of section 42(g)(4) of the Internal Revenue Code.

### **2. BACKGROUND**

Section 42(g)(4) applies certain rules of section 142(d) for purposes of determining if a project is a qualified low-income housing project eligible for the low-income housing tax credit. Under section 42(g)(4), a deep rent skewed project, as defined in section 142(d)(4)(B), is a qualified low-income housing project.

Section 142(d)(4)(B), as amended by the 1989 Act, defines a deep rent skewed project as a project whose owner elects to have section 142(d)(4) apply and, at all times during the qualified project period, that meets the following requirements: (i) 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 gross rent for each low-income unit in the project does not exceed 30 percent of the applicable income limitation that applies to individuals occupying the unit, and (iii) the gross rent for each low-income unit in the project does not exceed 1/2 of the average gross rent for units of comparable size that are not low-income units (market rate units).

Section 7108(n) of the 1989 Act changed the market rate rent restriction of section 142(d)(4)(B)(iii) from 1/3 to 1/2 both for purposes of section 142(d) and, under section 42(g)(4), section 42. Section 7108(n) of the 1989 Act applies to allocations under section 42(h)(1) made after 1989 (or, to bond-financed buildings placed in service after 1989, to the extent section 42(h)(4) applies to the building).

For projects not subject to the 1989 Act amendments, and for the period prior to the enactment of section 13142(c)(1) of the RRA 1993, the gross rent for each low-income unit in a deep rent skewed project could not exceed 1/3 of the average gross rent for a market rate unit of comparable size.

Section 13142(c)(1) of the RRA 1993 allows the owner of a project not covered by the 1989 Act amendments to elect to satisfy the 1/2 (200 percent) market rate unit rent restriction of section 142(d)(4)(B)(iii).

Section 13142(c) of the RRA 1993 places the following conditions on this election: (1) the project owner must have met the requirements of section 42(m)(1)(B)(iii) (relating to state housing credit agency procedures for monitoring compliance with section 42); (2) the project owner must make the election during the 180 day period beginning on the date of enactment of the RRA 1993; (3) the project owner cannot increase the rent of existing low-income tenants as a result of this election; and (4) once made, neither the project owner nor any subsequent owner may revoke the election.

### SEC 3. SCOPE

This revenue procedure applies to deep rent skewed project owners whose buildings were not subject to the amendments to section 42(g)(4) made by section 7108(n)(2) of the 1989 Act.

### 4. ELECTION PROCEDURE

To make the election to apply the changes made by section 7108(n)(2) of the 1989 Act to its project, a project owner must --

.01 By February 7, 1994, send a written statement signed under penalty of perjury to the Internal Revenue Service Center, P.O. Box 245, Philadelphia, PA 19255, that states:

(a) That the project owner elects to meet the 1/2 (200 percent) market rate unit rent restriction of section 142(d)(4)(B)(iii) as applicable under section 42(g)(4);

(b) That the project owner meets the requirements of the procedures of the compliance monitoring plan in effect on the date of the election that is implemented by the state housing credit agency responsible for monitoring the building;

(c) That the project owner will not increase the rent of current occupants of low-income units as a result of the election; and

(d) The building identification number assigned to the building, the building or project name, the building or project address, and the owner's name and taxpayer identification number.

.02 Simultaneously send a copy of the election document to the state housing credit agency responsible for monitoring the building.

.03 Attach a copy of the election document to the building's Form 8609 filed for the tax year in which the project owner made the election.

.04 Keep a copy of the election document with the building's records. This copy must stay with the building's records regardless of any ownership transfer.

## **5. EFFECTIVE DATE OF ELECTION**

An election under section 4 of this revenue procedure made after publication of this revenue procedure is effective when filed with the Internal Revenue Service Center in Philadelphia, PA. An election under section 13142(c)(1) to use the 200 percent rent restriction of the 1989 Act made before the publication of this revenue procedure is effective when made if: (1) the project owner complied with the requirements of section 13142(c) of the RRA 1993, and (2) the project owner perfects the election by following the requirements in section 4 of this revenue procedure.

## **6. EFFECTIVE DATE**

This revenue procedure is effective for elections made on or after August 10, 1993.

## **DRAFTING INFORMATION**

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Jeffrey A. Erickson at (202) 622-3040 (not a toll free call).