

**INTERNAL REVENUE SERVICE ADVANCE REVENUE RULING 92-40,
RELATING TO LOW INCOME-HOUSING CREDIT, ISSUED MAY 19, 1992
(TEXT)**

(Note: The revenue ruling will be published in the Internal Revenue Bulletin 1992-23, dated June 8, 1992)

Part I

Section 42.- -Low-Income Housing Credit

Rev. Rul. 92-40

ISSUES

(1) If a housing credit agency has not allocated the full amount of credits comprising the population component of its state housing credit ceiling under section 42(h) (3) (C) (i) of the Internal Revenue Code by June 30, 1992, may the agency nevertheless allocate credits from the other components of its state housing credit ceiling after that date?

(2) If a housing credit agency cannot verify at the time an allocation of credits is made for a qualified low-income building that the taxpayer has incurred more than 10 percent of the reasonably expected basis in the project, may the agency nevertheless allocate the credits under section 42(h) (1) (E) of the Code?

LAW

Section 42 of the Code provides a tax credit for investment in qualified low-income buildings placed in service after December 31, 1986. Qualified low-income buildings, except for certain buildings financed by tax-exempt bonds, must receive an allocation of housing credit dollar amounts from the housing credit agency (agency) in whose jurisdiction the building is located. The

housing credit dollar amount that an agency may allocate in any calendar year is limited to its portion of the state housing credit ceiling for the calendar year.

Under section 42(h) (3) (C) of the Code, the state housing credit ceiling applicable to any state for any calendar year is equal to the sum of the following components:

- (i) \$1.25 multiplied by the state population (the population component);
- (ii) the unused state housing credit ceiling, if any, of the state for the preceding calendar year;
- (iii) the amount of state housing credit ceiling returned in the calendar year; plus
- (iv) the amount, if any, allocated under subparagraph (D), relating to amounts allocated from a "national pool" of unused credits, to the state by the Secretary.

Section 42(o) (1) of the Code provides that the population component of the state housing credit ceiling shall not apply to any amount allocated after June 30, 1992.

Under section 42(h) (1) (E) of the Code, an allocation of credits may be made with respect to a "qualified building" that is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

A qualified building is described in section 42(h)(1)(E)(ii) as any building that is part of a project if the taxpayer's basis in that project, as of the close of the calendar year in which the allocation is made, is more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the calendar year in which the allocation is made.

HOLDINGS

(1) If a housing credit agency has not allocated the full amount of credits comprising the population component of its state housing credit ceiling under section 42(h)(3)(C)(i) of the Code by June 30, 1992, the agency nevertheless may allocate credits from the other components of its state housing credit ceiling after that date.

(2) If a housing credit agency cannot verify at the time an allocation of credits is made for a qualified low-income building that the taxpayer has incurred more than 10 percent of the reasonably expected basis in the project, the agency nevertheless may allocate the credits under section 42(h)(1)(E) of the Code, provided the agency verifies that more than 10 percent of the reasonably expected basis in the project has, in fact, been incurred by the taxpayer before the close of the calendar year in which the allocation is made.

DRAFTING INFORMATION

The principal author of this revenue ruling is Christopher J. Wilson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Wilson on (202) 377-6349 (not a toll-free call).

End of Text