

REVENUE RULE 90-60
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Internal Revenue Service

Revenue Ruling
LOW-INCOME HOUSING CREDIT; SATISFACTORY BOND
Published: July 3, 1990

Section 42. - Low-Income Housing Credit

Low-income housing credit; satisfactory bond. Guidance is provided on the amount of bond considered satisfactory by the Secretary and the period of the bond required by the Secretary under section 42(j)(6) of the Code. Also monthly 'bond factor' amounts to be used by taxpayers who dispose of low-income housing buildings or interests therein, during calendar years 1987, 1988, 1989, and the first seven months of calendar year 1990 are announced.

Section 42(a) of the Internal Revenue Code allows a 10-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986. Section 7108 of the Revenue Reconciliation Act of 1989, 1990-11 I.R.B. 11, 16, extended the credit and amended certain provisions of section 42. The amount of the low-income housing credit for any tax year in the credit period is an amount equal to the product of the applicable percentage and the qualified basis of each qualified low-income building.

If, at the close of any tax year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than the amount of the qualified basis at the close of the preceding tax year, section 42(j)(1) of the Code provides that the taxpayer's tax for the tax year shall be increased by the credit recapture amount under section 42(j)(2). However, under section 42(j)(6), a taxpayer that disposes of a qualified low-income building or an interest therein may defer or avoid recapture by furnishing a bond to the Secretary in an amount satisfactory to, and for the period required by, the Secretary if it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period.

The taxpayer's obligation under the bond must be secured by a surety, and the company acting as surety on the bond must hold a Certificate of Authority from the Department of the Treasury, Financial Management Service. These companies are listed in Treasury Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.

The purpose of the bond is to secure the taxpayer's liability for credit recapture under section 42(j) of the Code with respect to the taxpayer's disposition of an interest in a qualified low-income building during the compliance period. If a taxpayer furnishes a bond under section 42(j)(6) with respect to the disposition of an interest in a qualified low-income building, the taxpayer will be treated, solely for purposes of applying section 42(j) with respect to the disposition, as if the taxpayer had not disposed of the interest. Instead, the taxpayer's recapture (if any) with respect to the disposed-of interest will be determined under the rules of section 42(j) by deeming the taxpayer to continue to own the disposed-of interest and by determining the

qualified basis for the deemed interest in accordance with the rules of section 42(c). The taxpayer will not, however, be treated as claiming any additional low-income housing credit with respect to the disposed-of interest for any period following the disposition.

If the qualified basis with respect to the taxpayer's deemed interest in a qualified low-income building decreases after a disposition of the taxpayer's interest in the qualified low-income building, the bond may be forfeited in whole or in part. If a bond is forfeited only in part (i.e., the taxpayer's qualified basis in the deemed interest decreases, but is not eliminated), the nonforfeited portion of the bond remains subject to forfeiture in the event of subsequent decreases in qualified basis with respect to the taxpayer's deemed interest. For example, the Government could call a portion of a bond during the bond's term due to a decrease in qualified basis with respect to the taxpayer's deemed interest and could later call an additional portion of the bond due to a further decrease in qualified basis with respect to the taxpayer's deemed interest. Forfeiture could also result if the building ceases to be a qualified low-income building because such a cessation reduces to zero the qualified basis with respect to the taxpayer's deemed interest in the building.

In the event of a decrease in qualified basis, the amount of the bond forfeited generally will be (i) the credit recapture amount computed under section 42(j) of the Code with respect to the deemed interest (including interest at the overpayment rate through the date the return is due, without regard to extensions, for the year in which the event giving rise to forfeiture occurs), plus (ii) interest accruing on such amount as described under section 6621(a)(2) from the date the return is due, without regard to extensions, for the year in which the event giving rise to forfeiture occurs, through the date the Government collects the proceeds of the bond. It is the responsibility of the taxpayer to provide any documentation necessary to compute the credit recapture amount under section 42(j).

The Secretary has determined that a bond furnished under section 42(j)(6) of the Code must be maintained for a period that ends no sooner than the date that is 58 months after the last day of the compliance period for the building. Each calendar month, the Secretary will publish in the Internal Revenue Bulletin a table of 'bond factor' amounts for dispositions occurring during the calendar month. In general, taxpayers can ascertain the minimum bond that the Secretary considers satisfactory for qualified low-income buildings or interests therein that are disposed of during that calendar month by using the bond factor amount that corresponds to the month of disposition and the first year of the building's credit period - either the year the building was placed in service or the succeeding calendar year if the section 42(f)(1) election was made.

The minimum required bond amount is generally the product of (1) the total credits that the taxpayer has claimed (as well as any additional credits the taxpayer anticipates claiming for any year or portion thereof preceding the date of disposition), (2) the appropriate bond factor amount pertaining to the month in the compliance period which the disposition occurred and the first year of the building's credit period, and (3) the percentage of the taxpayer's total interest in the qualified low-income building disposed of by the taxpayer, taking into account the de minimis rule. described below. (It is not necessary for the taxpayer to calculate the amount of credits claimed on an accelerated basis, as the bond factor amount takes this into account.) The term 'total credits' includes any carrybacks and carryforwards that have been deferred. However, the

term 'total credits' does not include credit amounts previously recaptured, credit amounts with respect to which a bond was previously posted by the taxpayer, or credits taken on additions to qualified basis that are not subject to recapture because they are not claimed on an accelerated basis. In the event a taxpayer that has furnished a bond files an amended return claiming credits in excess of those included in the calculation of the bond factor amount, that taxpayer is subject to recapture with regard to the excess credits claimed unless the taxpayer furnishes an additional bond with respect to such excess credits.

