

Treasury Decision 8162, 26 CFR, IRC Sec(s). 42

November 03, 1987

AGENCY:

Internal Revenue Service, Treasury.

ACTION:

Temporary regulations.

SUMMARY:

This document provides temporary regulations concerning the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code of 1986, as enacted by the Tax Reform Act of 1986. These regulations provide guidance concerning the low-income housing credit allowable for certain Federally-assisted buildings acquired during a 10-year period. In addition, the text of the temporary regulations set forth in this document serves as the comment document for the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE:

The regulations are effective for buildings placed in service by a taxpayer after December 31, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert Beatson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T LR-61-87) (202-566-3829, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the low-income housing credit allowable under section 42(d)(6) of the Internal Revenue Code of 1986 for certain Federally-assisted buildings described in section 42(d)(2)(B)(ii), as enacted by section 252 of the Tax Reform Act of 1986 (Pub. L. 99-514). New §1.42-2T is added by this document to Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations provided by this document will remain in effect until superseded by final regulation on this subject.

Explanation of Provisions

Section 252 of the Tax Reform Act of 1986 enacted a new low-income housing credit equal to the applicable percentage of the qualified basis of each qualified low-income

building. The temporary regulations provide guidance with respect to the credit allowable for certain Federally-assisted buildings acquired during a 10-year period. The low-income housing credit is available to the acquirer of a qualified low-income building for which a special waiver is granted by the Internal Revenue Service in order to avert an assignment of the mortgage secured by the building to the Department of Housing and Urban Development or the Farmers' Home Administration, or to avert a claim against a Federal mortgage insurance fund with respect to a mortgage which is so secured.

Special Analyses

The Commissioner of Internal Revenue has determined that these temporary regulations are not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) because these are temporary regulations, and there is a need to provide the public with immediate guidance. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (Control no. 1545-1005).

Drafting Information

The principal author of these regulations is Robert Beatson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.0-1-1.58-8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

The amendments to 26 CFR Parts 1 and 602 are as follows:

PART 1-INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority:

26 U.S.C. 7805. Section 1.42-2T also issued under 26 U.S.C. 42 (m).

Par. 2. A new §1.42-2T is added immediately following §1.42-1T to read as follows:

§1.42-2T Waiver of requirement that an existing building eligible for the low-income housing credit has been held for 10 years prior to acquisition by the taxpayer (temporary).

(a) Low-income housing credit for existing building. Section 42 provides that, for purposes of section 38, new and existing qualified low-income buildings are eligible for a low-income housing credit. The eligibility rules for new and existing buildings differ. Under section 42(d)(2), the acquisition cost (to the extent properly included in basis) of an existing building may be eligible for the low-income housing credit if-

(1) The taxpayer acquires the building by purchase (as defined in section 179(d)(2), as applicable under section 42(d)(2)(D)(iii)(I)),

(2) There is a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of-

(i) The date the building was last placed in service, or

(ii) The date of the most recent nonqualified substantial improvement of the building, and

(3) The building was not previously placed in service by the taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) with respect to the taxpayer as of the time the building was last previously placed in service.

(b) Waiver of 10-year holding period requirement. Section 42(d)(6) provides that a taxpayer may apply for a waiver of the 10-year holding period requirement specified in paragraph (a)(2) of this section. The Internal Revenue Service will grant a waiver only if-

(1) The existing building satisfies all of the requirements in paragraph (c) of this section, and

(2) The taxpayer makes an application in conformity with the requirements in paragraph (d) of this section.

(c) Waiver requirements-(1) Federally-assisted building. To satisfy the requirement of this paragraph (c)(1), a building must be a Federally-assisted building. The term "Federally-assisted building" means any building which is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3) or 236 of the National Housing Act of 1934, or section 515 of the Housing Act of 1949, as such acts were in effect on October 22, 1986.

(2) Federal mortgage funds at risk. To satisfy the requirement of this paragraph (c)(2), Federal mortgage funds must be at risk with respect to a mortgage that is secured by the building or a project of which the building is a part. For purposes of this paragraph (c)(2), Federal mortgage funds are at risk if, in the event of a default by the mortgagor on the mortgage secured by the building or the project of which the building is a part-

(i) The mortgage could be assigned to the Department of Housing and Urban Development or the Farmers' Home Administration, or

(ii) There could arise a claim against a Federal mortgage insurance fund (or such Department or Administration).

(3) Action by the Department of Housing and Urban Development or the Farmers' Home Administration. To satisfy the requirement of this paragraph (c)(3), specified Federal action must have been taken by either the Department of Housing and Urban Development or the Farmers' Home Administration ("the Federal agency") with respect to the building or the project of which the building is a part that demonstrates that a waiver of the 10-year holding period requirement is necessary to avert Federal mortgage funds being at risk within the meaning of paragraph (c)(2) of this section. The following specified Federal actions shall be the only means of satisfying the requirement of this paragraph (c)(3):

(i) The federal agency intends to accept an assignment of a mortgage secured by the building or the project of which the building is a part, and such assignment requires payments by the agency or a mortgage insurance fund maintained by the agency to the prior mortgagee;

(ii) The Federal agency or a mortgage insurance fund maintained by the agency intends to accept, as a consequence of foreclosure proceedings or otherwise, conveyance of the building or the project of which the building is a part;

(iii) The Federal agency or a mortgage insurance fund maintained by the agency intends, as a consequence of default, to take possession of, hold title to, or otherwise assume ownership of the building or the project of which the building is a part; or

(iv) The Federal agency has designated the building or the project of which the building is a part as a troubled building or project. A designation of a troubled building or project must satisfy the following requirements:

(A) Designation of troubled status must be based on a review by the Federal agency of the financial condition of the building or project and on a determination by the agency of a history of financial distress and mortgage defaults;

(B) Designation of troubled status must be made or received and approved by the national office of the Federal agency; and

(C) Federal agency regulations or procedures must provide that, in the event of transfer of the ownership of a designated troubled building or project, the building or project may be subject to review by the Federal agency.

