

## REVENUE RULE 92-79

1992-2 C.B. 10, 1992-39 I.R.B. 5.

Internal Revenue Service  
Revenue Ruling

### LOW-INCOME HOUSING CREDIT

September 11, 1992

Low-income housing credit. This ruling clarifies that a taxpayer that received a low-income housing credit for a building before 1990 must enter into an extended low-income housing commitment under section 42(h)(6)(B) of the Code in order to be eligible for any additional housing credit allocation for the building after December 31, 1989.

#### ISSUE

Is a taxpayer that received a low-income housing credit allocation for a building from a state housing credit agency before 1990 required to enter into an "extended low-income housing commitment" under section 42(h)(6)(B) of the Internal Revenue Code, as amended by the Revenue Reconciliation Act of 1989, 1990-1 C.B. 214, 218, ("the 1989 Act"), in order to be eligible for an additional housing credit allocation for the building after December 31, 1989?

#### FACTS

Situation 1. In 1989, W, a calendar year taxpayer, acquired a five-unit residential rental building and placed the building in service for low-income housing. W's un-adjusted basis in the building was \$100,000. All of the units in the building were low-income units occupied by individuals who met the requirements of section 42 of the Code, including the income requirements of section 42(g)(1) ("low-income individuals"), and the building was a qualified low-income building under section 42. In 1989, W applied for and received a low-income housing credit allocation from the state housing credit agency.

In 1990, W incurred \$15,000 of expenditures in rehabilitating the building, and applied to the state housing credit agency for an additional low-income housing credit allocation under section 42(e) of the Code.

Situation 2. In 1989, X, a calendar year taxpayer, acquired a five-unit residential rental building and placed the building in service for low-income housing. Two of the units in the building were low-income units occupied by low-income individuals, and the building was a qualified low-income building under section 42 of the Code. In 1989, X applied for and received a low-income housing credit allocation from the state housing credit agency.

During the second year of the credit period, X rented the remaining units in the building to low-income individuals, and at the end of that year, all of the units in the building were low-income

units occupied by low-income individuals. X applied for an additional low-income housing credit allocation from the state housing credit agency for the addition to qualified basis under section 42(h)(1)(D) of the Code (with the additional credit limited as provided by section 42(f)(3)).

Situation 3. In 1989, Y, a calendar year taxpayer, began construction of a residential rental building to be used for low-income housing. In 1989, after having incurred expenditures that amounted to more than 10 percent of Y's reasonably expected basis in the building, Y applied for and received a low-income housing credit allocation from the state housing credit agency under section 42(h)(1)(E) of the Code.

In 1990, Y placed the building in service and applied for an additional low-income housing credit allocation to cover unexpected costs incurred by Y in constructing the building. The building was occupied by low-income individuals and was a qualified low-income building under section 42 of the Code.

Situation 4. In 1989, Z, a calendar year taxpayer, constructed a residential rental building and placed the building in service for low-income housing. The building was occupied by low-income individuals and was a qualified low-income building under section 42 of the Code. In 1989, Z applied for a low-income housing credit allocation from the state housing credit agency. However, due to a shortage of housing credit dollar amounts under the state housing credit ceiling for 1989, Z received an allocation of some low-income housing credit in 1989 and entered into a binding agreement with the housing credit agency (as described in section 42(h)(1)(C)) before the close of 1989 for additional credit to be allocated from the state housing credit ceiling for 1990.

## LAW AND ANALYSIS

Section 42(a) of the code, prior to its amendment by the 1989 Act, allowed a 10-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986, and, with certain limited exceptions, before January 1, 1990. The low-income housing credit is allocated by state housing credit agencies, which may allocate housing credit dollar amounts in each year up to the state housing credit ceiling for that year. Allocations from a state housing credit ceiling for a calendar year may only be made during that year. As enacted, section 42 allowed allocations in calendar years 1987, 1988, and 1989. The 1989 Act extended the credit to allow allocations after 1989 and amended certain provisions of section 42.

Section 7108(r)(1) of the 1989 Act provides the general effective date for the amended provisions. Section 7108(r)(1) states "[e]xcept as otherwise provided in this subsection, the amendments made by this section shall apply to 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 1989.<sup>11</sup>

Under section 42(h)(1)(B) of the Code, a state or local housing credit agency generally must allocate housing credit dollar amounts for a building no later than the close of the calendar year

in which the building is placed in service. However, section 42(h)(1)(C) and (D) provides exceptions to this general rule.

Section 42(h)(1)(C) of the Code provides that an allocation may be made for a building in a year after the year the building is placed in service if there is a binding commitment (made 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 the building in a specified later year. The allocation is made out of the housing credit ceiling for the later year.

