

## Part III-Administrative, Procedural, and Miscellaneous

### Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Katrina

Notice 2007-66

#### I. PURPOSE

This notice is to advise owners of qualified low-income buildings and State housing credit agencies located in the Gulf Opportunity Zone (GO Zone) of relief from certain requirements under § 42 of the Internal Revenue Code. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations.

#### II. BACKGROUND

Owners of qualified low-income buildings may claim a tax credit under § 42(a). For any taxable year in a 10-year credit period, the amount of credit is equal to the applicable percentage of the qualified basis of each qualified low-income building.

Under § 42(j)(1) and (2) if, at the close of any taxable year in the compliance period, the building's qualified basis with respect to the taxpayer is less than the basis as of the close of the preceding taxable year, then the taxpayer is liable for additional tax (recapture) in an amount equal to the

accelerated portion of credits allowed in earlier years with respect to the reduction in qualified basis, plus interest.

Section 42(j)(4)(E) provides that the increase in tax under § 42(j) shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

Rev. Proc. 95-28, 1995-1 C.B. 704 and Rev. Proc. 2007-54, I.R.B. 2007-31, which supersedes Rev. Proc. 95-28, allow temporary relief from certain requirements under § 42 to owners of qualified low-income buildings and housing credit agencies of States or possessions of the United States in major disaster areas declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 42 U.S.C. 5121-5206 (2000 and Supp. IV 2004) (Stafford Act).

Section 7.01 of Rev. Proc. 95-28, and § 7.01 of Rev. Proc. 2007-54, provide that an owner of a building that is beyond the first year of the credit period will not be subject to recapture or loss of credit if the building's qualified basis suffered a reduction because of a disaster that caused the President to issue a major disaster declaration, provided the building's qualified basis is restored within a reasonable period. Both revenue procedures provide that the housing credit agency may determine what constitutes a reasonable period for purposes of § 42(j)(4)(E), but in no instance will the period end later than 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 a building's

qualified basis is restored within the period determined by the housing credit agency, the building will not be subject to recapture, and the building may continue to earn credit during that restoration period.

Under § 1.42-13, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin.

The Gulf Opportunity Zone Act of 2005 (Public Law 109-135, 119 Stat. 25) (GOZA) added §§ 1400M and 1400N to the Code to provide certain tax benefits to those areas affected by Hurricane Katrina. Section 1400M(1) defines the GO Zone as that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Stafford Act by reason of Hurricane Katrina. Section 1400M(2) defines the term "Hurricane Katrina disaster area" as an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Stafford Act by reason of Hurricane Katrina. Because of the widespread damage to housing caused by Hurricane Katrina and the difficulty in rebuilding, the Service has determined that it is appropriate to extend the restoration period provided under Rev. Proc. 95-28 for qualified low-income buildings located in the GO Zone.

### III. AFFECTED PROJECTS

The reasonable restoration period for purposes of § 42(j)(4)(E) provided in this Notice applies to qualified low-income buildings located in the GO Zone, as defined in § 1400M(1), that are (1) beyond the first year of the credit period, and

(2) that, because of Hurricane Katrina and its aftermath, suffered a reduction in qualified basis that would cause it to be subject to recapture and loss of credit.

#### IV. RELIEF PROVIDED

For qualified low-income buildings subject to this Notice, a housing credit agency may determine what constitutes a reasonable restoration period for purposes of § 42(j)(4)(E), but in no instance will it end later than 48 months after the end of calendar year 2005. In order to qualify for this period, the owner must have been engaged in the restoration of the building's qualified basis during the restoration period provided in § 7.01 of Rev. Proc. 95-28. The term "engaged in the restoration of the building's qualified basis" means, with respect to the qualified low-income building, ongoing physical repairs; having entered into binding, written contracts for the repair or restoration to be completed within the restoration period; or, active negotiation of contracts for the repair or restoration, including obtaining permits for construction.

If a building's qualified basis is restored within the period determined by the housing credit agency, not to exceed 48 months, the building will not be subject to recapture, and the building may continue to earn credit during that restoration period. If the owner of the building fails to restore the building within the reasonable restoration period determined by the state housing credit 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).

The state housing credit agency may determine the appropriate period, not to extend beyond 48 months after the end of the calendar year 2005 on a

building-by-building basis. Sections 7.02 through 7.04 of Rev. Proc. 95-28 continue to apply to qualified low-income buildings subject to this Notice.

#### V. DRAFTING INFORMATION

The principal author of this notice is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Malgeri on (202) 622-3040 (not a toll free call).