each taxable year that was scheduled to have been paid in the taxable year based on the terms of the refinanced loan including any changes in the interest rate that would have been required by the terms of the refinanced loan and any payments of principal that would have been required by the terms of the refinanced loan (other than repayments required as a result of any refinancing of the loan).

(D) The hypothetical interest method (which is available only for refinanced loans that are not fixed interest rate loans) determines the amount of interest treated as having been scheduled to be paid for a taxable year by constructing an amortization schedule for a hypothetical self-amortizing loan with level payments. The hypothetical loan must have a principal amount equal to the remaining outstanding balance of the certified mortgage indebtedness specified on the existing certificate, a maturity equal to that of the refinanced loan, and interest equal to the annual percentage rate (APR) of the refinancing loan that is required to be calculated for the Federal Truth in Lending Act.

(E) A holder must consistently apply the scheduled interest method or the hypothetical interest method for all taxable years beginning with the first taxable year the tax credit is claimed by the holder based upon the reissued certificate.

(4) *Examples*. The following examples illustrate the application of paragraph (p)(3)(v) of this section:

Example 1. A holder of an existing certificate that meets the requirements of this section seeks to refinance the mortgage on the property to which the existing certificate relates. The final payment on the holder's existing mortgage is due on December 31, 2000; the final payment on the new mortgage would not be due until January 31, 2004. The holder requests that the issuer provide to the holder a reissued mortgage credit certificate in place of the existing certificate. The requested certificate would have the same certificate credit rate as the existing certificate. For each calendar year through the year 2000, the credit that would be allowable to the holder with respect to the new mortgage under the requested certificate would not exceed the credit allowable for that year under the existing certificate. The requested certificate, however, would allow the holder credits for the years 2001 through 2004, years for which, due to the earlier scheduled retirement of the existing mortgage, no credit would be allowable under the existing certificate. Under paragraph (p)(3)(v) of this section, the issuer may not reissue the certificate as requested because, under the existing certificate, no credit would be allowable for the years 2001 through 2004. The issuer may, however, provide a reissued certificate that limits the amount of the credit allowable in each year to the amount allowable under the existing certificate. Because the existing certificate would allow no credit after December 31, 2000, the reissued certificate could expire on December 31, 2000.

Example 2. (a) The facts are the same as *Example 1* except that the existing mortgage loan has a variable rate of interest and the refinancing loan will have a fixed rate of interest. To determine whether the limit under paragraph (p)(3)(v) of this section is met for any taxable year, the holder must calculate the amount of credit that otherwise would have been allowable absent the refinancing. This requires a determination of the amount of interest that would have been payable on the refinanced loan for the taxable year. The holder may determine this amount by—

(1) Applying the terms of the refinanced loan, including the variable interest rate or rates, for the taxable year as though the refinanced loan continued to exist; or

(2) Obtaining the amount of interest, and calculating the amount of credit that would have been available, from the schedule of equal payments that fully amortize a hypothetical loan with the principal amount equal to the remaining outstanding balance of the certified mortgage indebtedness specified on the existing certificate, the interest equal to the annual percentage rate (APR) of the refinancing loan, and the maturity equal to that of the refinanced loan.

(b) The holder must apply the same method for each taxable year the tax credit is claimed based upon the reissued mortgage credit certificate.

(5) *Coordination with section 143(m)(3).* A refinancing loan underlying a reissued mortgage credit certificate that replaces a mortgage credit certificate issued on or before December 31, 1990, is not a federally subsidized indebtedness for the purposes of section 143(m)(3) of the Internal Revenue Code.

§ 1.25–3T [Amended}

Par. 3. Section 1.25–3T is amended by removing paragraphs (g)(1)(iii) and (p).

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 27, 1996.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 16, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 17, 1996, 61 F.R. 66212)

Section 42.—Low-Income Housing Credit

Low-income housing tax credit. This revenue ruling clarifies that section 502(e)(3) of the Tax Reform Act of 1986 does not prevent a taxpayer from claiming a low-income housing tax credit under section 42 of the Code for a building's credit period beginning after 1995.

Rev. Rul. 97–4

ISSUE

Does § 502(e)(3) of the Tax Reform Act of 1986 (Act) prevent a taxpayer from claiming a low-income housing tax credit under § 42 of the Internal Revenue Code for a building whose credit period begins after 1995?

FACTS

On January 1, 1995, taxpayer, *T*, purchased a residential rental building (Building) from seller, *S*. *S* was allowed the transition-rule benefits under Act § 502(a). *T* intends to substantially rehabilitate the Building and qualify the Building for a low-income housing tax credit under § 42. The credit period for the Building will begin in 1996.

