

Draft Date: 5/31/2012

CASE MIS No.: RP-141793-11

Administrative, Procedural, and Miscellaneous

26 CFR 1.601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part I, Section 42; 1.42-13)

Rev. Proc. [XXXX-XX]

SECTION 1. PURPOSE

This revenue procedure establishes a procedure for temporary relief from certain requirements of § 42 of the Internal Revenue Code for owners of low-income buildings (Owners) and housing credit agencies of States or possessions of the United States (Agencies) affected by major disaster areas declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (Stafford Act). This revenue procedure modifies and supersedes Rev. Proc. 2007-54, 2007-2 C.B. 293.

SECTION 2. BACKGROUND

.01 Under §1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin. Rev. Proc. 2007-54 established a procedure for temporary relief from certain requirements of § 42 for Owners and Agencies in major disaster areas declared by the President under the Stafford Act. In particular, Rev. Proc. 2007-54: (1) provided relief from the carryover allocation provisions; (2) clarified the consequences if an Owner failed to restore a building within a reasonable restoration period; (3) provided relief from certain compliance monitoring requirements; (4) allowed Agencies discretion to address buildings severely damaged or destroyed in the first year of the credit period; and (5) described the amount of credit allowable to a restored building.

.02 Section 11 of Rev. Proc. 2007-54 provided for emergency housing relief for displaced low-income individuals in low-income units by allowing Owners to rely on a displaced low-income individual's self-certification of income eligibility. Under section 11, an individual was a "displaced individual" if the individual was displaced from his/her principal place of residence as a result of a major disaster and the principal place of residence was in a city, county, or other local jurisdiction designated for Individual Assistance by Federal Emergency Management Agency (FEMA) as a result of the major disaster. The self-certification could not extend for more than four months beyond the date of the President's major disaster declaration. During the four-month self-certification period, the self-certified tenant was deemed a qualified tenant. After

the four-month self-certification period, Owners needed to obtain all required documentation required under § 42 to support the tenant's continued status as a qualified low-income individual.

.03 After the President declared major disasters under the Stafford Act, many states requested that the Department of the Treasury and the Internal Revenue Service (Service) allow Owners to provide temporary housing in vacant low-income units to displaced individuals who resided in major disaster areas before a disaster destroyed or damaged their principal place of residence without regard to the individuals' incomes. Under the authority granted in § 42(n) and in accordance with § 1.42-13(a) of the Income Tax Regulations, the Service issued several nearly identical notices granting Agencies, on a case-by-case basis, the authority to temporarily suspend certain income limitation requirements under § 42(g)(1) for an appropriate amount of time generally not to extend beyond 12 months from the last day of the month in which the Service issued the notice.¹

¹. See Notice 2004-66, 2004-2 C.B. 677; Notice 2004-74, 2004-2 C.B. 875; Notice 2004-75, 2004-2 C.B. 876; Notice 2004-76, 2004-2 C.B. 878; Notice 2005-69, 2005-2 C.B. 622; Notice 2006-11, 2006-1 C.B. 457; Notice 2008-56, 2008-2 C.B. 79; Notice 2008-58, 2008-2 C.B. 81; Notice 2008-61, 2008-2 C.B. 180; Notice 2008-66, 2008-2 C.B. 270; Notice 2011-47, 2011-27 I.R.B. 34; Notice 2011-60, 2011-31 I.R.B. 90; Notice 2011-65, 2011-34 I.R.B. 173; Notice 2011-74, 2011-41 I.R.B. 496; and Notice 2011-83, 2011-43 I.R.B. 593; Notice 2011-87, 2011-45 I.R.B. 699; and Notice 2012-7, 2012-4 I.R.B. 308.