Section 42(h)(1)(D) of the Code provides, in part, that an allocation may be made for an increase in a building's qualified basis occurring after the close of the first year of the building's credit period if the allocation is made no later than the close of the calendar year in which ends the tax year to which the allocation will first apply.

Under section 42(h)(1)(E) of the Code, a taxpayer may receive an allocation for a building prior to the year the taxpayer places the building in service if, as of the close of the year of the allocation, the taxpayer's basis in the building (or, if the building is part of a multiple-building project, the project) is more than 10 percent of the taxpayer's reasonably expected basis in the building (or project), as of the close of the second calendar year following the allocation year, and the taxpayer places the building in service before the close of the second calendar year following the allocation year.

Under section 42(h)(1)(F) of the Code, a taxpayer may receive an allocation of credit for a multiple-building project prior to the year the taxpayer places the project's buildings in service if (I) the allocation is made to the project for a calendar year in the project period (as defined in section 42(h)(1)(F)(ii)), (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 the allocation which is allocated to any building in the project is specified not later than the close of the calendar year in which the building is placed in service. In order to receive an allocation under section 42(h)(1)(F), the taxpayer must satisfy the rules for an allocation under section 42(h)(1)(E) (a "carryover allocation"), except that the carryover allocation need not be divided among the buildings at the time of the allocation. See H.R. Rep. No. 247, 101st Cong., 1st Sess., 1195-1196 (1989).

Among the changes made by the 1989 Act to section 42 of the Code was the addition of section 42(h)(6)(A), which provides that a building will be eligible for the credit only if the taxpayer and the housing credit agency enter into an extended low-income housing commitment as defined in section 42 (h) (6) (B)

Section 42(h)(6)(B) of the Code defines an extended low- income housing commitment as any agreement between the taxpayer and the housing credit agency that meets a number of specified requirements. Among other things, the agreement must (i) require that the applicable fraction (as defined in section 42(c)(1)) for the building for each tax year in the extended use period will not be less than the applicable fraction specified in the agreement, (ii) allow individuals meeting the income limitation applicable to the building the right to enforce in any state court the

requirement in clause (i), (iii) bind all successors of the taxpayer, and (iv) be recorded pursuant to state law as a restrictive covenant.

Section 42(c)(1)(B) of the Code defines the applicable fraction as the smaller of the unit fraction or the floor space fraction of the building. Under section 42(c)(1)(C), the unit fraction is the ratio of low-income units in the building to the number of residential rental units (whether or not occupied) in the building. Under section 42(c)(1)(D), the floor space fraction is the ratio of the total floor space of the low-income units in the building to the total floor space of the residential rental units (whether or not occupied) in the building.

Under section 42(h)(6)(C)(i) of the Code, the housing credit dollar amount allocated for any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for the building. The amount allocated, however, may reflect any increase in the applicable fraction pursuant to the application of section 42(f)(3) if the increase is also reflected in an amended extended low-income housing commitment.

Under section 42(h)(6)(D) of the Code, the extended use period begins on the first day in the compliance period on which the building is part of a qualified low-income housing project, and ends on the later of the date specified by the agency in the extended low-income housing commitment or the date that is 15 years after the close of the compliance period.

In Situation 1, W received an initial allocation of credit from the state housing credit agency in 1989 for acquisition of an existing building. In 1990, W incurred rehabilitation expenditures that W- treated as a separate new building under section 42(e) of the Code. Because section 42(h)(6)(A) applies to allocations made from state housing credit ceilings after 1989, in order to receive in 1990 an allocation of credit for expenditures incurred in rehabilitating the building, W must meet the extended low-income housing commitment. Accordingly, W must enter into an extended low-income housing commitment in which W agrees to maintain the building as low-income housing for at least 15 years beyond the end of the building's compliance period. Under section 42(h)(6)(B)(i), W and the state housing credit agency must specify in the extended low-income housing commitment the minimum applicable fraction that will be maintained throughout the extended use period.

Because they are treated as a separate new building under section 42(e) of the Code, W's rehabilitation expenditures have a separate 10-year credit period and 15-year compliance period which differ from the credit and compliance periods of the existing building. However, the extended low-income housing commitment must apply to the entire property, not just to the rehabilitation expenditures.

