

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 §§ 42, 141, 142, and 146, and 26 CFR 1.42-8, 1.42-13, and 1.150-1.)

Rev. Proc. 2021-43

SECTION 1. PURPOSE

This revenue procedure provides safe harbors for determining whether an exempt facility bond issue that is issued after December 31, 2020, or an allocation of a housing credit dollar amount that is made after December 31, 2020, is more than *de minimis* for purposes of Holdings 2 and 3 of Rev. Rul. 2021-20, page ___ this bulletin. That ruling addresses whether the minimum 4 percent applicable percentage (4 percent floor) under § 42(b)(3) of the Internal Revenue Code applies to a building.

SECTION 2. BACKGROUND

.01 Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

.02 Section 42(b) describes rules to determine the applicable percentage.

.03 Section 42(b)(2) provides a minimum credit rate of 9 percent for non-federally subsidized new buildings.

.04 Section 201(a) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Public Law 116-260, 134 Stat. 1182, 3056 (December 27, 2020), amended § 42(b) by redesignating § 42(b)(3) as § 42(b)(4) and adding a new § 42(b)(3).

.05 Section 42(b)(3), as added by section 201(a) of the Act, provides that in the case of any new or existing building to which § 42(b)(2) does not apply and which is placed in service by the taxpayer after December 31, 2020, the applicable percentage cannot be less than 4 percent. The amendments to § 42(b) in section 201(a) of the Act apply to (1) any building which receives an allocation of housing credit dollar amount after December 31, 2020, and (2) in the case of any building any portion of which is financed with an obligation described in § 42(h)(4)(A), any such building if any such obligation which so finances such building is issued after December 31, 2020.

.06 Rev. Rul. 2021–20 addresses three situations. Situation 2 of the ruling describes a building that is financed in part with proceeds of an exempt facility bond issue that was issued in 2020 and in part with proceeds of a different exempt facility bond issue that is issued in a *de minimis* amount in a subsequent year. (Generally, exempt facility bonds are bonds issued pursuant to § 142 of the Code, and the interest on these bonds is exempt from tax under § 103 of the Code provided certain requirements are met.) Situation 3 of the ruling describes a building that receives an allocation of housing credit

dollar amount in 2020 and a *de minimis* additional allocation in a subsequent year.

.07 Holdings 2 and 3 of Rev. Rul. 2021–20 provide that a *de minimis* amount of exempt facility bonds issued, or a *de minimis* allocation made, after December 31, 2020, does not cause the 4 percent floor under § 42(b)(3) to apply to a building.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers with buildings that are eligible for the low-income housing credit under § 42 and that must determine whether the 4 percent floor under § 42(b)(3) applies to their buildings.

SECTION 4. PROCEDURE

.01 For purposes of Situation 2 of Rev. Rul. 2021–20, an exempt facility bond issue issued after December 31, 2020, that finances the building in question is not *de minimis* if, as of the latest issue date of any such issue, the aggregate amount of the post-2020 obligations is at least 10 percent of the total amount of all § 42(h)(4)(A) obligations that finance the building. For this section 4.01, an issue is taken into account only to the extent that it finances the particular building in question (such as the building described in Situation 2 of Rev. Rul. 2021–20).

.02 For purposes of Situation 3 of Rev. Rul. 2021–20, an allocation of housing credit dollar amounts to a building made after December 31, 2020, is not *de minimis* if the allocation is at least 10 percent of the total allocations to the building that have been made on or before the date of the allocation in question. For this section 4.02, all allocations to a building of housing credit dollar amounts that reduce a State’s housing

credit ceiling for one or more years after 2020 are treated as one allocation that was made to the particular building in question on the latest date of these post-2020 allocations.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to buildings financed with exempt facility bond issues that are issued after December 31, 2020, and to buildings to which allocations of housing credit dollar amounts are made after December 31, 2020.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Dillon Taylor and Michael Torruella Costa, Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, please contact Dillon Taylor or Michael Torruella Costa on (202) 317-4137 (not a toll-free call).