Each Federal agency may prescribe its own standards and procedures for designating a troubled building or project so long as such standards are consistent with the requirements of this paragraph (c)(3)(iv).

(4) No prior credit allowed. The requirement of this paragraph (c)(4) is satisfied only if no prior owner was allowed a low-income housing credit under section 42 for the building.

(d) Application for Waiver-(1) Time and manner. In order to receive a waiver of the 10-year holding period requirement specified in paragraph (a)(2) of this section, a taxpayer must file an application that complies with the requirement of this paragraph (d) and applicable procedural rules set forth in paragraph (e) of §601.201 (Statement of Procedural Rules). The application must be filed by a taxpayer who has acquired the building by purchase or who has a binding contract to purchase the building. Such binding contract may be conditioned upon the granting of a waiver under this section. The application may be filed at any time after a binding contract has been entered into, but no later than 12 months after the taxpayer's acquisition of the building. An application for a waiver of the 10-year holding period requirement must not contain a request for a ruling on any other issue arising under section 42 or other sections of the Internal Revenue Code. An application for a waiver of the 10-year holding period requirement must be mailed or delivered to the Internal Revenue Service, Associate Chief Counsel (Technical and International), Attention CC:IND:D:C, Room 6545, 1111 Constitution Avenue, NW., Washington, DC 20224.

(2) Information required. An application for a waiver of the 10-year holding period requirement must contain the following information:

(i) The taxpayer's name, address and taxpayer identification number;

(ii) The name (if any) and address of the acquired building and the project (if any) of which it is a part;

(iii) The date of acquisition or of the binding contract for acquisition of the building by the taxpayer, the amount of consideration paid or to be paid for the acquisition (including the value of any liabilities assumed by the taxpayer), and the taxpayer's certification that such acquisition is by purchase (as defined in section 179(d)(2), as applicable under section 42(d)(2)(D)(iii)(I));

(iv) The identity of the person from whom the building is acquired, and whether such person is a Federal agency, a mortgagee holding title to the building, or the mortgagor or prior owner;

(v) The date the building was last placed in service and the date of the most recent (if any) nonqualified substantial improvement of the building (as defined in section 42(d)(2)(D)(i));

(vi) The taxpayer's certification that the building was not previously placed in service by the taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) with respect to the taxpayer as of the time the building was last placed in service;

(vii) The source of Federal assistance received by the building (for purposes of paragraph (c)(1) of this section);

(viii) The taxpayer's certification that, as of the earlier of the time of acquisition of the building or the time of application for the waiver, the building is a Federally-assisted building (as defined in paragraph (c)(1) of this section);

(ix) The amount and disposition (e.g., discharge, assignment, assumption, or refinancing) of any outstanding mortgage, if any, at the time of acquisition and the identities of the mortgagee and mortgagor;

(x) The taxpayer's certification that, as of the earlier of the time of acquisition of the building or the time of application for the waiver, Federal mortgage funds are at risk within the meaning of paragraph (c)(2) of this section;

(xi) Documentation of specified Federal agency action within the meaning of paragraph (c)(3) of this section; and

(xii) The taxpayer's certification that no prior owner was allowed a low-income housing credit under section 42 of the building.

(3) Other rules. (i) In the event that an acquired building will be owned by more than one taxpayer, a single application for waiver may be filed by one taxpayer on behalf of the co-owners, if the application contains the names, addresses and taxpayer identification numbers of the other owners. A general partner or a designated limited partner may file an application for waiver on behalf of a partnership.

(ii) With respect to the requirement in paragraph (d)(2)(xi) of this section for documentation of specified Federal agency action, in the case of Federal agency designation of a troubled building or project (as described in paragraph (c)(3)(iv) of this section), a letter or other written statement is required from an appropriate official in the national office of the Federal agency verifying designation of troubled status and compliance with the requirements in paragraph (c)(3)(iv) of this section.

(iii) With respect to the certifications required in paragraphs (d)(2) (x) and (xii) of this section, the taxpayer may make the certifications to the best of its knowledge, and no documentation from other persons need be submitted with the application.

(4) Effective date of waiver. A waiver will be effective when granted but in no event later than 60 days after a taxpayer files a substantially complete application for waiver under this paragraph (d). If a taxpayer has filed a substantially complete application but the Internal Revenue Service requires additional information or materials, any waiver granted will be effective no later than 60 days after the initial application was filed.

(5) Attachment to return. A waiver letter granted by the Internal Revenue Service shall be filed with the taxpayer's Federal income tax return for the first taxable year the low-income housing credit is claimed by the taxpayer.

(e) Effective date of regulations. The provisions of §1.42-2T are effective for buildings placed in service by the taxpayer after December 31, 1986.

PART 602-OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority:

26 U.S.C. 7805.

§ 602.101 (Amended)

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§1.42-2T 1545-1005".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: October 19, 1987.

Donaldson Chapoton,

Assistant Secretary of the Treasury.