LAW AND ANALYSIS

Act § 502 contains a transition rule for taxpayers investing in certain low-income housing properties that exempts them from the passive-loss rules under § 469. The rule applies for investments made after 1983 in housing property constructed or acquired pursuant to a binding written contract entered into by August 16, 1986. If a binding contract existed by that date, taxpayers who purchased an interest in the property by the close of 1986 (1988 if the interest was held through certain partnerships), and who had not contributed more than 50 percent of their capital obligation, could qualify for the transition rule. These taxpayers could claim passive losses on new low-income housing investments for a limited period of time if the properties were placed in service prior to January 1, 1989. After 1995, the transition-rule benefits of Act § 502 are no longer available to any taxpayer.

Section 42 provides a tax credit for investment in qualified low-income buildings placed in service after December 31, 1986.

A taxpayer may not claim a § 42 credit before the start of a building's 10-year credit period. Section 42(f) provides that the 10-year credit period for a building begins with the taxable year the building is placed in service, or, at the election of the taxpayer, the succeeding taxable year.

Act § 502 and § 42 can apply to the same type of property. To prevent a taxpayer from obtaining a simultaneous tax benefit under both sections, Act § 502(e)(3) provides that no low-income housing credit under § 42 is available "with respect to any project with respect to which any person has been allowed any benefit under [Act § 502]."

The transition-rule benefits under Act § 502 are not available to *S* in 1996 and future years. Thus, no simultaneous tax benefit under Act § 502 and § 42 is available after that date. Therefore, Act § 502(e)(3) does not prohibit *T* from claiming a § 42 low-income housing credit for the Building whose credit period begins after 1995.

HOLDING

Act § 502(e)(3) does not prevent a taxpayer from claiming a low-income housing tax credit under § 42 for a building whose credit period begins after 1995.

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) 622–3040 (not a toll-free call).

Section 108.—Income From Discharge of Indebtedness

26 CFR 1.108(c)–1: Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

T.D. 8688

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Certain Elections Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time and manner of making certain elections under the Omnibus Budget Reconciliation Act of 1993. These regulations provide guidance to persons making the elections.

EFFECTIVE DATE: December 12, 1996.

FOR FURTHER INFORMATION CONTACT: George Bradley, 202–622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1421. Responses to these collections of information are required to obtain the benefits of the particular election that is the subject of the collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from 15 minutes to 45 minutes, depending on individual circumstances, with an estimated average of 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations relating to elections under the following sections of the Internal Revenue Code of 1986 (Code) and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312) (Act):

Act Section	Code Section
13114	1044(a)
13150	108(c)(3)(C)
13206(d)	163(d)(4)(B)(iii)
13225	6655(e)(2)(C)

On December 27, 1993, the **Federal Register** published temporary regulations (T.D. 8509 [1994–1 C.B. 24]) and a cross-reference notice of proposed rulemaking (IA–62–93 [1994–1 C.B. 803]), 58 FR 68300 and 58 FR 68336, respectively, relating to these elections. Three written comments responding to the regulations were submitted. Since none of the commentators requested a public hearing, one was not held. After consideration of the comments, the proposed regulations are adopted as final regulations subject to modifications to proposed § 1.108(c)–1, and the corresponding temporary regulations are removed. The comments and a description of the modifications to proposed § 1.108(c)–1 are discussed below.

Summary of Comments and Modifications

All three comments related to the election under section 163(d)(4)(B)(iii), which allows a taxpayer to take all or a portion of certain net capital gains, attributable to dispositions of property held for investment, into account as investment income. As a consequence, the capital gains affected by this election are not eligible for the maximum capital gain rate of 28 percent. The election must be made on Form 4952, Investment Interest Expense Deduction, on or before the due date (including extensions) of the income tax return for the taxable year in which the net capital gain is recognized.

The commentators questioned the authority of the IRS to require a formal election, stated that a formal election will add to the complexity of filing individual income tax returns, and suggested that taxpayers be allowed to freely change the manner in which they treat long-term capital gains, as long as the taxable year is open. These comments were given careful consideration. However, they have not been incorporated into these final regulations. The IRS and the Treasury Department believe that the requirement of a formal election is supported by the language of section 163(d)(4)(B)(iii), is not unduly burdensome, and provides taxpayers with flexibility, since the election is revocable.

The final regulations modify the requirements for making the election for discharge of qualified real property business indebtedness under section 108(c). Under the previous temporary regulations a taxpayer was required to make