In order to receive a 1990 credit for rehabilitation expenditures, W must also satisfy the minimum qualifying expenditure test for substantial rehabilitation required under section 42(e)(3)(A) of the Code as amended by the 1989 Act. Under section 42(e)(3)(A)(ii), the expenditures must equal the greater of 10 percent of the unadjusted basis in the building or at least \$3,000 of qualified basis per low-income unit. These expenditures must be allocable to one or more low-income units or substantially benefit those units. W meets this test because W's \$15,000 of rehabilitation expenditures exceed 10 percent of W's \$100,000 basis and equal \$3,000

of qualified basis per low-income unit (\$15,000 of eligible basis for the rehabilitation expenditures multiplied by an applicable fraction of 100 percent for a qualified basis of \$15,000, and divided by five low-income units). Therefore, W may qualify for an additional allocation of credit in 1990 for rehabilitation expenditures provided that W enters into an extended low-income housing commitment. The extended use period will end on the later of the date specified by the housing credit agency in the extended low-income housing commitment or 15 years after the close of the compliance period of the building created by the rehabilitation expenditures.

In Situation 2, although X received an initial allocation of credit from the state housing credit agency in 1989 for acquisition of an existing building, X increased the qualified basis of the building after the close of the first year of the credit period. As in Situation 1, in order for X to receive an additional allocation of credit under section 42(h)(1)(D) of the Code for the addition to qualified basis, X must enter into an extended low-income housing commitment with the state housing credit agency under section 42(h)(6). Under section 42(f)(3), unlike credits claimed on the initial qualified basis, credits claimed on additions to qualified basis are allowable annually for the remainder of the building's 15-year compliance period and are determined using a credit percentage equal to two-thirds of the applicable credit percentage allowable for the initial qualified basis. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-92 (1986), 1986-3 (Vol. 4) C.B. 92. The extended use period will end on the later of the date specified by the state housing credit agency in the extended low-income housing commitment or 15 years after the close of the building's compliance period.

A building has only one 10-year credit period and only one 15-year compliance period. Because an addition to qualified basis is not treated as a separate new building, the credit and compliance periods that have already been fixed for the building also apply to the credit allocated for the addition to qualified basis. The extended low-income housing commitment must apply to the entire building.

In Situation 3, Y received a low-income housing credit allocation from the state housing credit agency under section 42(h)(1)(E) of the Code after having incurred more than 10 percent of Y's reasonably expected basis in the building (in this case, also a single building project) being constructed. However, Y incurred additional unexpected costs in constructing the building that were not covered by the initial allocation. In order to receive an additional credit allocation under section 42(h)(1)(B) in the year Y places the building in service, Y must enter into an extended low-income housing commitment with the state housing credit agency under section 42(h)(6). The credit allocated under section 42(h)(1)(B) for the additional unexpected costs is made for the same building as the initial allocation for construction of the building under section 42(h)(1)(E). Because the allocations are made for the same building, the same 10-year credit period and 15-year compliance period apply for both allocations. Therefore, the extended use period will end on the later of the date specified by the state housing credit agency in the extended low-income housing commitment or 15 years after the close of the building's compliance period. As in Situation 2, the extended low-income housing commitment must apply to the entire building.

In Situation 4, due to a shortage of housing credit dollar amounts remaining in the 1989 state housing credit ceiling, Z received an allocation of low-income housing credit in 1989 (the year Z placed the building in service) and entered into a binding agreement with the housing credit

agency before the close of 1989 for additional credit to be allocated in 1990 from the state housing credit ceiling for 1990. The 1989 binding commitment, however, does not exempt Z from the requirements of the 1989 Act with regard to the 1990 housing credit allocation. The 1989 binding commitment was necessarily contingent on an extension of the low-income housing credit after December 31, 1989. The 1989 Act did extend the credit after that date, but also made post-1989 allocations conditional on the satisfaction of a number of other requirements, including the requirement of an extended low-income use commitment. Accordingly, as in the above situations, in order to receive the 1990 allocation under section 42(h)(1)(C) of the Code, Z must enter into an extended low-income housing commitment with the state housing credit agency under section 42(h)(6). Because the additional credit allocated under section 42(h)(1)(C) relates to the same building as the initial 1989 allocation, the same 10-year credit period and 15-year compliance period apply for both allocations. The extended use period will end on the later of the date specified by the state housing credit agency in the extended low-income housing commitment or 15 years after the close of the building's compliance period. As in the above situations, the extended low-income housing commitment must apply to the entire building.

The above situations illustrate that the extended low-income housing commitment requirement applies to all buildings receiving allocations from state housing credit ceilings for calendar years after 1989.

#### HOLDING

A taxpayer that received a low-income housing credit allocation for a building from a state housing credit agency before 1990 must enter into an extended low-income housing commitment under section 42(h)(6)(B) of the Code in order to be eligible for any additional housing credit allocation for the building after December 31, 1989.

This revenue ruling does not address application of the 1989 Act amendment in section 42(d)(5)(C) of the Code allowing for an increase in credit for buildings in high cost areas.

#### DRAFTING INFORMATION

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