For administrative convenience, the Service intends to issue regulations adopting a de minimis rule pursuant to which a taxpayer who is a partner in a partnership owning an interest in a qualified low-income building (other than a partnership described in section 42(j)(5)(B) of the Code) may elect to avoid or defer recapture by reason of dispositions of interests in the partnership without furnishing a bond until the taxpayer has, in the aggregate, disposed of more than 33-1/3 percent of that taxpayer's greatest total interest in the qualified low-income building through the partnership at any point in time. Once dispositions aggregate more than 33-1/3 percent, the de minimis rule will no longer be available and further deferral with respect to those dispositions will be possible only if the taxpayer furnishes a bond. The taxpayer that defers recapture by reason of the disposition of an interest under the de minimis rule will remain subject to recapture under section 42(j) with respect to that interest. Regulations containing the de minimis rule will be forthcoming and may modify the rules set forth above.

After the publication of this revenue ruling, the previous 50 percent de minimis rule mentioned in the instructions to Schedule A of Form 8609 is no longer available. A taxpayer, other than a taxpayer in a partnership relying on the 33-1/3 percent de minimis rule, may avoid or defer recapture with respect to a disposition of an interest in a qualified low-income building only if the taxpayer furnishes a bond with respect to such disposition.

However, in the case of taxpayers (other than taxpayers in partnerships relying on the 33-1/3 percent de minimis rule) that disposed of less than 50 percent of their interest (direct or indirect) in a qualified low-income building before the publication of this ruling but have neither furnished a bond nor paid recapture with respect to such dispositions, a special rule applies. Those taxpayers may continue to defer recapture by reason of their prior dispositions, without furnishing a bond with respect to those dispositions, until the date they dispose of any additional interest, direct or indirect, in the qualified low-income building. This rule is intended to apply to those taxpayers who previously relied on the 50 percent de minimis rule mentioned in the instructions to Schedule A of Form 8609. For purposes of this rule, a written binding contract to dispose of an interest in a qualified low-income building is deemed to constitute a disposition as of the date the contract is entered into.

Taxpayers that disposed of 50 percent or more of their interest (direct or indirect) in a qualified low-income building before the publication of this revenue ruling but have neither furnished a bond nor paid recapture with respect to such dispositions may continue to defer recapture by reason of their prior dispositions only by furnishing a bond securing their liability for recapture with respect to those dispositions. This bond must be furnished in accordance with the provisions of this revenue ruling within 6 months after publication of this revenue ruling.

The bond factor amounts for calculating a disposition bond under section 42(j)(6) of the Code for dispositions occurring during calendar years 1987, 1988, 1989 and the first seven months of 1990 are contained in the accompanying table.

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MONTHLY BOND FACTOR AMOUNTS FOR DISPOSITIONS EXPRESSED AS A PERCENTAGE OF TOTAL CREDITS

Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year				
Month of Disposition	1987	1988	1989	1990
Jan '87	150.72%			
Feb '87	150.72			
Mar '87	150.72			
Apr '87	150.72			
May '87	150.72			
Jun '87	150.72			
Jul '87	150.72			
Aug '87	150.72			
Sep '87	150.72			
Oct '87	150.72			
Nov '87	150.72			
Dec '87	150.72			
Jan '88	149.68	151.51		
Feb '88	148.78	151.51		
Mar '88	148.00	151.51		
Apr '88	147.32	151.51		
May '88	146.72	151.51		
Jun '88	146.18	151.51		
Jul '88	145.70	151.51		
Aug '88	145.27	151.51		
Sep '88	144.88	151.51		
Oct '88	144.53	151.51		
Nov '88	144.21	151.51		

Dec '88	143.81	151.51		
Jan '89	143.09	150.35	150.76	
Feb '89	142.34	149.36	150.76	
Mar '89	141.64	148.49	150.76	
Apr '89	140.98	147.74	150.76	
May '89	140.38	147.07	150.76	
Jun '89	139.81	146.48	150.76	
Jul '89	139.29	145.95	150.76	
Aug '89	138.79	145.47	150.76	
Sep '89	138.33	145.04	150.76	
Oct '89	137.89	144.65	150.76	
Nov '89	137.47	144.29	150.76	
Dec '89	137.08	143.96	150.76	
Jan '90	136.40	143.14	149.65	150.76
Feb '90	135.75	142.38	148.71	150.76
Mar '90	135.13	141.68	147.89	150.76
Apr '90	134.54	141.03	147.17	150.76
May '90	133.99	140.42	146.54	150.76
Jun '90	133.46	139.86	145.97	150.76
Jul '90	132.95	139.33	145.47	150.76

The Service will provide additional guidance concerning procedural aspects of furnishing and forfeiting bonds under section 42(j)(6) of the Code, including guidance with respect to the time, Place, and form in which bonds are to be furnished. Furthermore, regulations will be forthcoming to explain the proper calculation of qualified basis and credit amounts subject to recapture under section 42(j). The Service solicits suggestions for alternative methods of satisfying the requirements in section 42(j)(6).

DRAFTING INFORMATION

The principal author of this revenue ruling is Donna M. Young of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Ms. Young on (202) 377-6349 (not a toll-free call).