

ceiling amounts) of the Income Tax Regulations (26 CFR part 1).

The proposed regulations also amend § 1.42–6 and § 1.42–8 (Election of appropriate percentage month) by removing the requirements that certain documents (for example, carryover allocation documents, election statements, and binding agreements) be attached to a taxpayer's income tax return when it is filed. These amendments help to facilitate the electronic filing of income tax returns.

### Explanation of Provisions

#### *Buildings Qualifying for Carryover Allocations*

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency) of the jurisdiction where the building is located.

In general, an allocation must be made not later than the close of the calendar year in which the building is placed in service. Under section 42(h)(1)(E), an allocation (carryover allocation) may be made to a “qualified building” that has not yet been placed in service, provided the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation. Prior to the 2000 Act changes, section 42(h)(1)(E)(ii) defined a qualified building as any building that is part of a project if the taxpayer's basis in the project (as of the close of the calendar year of the allocation) is more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation). If the taxpayer failed to meet this 10 percent basis requirement by the close of the calendar year of the allocation, the carryover allocation was not valid and was treated as if it had not been made.

The 2000 Act amended the definition of a qualified building to provide that the 10 percent basis requirement must be met by the later of: (1) The date which is 6 months after the date that the allocation was made, or (2) the close of the calendar year in which the allocation is made. The proposed regulations amend the existing regulations to reflect this change. Thus, the proposed regulations provide that for carryover allocations made before July 1, a taxpayer must meet the 10 percent basis requirement as of the close

of the calendar year of allocation. For carryover allocations made after June 30, a taxpayer must meet the 10 percent basis requirement by the close of the date that is 6 months after the date the allocation is made. In addition, the proposed regulations provide that an allocation made before July 1 will be invalid and will be treated as if it had not been made if the 10 percent basis requirement is not met by the close of the calendar year of the allocation. An allocation made after June 30 will be treated as validly made in the calendar year of the allocation but returned to the Agency the following calendar year if the 10 percent basis requirement is not met by the close of the date that is 6 months after the date the allocation is made.

The proposed regulations also facilitate the electronic filing of income tax returns by removing the requirement of § 1.42–6(d)(4)(i) that a taxpayer file a copy of the carryover allocation with its income tax return for the first taxable year a credit is claimed.

#### *Election of Appropriate Percentage Month*

Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the 10-year credit period is the applicable percentage of the qualified basis of each qualified low-income building. Section 42(b)(2)(A) provides that, for any qualified low-income building placed in service by the taxpayer after 1987, the applicable percentage is the appropriate percentage prescribed by the Secretary for the month the building is placed in service, unless the taxpayer otherwise elects.

The taxpayer may elect to use the appropriate percentage for the month in which the taxpayer and the Agency enter into an agreement with respect to the building (which is binding on the Agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to the building. In the case of a substantially bond-financed building (as described in section 42(h)(4)(B)), the taxpayer may elect to use the appropriate percentage for the month in which the tax-exempt obligations are issued. In either case, the election must be made no later than the 5th day after the close of the month elected by the taxpayer. An election, once made, is irrevocable.

The proposed regulations facilitate the electronic filing of income tax returns by removing the requirements of § 1.42–8(a)(6)(i) and § 1.42–8(b)(4)(i) that a taxpayer file a copy of the election statement (and, in the case of § 1.42–8(a)(6)(i), the binding agreement) with

its income tax return for the first taxable year that credit is claimed.

#### *Allocation Rules for Post-1989 State Housing Credit Ceiling Amounts*

Under section 42(h), the aggregate housing credit dollar amount that an Agency may allocate for any calendar year is limited to the State housing credit ceiling (Credit Ceiling) apportioned to the Agency for that calendar year. Prior to the 2000 Act changes, section 42(h)(3)(C) provided that the Credit Ceiling of any State for any calendar year was an amount equal to the sum of: (a) \$1.25 multiplied by the State population (the population component); (b) the unused Credit Ceiling, if any, of the State for the preceding calendar year (the unused carryforward component); (c) the amount of Credit Ceiling returned in the calendar year (the returned credit component); plus (d) the amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

Read together, sections 42(h)(3)(C) and 42(h)(3)(D)(ii) provide rules governing the order in which credit is allocated from the various components of the Credit Ceiling (the stacking rule). Prior to the 2000 Act changes the stacking rule provided that credit was allocated first from the sum of the population and returned credit components, then from the unused carryforward component, and finally, from the national pool component. In addition, unlike unallocated credit attributable to the population and returned credit components, unallocated credit attributable to the national pool component could not be carried forward, and therefore, was not included in the unused carryforward component of the following calendar year's Credit Ceiling.

The 2000 Act increased the size of the population component to the greater of (1) \$1.75 (\$1.50 for 2001) multiplied by the State population, or (2) \$2,000,000, with these amounts being increased by a cost-of-living adjustment for calendar years after 2002. The proposed regulations amend the existing regulations to reflect this change.

The 2000 Act also amended the returned credit component of a Credit Ceiling for any calendar year to include credits from a carryover allocation made in the prior calendar year where a taxpayer fails to satisfy the 10 percent basis requirement by a date after the close of the calendar year of the allocation. The proposed regulations amend the final regulations to reflect this change.