

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 Part I, § 42.)

Rev. Proc. 2008-60

SECTION 1. PURPOSE

This revenue procedure affects taxpayers who are maintaining a surety bond or a Treasury Direct Account (TDA) to satisfy the low-income housing tax credit recapture exception in § 42(j)(6) of the Internal Revenue Code (the Code), as in effect on or before July 30, 2008. This revenue procedure provides the procedures for taxpayers to follow when making the election under section 3004(i)(2)(B)(ii) of the Housing Assistance Tax Act of 2008 (Pub. L. 110-289) (the Act) to no longer maintain a surety bond or a TDA to avoid recapture.

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 compliance period, 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 Prior to the Act, § 42(j)(6) of the Code provided that in the case of a disposition of a building or an interest therein the taxpayer would be discharged from liability for any additional tax by reason of such disposition if (A) the taxpayer furnished to the Secretary a bond in an amount satisfactory to the Secretary and for the period required, and (B) it was reasonably expected that such building would continue to be operated as a qualified low-income building for the remainder of the building's compliance period. A building's compliance period is defined in § 42(i)(1).

.03 Form 8693, Low Income Housing Credit Disposition Bond, was developed by the Service for use as a "surety bond" for taxpayers to use to avoid or defer recapture of low-income housing tax credits under § 42(j)(6) of the Code following a disposition of a building (or interest therein). Rev. Rul. 90-60, 1990-2 C.B. 3, provides guidance to taxpayers on the amount of "surety bond" considered satisfactory by the Secretary and the period of the bond required by the Secretary under § 42(j)(6).

.04 Rev. Proc. 99-11, 1999-1 C.B. 275, establishes a collateral program as an alternative to providing a surety bond to avoid or defer recapture of low-income housing tax credits under § 42(j)(6) of the Code. Under this program, taxpayers may establish a TDA and pledge certain United States Treasury securities to the Internal Revenue Service as security for the taxpayer's recapture liability.

.05 Taxpayers must use Form 8693 in posting a surety bond and in establishing



a TDA. The Internal Revenue Service must approve Form 8693 before it will take effect.

.06 Section 42(j)(6)(A) of the Code, as amended by section 3004(c) of the Act, provides that, in general, the increase in tax under § 42(j)(1) shall not apply solely by reason of the 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 remainder of the building's compliance period.

.07 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.

.08 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 interests in buildings disposed of after July 30, 2008, the date of enactment of the Act. In addition, the amendments also apply to interests in buildings 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.

SECTION 3. SCOPE

.01 Except as provided in section 3.02 of this revenue procedure, this revenue procedure applies to all taxpayers that disposed of a qualified low-income building (or an interest therein) on or before July 30, 2008, for which the Internal Revenue Service has approved a Form 8693. Under this revenue procedure, these taxpayers may elect to have section 3004(c) of the Act apply to the disposition if at the time of the election the building covered by a surety bond or TDA is reasonably expected to continue to be operated as a qualified low-income building for the remainder of the building's compliance period.

.02 This revenue procedure does not apply to any taxpayer who opted to satisfy the bond posting exception to recapture under § 42(j)(6) of the Code by setting up a TDA, and who received a Form 8693 that was approved by the Internal Revenue Service before January 1, 2008, but who did not fund the TDA within the period for funding the TDA prescribed by Rev. Proc. 99-11.

SECTION 4. PROCEDURE FOR MAKING ELECTION

.01 A taxpayer who seeks to make the election provided by section 3004(i)(2)(B)(ii) of the Act must submit a letter to the Internal Revenue Service containing the following information:

- (1) The taxpayer's name, address, and taxpayer identification number;



(2) A statement affirming that the taxpayer reasonably expects that the building will continue to be operated as a qualified low-income building (within the meaning of § 42) for the remainder of the building's compliance period;

(3) A 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 attach to the letter required by Section 4.01 of this revenue procedure a copy of the Form 8693 that was approved by the Internal Revenue Service for the building, signature page only, and mail the letter and attached page to:

Internal Revenue Service
Box 331
Attn: LIHC Unit, DP 607 South
Philadelphia Campus
Bensalem, PA 19020

SECTION 5. EFFECT OF ELECTION

If a taxpayer makes the election under this revenue procedure, section 3004(c) of the Act applies to a disposition of a building (or interest therein) on or before July 30, 2008. Thus, the disposition is treated as if § 42(j)(6) of the Code, as in effect on or before July 30, 2008, contained no provision for the posting of a bond to avoid or defer recapture and the taxpayer is treated as if no surety bond or TDA had been established for that disposition.

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 elect to terminate surety bonds or TDA accounts furnished or established under former § 42(j)(6).

The likely respondents are taxpayers who have currently in effect a surety bond or TDA to avoid or defer recapture of low-income housing tax credits arising from a disposition of a building (or interest therein) on or before July 30, 2008. The estimated total annual reporting burden is 7,800 hours. The estimated annual burden per respondent is 1 hour, depending on the individual circumstances. The estimated total number of respondents is 7,800. 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. EFFECTIVE DATE

This revenue procedure is effective for elections under section 3004(i)(2)(B)(ii) of the Act made on or after October 2, 2008. An election request submitted by a taxpayer to the Internal Revenue Service after July 30, 2008, but prior to October 2, 2008, that does not satisfy all of the procedures required by Section 4 of this revenue procedure will be deemed valid as of the date originally submitted if the taxpayer corrects the



election to comply with these procedures by the close of December 31, 2008.

SECTION 8. 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).