

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 42.)

Rev. Proc. 2012-27

SECTION 1. PURPOSE

This revenue procedure provides the manner under § 42(j)(6)(B)(i) of the Internal Revenue Code (the Code) by which a taxpayer may notify the Internal Revenue Service of any increase in tax resulting from a reduction in the qualified basis of a low-income housing tax credit building in order to begin the 3-year statutory period for assessing a deficiency with respect to that taxpayer.

SECTION 2. BACKGROUND

.01 Section 42 of the Code allows a 10-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986. If, as of the close of any taxable year in the 15-year compliance period (defined under § 42(i)(1) of the Code), the amount of the qualified basis of any building with respect to the taxpayer is less than the amount of such basis as of the close of the preceding taxable year, § 42(j)(1) provides that the taxpayer's tax for the taxable year shall be increased by the credit recapture amount.

.02 Section 42(j)(6)(A) of the Code, as amended by section 3004(c) of the Housing Assistance Tax Act of 2008 (Pub. L. 110-289) (the Act), provides that, in

general, an increase in tax under § 42(j) shall not apply solely by reason of a disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building. A building's compliance period is defined in § 42(i)(1).

.03 Section 42(j)(6)(B) of the Code, as amended by section 3004(c) of the Act, provides that if a building (or interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax for such taxable or any subsequent taxable year, then (i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and (ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

.04 Under section 3004(i) of the Act, the amendments made to § 42(j)(6) of the Code by section 3004(c) of the Act apply to buildings (or interests therein) disposed of after July 30, 2008, the date of enactment of the Act. In addition, the amendments apply to buildings (or interests therein) disposed of on or before July 30, 2008, if (i) it is reasonably expected that such building(s) will continue to be operated as qualified low-income building(s) (within the meaning of § 42) for the remainder of the compliance period with respect to such building(s), and (ii) the taxpayer elects the application of these rules to such disposition. Rev. Proc. 2008-60, 2008-2 C.B. 1006, provides

taxpayers with the procedures for making the election to apply these rules to dispositions of buildings (or interests therein) on or before July 30, 2008.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that—

.01 Dispose of a low-income housing building (or interest therein) in a transaction to which the amendments made by section 3004(c) of the Act apply; and

.02 Seek to make the notification prescribed by § 42(j)(6)(B)(i) of the Code.

SECTION 4. NOTIFICATION PROCEDURES

.01 To make the notification prescribed by § 42(j)(6)(B)(i) of the Code a taxpayer that disposed of a low-income building (or interest therein) must submit a letter to the Internal Revenue Service, signed by the taxpayer, containing the following:

(1) A lead-in declaration stating: “By this letter I am making the notification prescribed by § 42(j)(6)(B)(i) of the Internal Revenue Code.”;

(2) The taxpayer’s name, address, and taxpayer identification number;

(3) The name (if any), address, and Building Identification Number of each building to which the taxpayer’s disposition relates. If a taxpayer received a credit from a pass-through entity but does not know the information required by the preceding sentence, the taxpayer must provide the name and employer identification number of the pass-through entity from which the taxpayer received the credit;

(4) To the extent known, the name, address, and taxpayer identification number of any person(s) to whom the increase in tax under § 42(j)(6)(B) applies as a result of a reduction in the qualified basis of any building to which the taxpayer’s disposition relates; and

(5) A concluding declaration stating: “Under penalties of perjury, I declare that I have examined this letter and the representations made therein, and to the best of my knowledge and belief, they are true, correct, and complete.”

.02 The taxpayer must mail the letter to the address where the most current Form 8609, Low-Income Housing Credit Allocation and Certification, would be filed. For purposes of determining the 3-year period described in § 42(j)(6)(B)(i), the Secretary is deemed to be notified as of the postmark date of the letter. The instructions to Form 8609 contain the address for filing the most current Form 8609 and may be accessed electronically at:

<http://www.irs.gov/app/picklist/list/formsInstructions.html>.

SECTION 5. EFFECTIVE DATE

.01 This revenue procedure is effective for notifications under § 42(j)(6)(B)(i) of the Code made on or after May 2, 2012.

.02 Except to the extent provided in section 5.03 of this revenue procedure, a notification sent by a taxpayer to the Internal Revenue Service prior to May 2, 2012, is not effective to begin the 3-year statutory period for assessing a deficiency with respect to that taxpayer under § 42(j)(6)(B)(i).

.03 A notification received from a taxpayer by the Internal Revenue Service prior to May 2, 2012, is effective to begin the 3-year statutory period if it complies with the substance of this revenue procedure. A notification complies with the substance of this revenue procedure only if it provides the information described in section 4.01(2) and (3) of this revenue procedure, and it contains a declaration under penalties of perjury substantially similar to that described in section 4.05 of this revenue procedure.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has 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 1545-2120.

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 OMB control number.

The reporting requirement is contained in section 4 of this revenue procedure. The information is required so that taxpayers may notify the Service of any increase in tax resulting from a reduction in the qualified basis of a low-income housing tax credit building in order to begin the 3-year statutory period for assessing a deficiency with respect to that taxpayer pursuant to § 42(j)(6)(B)(i) of the Code.

The likely respondents are taxpayers that have disposed of a low-income building (or interest therein). The estimated total annual reporting burden is 10 hours. The estimated annual burden per respondent is 1 hour, depending on the individual circumstances. The estimated total number of respondents is 10.

Books or records relating to a 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.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Julie Hanlon-Bolton of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further

information regarding this revenue procedure contact Ms. Hanlon-Bolton on (202) 622-3040 (not a toll-free call).