Part I

Section 42.—Low-income housing credit

26 CFR 1.42-14: Allocation rules for post-2000 State housing credit ceiling amount.

Rev. Rul. 2024-5

ISSUE

Section 305 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, Public Law 116-260, div. EE, 134 Stat. 3038, 3080 (Dec. 27, 2020) (Act) authorized housing credit agencies (Agencies) to allocate additional housing credit dollar amounts (HCDAs) in 2021 or 2022 to buildings in one or more qualified disaster zones (as defined in section 301(2) of the Act). If an Agency allocated HCDAs to buildings located in qualified disaster zones in 2021 or 2022 and some of those amounts are returned to the Agency after 2022, may the Agency reallocate those returned amounts, and, if so, are the reallocations restricted to buildings in a qualified disaster zone?

LAW

Under section 305(a)(1) and (2) of the Act, for purposes of section 42 of the Internal Revenue Code (Code)[1], the State housing credit ceiling for any State for each of calendar years 2021 and 2022 is increased by the aggregate HCDA allocated by the State's Agencies for the calendar year to buildings located in any qualified disaster zone (as defined in section 301(2) of the Act) in the State up to an aggregate limitation as set in section 305(a)(2) of the Act (Applicable Dollar Limitation).

Section 305(a)(4) of the Act provides that, for purposes of determining the unused State housing credit ceiling for any calendar year under section 42(h)(3)(C), any increase in the State housing credit ceiling under section 305(a)(1) of the Act is treated as an amount described in section 42(h)(3)(C)(ii).

Section 42(h)(3)(C) defines the State housing credit ceiling applicable to any State for any calendar year to be an amount equal to the sum of the following four amounts—

(i) the "Unused Carryforward Component," which is the amount of the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the "Population Component," which is the amount equal to the greater of—
- (I) $1.75 multiplied by the State population, or
- (II) $2,000,000,[2]

(iii) the "Returned Credit Component," which is the amount of State housing credit ceiling returned in the calendar year, plus

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[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

[2] An annual cost of living adjustment applies to both elements of the Population Component under section 42(h)(3)(H).

(iv) the “National Pool Component,“ which is the amount (if any) allocated under section 42(h)(3)(D) from a national pool of unused credit to such State by the Secretary of the Treasury or her delegate.

Section 1.42-14(d)(1) further provides that the Returned Credit Component of the State housing credit ceiling of a State for any calendar year equals the HCDA returned during the calendar year that was validly allocated within the State in a prior calendar year to any project that does not become a qualified low-income housing project within the period required by section 42, or as required by the terms of the allocation. The Returned Credit Component also includes credit allocated in a prior calendar year that is returned as a result of the cancellation of an allocation by mutual consent or by a State’s determination that the amount allocated is not necessary for the financial feasibility of the project.

Section 1.42-14(g) sets forth the stacking order regarding how credit is treated as allocated from the various components of the State housing credit ceiling. Specifically, the first credit allocated for any calendar year is treated as credit from the Unused Carryforward Component of the State housing credit ceiling for the calendar year. After all of the credit in the Unused Carryforward Component has been allocated, any credit allocated is treated as allocated from the sum of the Population, Returned Credit, and National Pool Components of the State housing credit ceiling.

Notice 2021-45, 2021-31 I.R.B. 170, identified the 11 States and Puerto Rico that had qualified disaster zones, along with the State populations residing in each. It also contained a list of counties and parishes located within the qualified disaster zones.

IRS Announcement 2022-27, 2022-51 I.R.B. 559, reminded Agencies that unless an allocation was in 2021 and 2022, it would fail to increase a State's housing credit ceiling.

ANALYSIS

Under section 305(a)(1) of the Act, a State's housing credit ceiling is increased in calendar years 2021 and 2022 to reflect the aggregate HCDAs that are allocated by the State to buildings located in any qualified disaster zone in the State. The aggregate increases for both years, however, may not exceed the Applicable Dollar Limitation. Section 305(a)(4) of the Act provides that the increase is taken into account in the Population Component of a State's housing credit ceiling for the purpose of determining the unused State housing credit ceiling for any calendar year. Thus, the housing credit ceiling increase resulting from a valid allocation under the Act joins with the otherwise-determined Population Component of a State's housing credit ceiling in the year of allocation.

The need for an increase in the State's housing credit ceiling for the year of allocation implies that a qualified disaster zone allocation comes out of the State's housing credit ceiling for the allocation year. Without the increase, a qualified disaster zone allocation would reduce the credit ceiling amounts available to the State for other projects in that year. Consistent with section 42(h)(3)(C)(iii) and § 1.42-14(d)(1) in all years, the Returned Credit Component for any year is the amount of State housing credit ceiling allocated in a prior year that is returned in the calendar year at issue. Because the Act treats the disaster allocations as coming out of the allocation-year ceiling, any such allocation that is returned in 2023 or after meets the requirements in section 42(h)(3)(C)(iii) and § 1.42-14(d)(1). As such, the returned allocation is part of the Returned Credit Component of a State's housing credit ceiling in the year of return and may be reallocated.

Other than increasing the State's 2021 and 2022 housing credit ceiling, section 305 of the Act ascribes no special attributes to HCDA allocations to qualified disaster zones. After their allocation, these HCDAs have no statutory attributes that distinguish them from any other allocations that had been made from the allocation-year ceiling. Put differently, the Act provides for the increase in the credit ceiling and indicates where the increase is taken account for purposes of the stacking order, but does not provide rules for how a State should reallocate these amounts if they are returned after 2022.

The Act's silence about returned allocations suggests that the normal returned credit rules under section 42 apply to these returned allocations as well. Further, there is an indication that the Act affirmatively intended for normal section 42 rules to apply after a valid allocation to a qualified disaster zone. Because section 305(a)(4) of the Act provides that the increase in the credit ceiling is part of the Population Component for determining the Unused Carryforward Component for the next year, it indicates an intent to apply the general stacking order of the rules under § 1.42-14(g). For example, this would mean that a State's allocations would first reduce the State's current year Unused Carryforward Component (regardless of whether to a qualified disaster zone) before reducing the other components of a State's housing credit ceiling. Therefore, under the Act, the regular section 42 returned credit rules would apply to a returned allocation that was validly allocated in a prior calendar year.

HOLDING

If one or more of a State's allocations to qualified disaster zones in 2021 or 2022 are returned after 2022, then the returned HCDAs are part of the overall Returned Credit Component of a State's housing credit ceiling in the year of return. As such, reallocations of these returned amounts are not restricted to projects located in qualified disaster zones.

The analysis in this revenue ruling applies only for purposes of determining the validity of reallocations of HCDAs whose previous allocations had increased a State's housing credit ceiling under section 305 of the Act.

DRAFTING INFORMATION

The principal author of this revenue ruling is Dillon Taylor of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, contact Dillon Taylor at (202) 317-4137 (not a toll-free call).