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, Section 42; 1.42-13)

Rev. Proc. 2007-54

SECTION 1. PURPOSE

This revenue procedure establishes a procedure for temporary relief from certain requirements of § 42 of the Internal Revenue Code for owners of low-income housing buildings (Owners) and housing credit agencies of States or possessions of the United States (Agencies) in major disaster areas declared by the President. This revenue procedure supersedes the relief provisions of Rev. Proc. 95-28, 1995-1 C.B. 704.

SECTION 2. CHANGE

.01 Under §1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal

Revenue Bulletin. Rev. Proc. 95-28 provided a procedure for temporary relief from certain requirements under § 42 in major disaster areas. Sections 5 and 6 of Rev. Proc. 95-28 provided certain relief from the carryover allocation provisions under § 42(h)(1)(E) and § 1.42-6. The carryover allocation provisions were later amended by section 135(a)(1) of the Community Renewal Tax Relief Act of 2000 (Public Law 106-554) to allow a building that receives an allocation of credit in the second half of a calendar year to qualify for the carryover allocation of credit if the taxpayer expends an amount equal to 10 percent or more of the taxpayer' s reasonably expected basis in the building within six months of receiving the allocation. In addition, § 1.42-6 was modified under T.D. 9110 on December 31, 2003, to reflect the amendments to § 42(h)(1)(E). This revenue procedure makes changes to the provisions of Rev. Proc. 95-28 to extend temporary relief in major disaster areas to the carryover allocation provisions taking into account the amendments to § 42 and changes to the regulations.

.02 Section 8 of Rev. Proc. 95-28 provided certain relief to Agency compliance monitoring requirements under § 1.42-5. Several provisions of § 1.42-5 were subsequently modified under T.D. 8859 on January 13, 2000. This revenue procedure incorporates the modified compliance monitoring requirements under T.D. 8859.

.03 The Internal Revenue Service (Service) has issued several Notices suspending certain § 42 requirements for Owners that provide temporary housing to individuals residing in certain major disaster areas who have been displaced because their residences have been destroyed or damaged as a result of the disaster. See Notice 2004-74, 2004-2 C.B. 875; Notice 2004-75, 2004-2 C.B. 876; and Notice 2004-76, 2004-2 C.B. 878; Notice 2005-69, 2005-2 C.B. 622; and Notice 2006-11, 2006-7

I.R.B. 457. This revenue procedure provides a procedure for Owners to rent on a temporary basis vacant low-income units to certain displaced low-income individuals that resided in major disaster areas described in section 4 of this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to Agencies and Owners in major disaster areas, as defined in section 4 of this revenue procedure.

SECTION 4. MAJOR DISASTER AREA

When a disaster occurs that warrants assistance from the federal government, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), Title 42 U.S.C. 5121-5206 (2000 and Supp. IV 2004) authorizes the President to issue a major disaster declaration for the affected area. When the President issues such a declaration, the Federal Emergency Management Agency (FEMA) publishes a notice in the Federal Register designating particular cities and/or counties or other local jurisdictions covered by the President' s major disaster declaration as eligible for Individual Assistance and/or Public Assistance. A city and/or county or other local jurisdiction so designated by FEMA for Individual Assistance and/or Public Assistance under the President' s disaster declaration is a major disaster area for purposes of the relief provisions under sections 5, 6, 7, 8, 9, 10, and 12 of this revenue procedure. The emergency housing relief of section 11 of this revenue procedure applies only in States or possessions where FEMA designates cities and/or counties or other local jurisdictions for Individual Assistance.

SECTION 5. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is an allocation of low-income housing credits made in a year before the project is placed in service.

.02 If an Owner has a carryover allocation for a building located in a major disaster area, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner' s reasonably expected basis in the project (land and depreciable basis) no later than six months after the date that Owners would otherwise be required to meet the 10-percent basis requirement under § 1.42-6(a)(2)(I) and (II). See § 1.42-6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a major disaster area and the area is declared a major disaster area during the 2-year period described in § 42(h)(1)(E)(i), the Service will treat the Owner as having satisfied the applicable placed in service requirement if the Owner places the building in service no later than December 31 of the year following the end of the 2-year period. See § 1.42-6 for specific rules on carryover allocations.

.04 If an Owner obtains the relief provided in section 5.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) by the extension period granted under the authority of section 5.02, the Service will treat the carryover allocation under § 1.42-6(a)(2)(I)(II) as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 5.02, provided the Agency complies with the requirements of § 1.42-14(d)(3). See § 1.42-14 for specific rules on returned credits.

.05 If an Owner obtains the relief provided in section 5.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) by the close of the calendar year following the end of the 2-year period of § 42(h)(1)(E)(i), the Service will treat the carryover allocation credit amount as a credit returned to the Agency on January 1 of the second year following the two year period of § 42(h)(1)(E)(i), provided the Agency complies with the requirements of § 1.42-14(d)(3).

SECTION 6. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in sections 5.02 or 5.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation.

.02 The Agency may approve the carryover allocation relief provided in sections 5.02 and 5.03 of this revenue procedure only for projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a disaster that led to a major disaster declaration under the Stafford Act. An Agency may make this determination on an individual project basis or may determine, because of the extent of the damage in a major disaster area that all Owners or a certain group of Owners in the major disaster area warrant the relief provided in sections 5.02 and 5.03 of this revenue procedure. An Agency has the discretion to provide less than the full amount of relief allowed under sections 5.02 and 5.03 or no relief based upon all the facts and circumstances.

.03 An Agency that chooses to approve the relief provided in sections 5.02 and 5.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The

Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that provides the relief in sections 5.02 and 5.03 of this revenue procedure must report to the Service projects granted relief by attaching the required documentation as provided in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that had received its approval of the carryover allocation relief provided in sections 5.02 and 5.03 of this revenue procedure since the Agency last filed the Form 8610.

SECTION 7. RECAPTURE RELIEF

.01 Under § 42(j)(4)(E), a building (1) that is beyond the first year of the credit period and (2) that, because of a disaster that led to a major disaster declaration, has suffered a reduction in qualified basis that would cause it to be subject to recapture or loss of credit will not be subject to recapture or loss of credit if the building' s qualified basis is restored within a reasonable restoration period. The Agency that monitors the building for compliance with § 42 shall determine what constitutes a reasonable restoration period, not to exceed 24 months after the end of the calendar year in which the President issued a major disaster declaration for the area where the building is located. If the Owner of the building fails to restore the building within the reasonable restoration period determined by the Agency, the Owner shall lose all credit claimed during the restoration period and suffer recapture for any prior years of claimed credit under the provisions of § 42(j)(1).