SECTION 3. CHANGES

This revenue procedure modifies the relief described in section 11 of Rev. Proc. 2007-54 by: (1) incorporating the temporary suspension of certain income limitations for displaced individuals without regard to the individuals' incomes; (2) increasing the maximum emergency-housing-relief period to 12 months; (3) treating individuals that cannot return to their principal places of residence due to another major disaster occurring after the disaster that caused the individuals to be displaced individuals as displaced individuals for the later disaster; (4) permitting an Agency to allow an Owner within its jurisdiction to provide temporary housing to displaced individuals from other jurisdictions; and (5) describing separately the consequences of the relief for units in the first year of the credit period and for units after the first year of the credit period. Consistent with Rev. Proc. 2007-54, this revenue procedure continues to define "displaced individual" as an individual who was displaced from his/her principal place of residence as a result of a major disaster and the principal place of residence was in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the major disaster.

SECTION 4. SCOPE

This revenue procedure applies to Agencies, Owners, and displaced individuals affected by major disasters as described in section 5 of this revenue procedure. This revenue procedure also applies to Agencies and Owners outside areas affected by such major disasters that agree to provide temporary low-income housing to displaced

individuals.

SECTION 5. MAJOR DISASTER AREA

When a disaster occurs that warrants assistance from the federal government, the Stafford Act authorizes the President to issue a major disaster declaration for the affected area. When the President issues such declaration, FEMA publishes a notice in the Federal Register designating particular cities and/or counties or other local jurisdictions covered by the President's major disaster declaration as eligible for Individual Assistance and/or Public Assistance. A city, county, or other local jurisdiction so designated by FEMA for Individual Assistance and/or Public Assistance under the President's disaster declaration is a major disaster area for purposes of the relief provisions under sections 6, 7, 8, 9, 10, 11, and 13 of this revenue procedure. The emergency housing relief of section 12 of this revenue procedure applies only where FEMA designates cities and/or counties or other local jurisdictions for Individual Assistance.

SECTION 6. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is an allocation of low-income housing credits made in a year before the project is placed in service.

.02 If an Owner has a carryover allocation for a building located in a major disaster area, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner's reasonably expected basis in the project (land and depreciable basis) no later than six months after the date the Owners would otherwise be required to meet the 10-percent basis requirement under § 1.42-6(a)(2)(i) and (ii). See § 1.42-6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a major disaster area and the area is declared a major disaster area during the two-year period described in § 42(h)(1)(E)(i), the Service will treat the Owner as having satisfied the applicable placed in service requirement if the Owner places the building in service no later than December 31 of the year following the end of the two-year period. See § 1.42-6 for specific rules on carryover allocations.

.04 If an Owner obtains the relief provided in section 6.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) by the extension period granted under the authority of section 6.02, the Service will treat the carryover allocation under § 1.42-6(a)(2)(i)(ii) as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 6.02, provided the Agency complies with the requirements of § 1.42-14(d)(3). See § 1.42-14 for specific rules on returned credits.

.05 If an Owner obtains the relief provided in section 6.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) by the close of the calendar year following the end of the two-year period of § 42(h)(1)(E)(i), the Service will treat the carryover allocation credit amount as a credit returned to the Agency on January 1 of the second year following the two-year period of § 42(h)(1)(E)(i), provided the Agency complies with the requirements of § 1.42-14(d)(3).

SECTION 7. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in sections 6.02 or 6.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation.

.02 The Agency may approve the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure only for projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a disaster that resulted in a major disaster declaration under the Stafford Act. An Agency may make this determination on an individual project basis or may determine, because of the extent of the damage in a major disaster area, that all Owners or a particular group of Owners in the major disaster area warrant the relief provided in sections 6.02 and 6.03 of this revenue procedure. An Agency has the discretion to provide less than the full amount of relief allowed under sections 6.02 and 6.03 or no relief based upon all facts and circumstances.

.03 An Agency that chooses to approve the relief provided in sections 6.02 and 6.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that provides the relief in sections 6.02 and 6.03 of this revenue procedure must report to the Service projects granted relief by attaching the required documentation as provided in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that had received its approval of the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure since the Agency last filed the Form 8610.

SECTION 8. RECAPTURE RELIEF

.01 Under § 42(j)(4)(E), a building (1) that is beyond the first year of the credit period and (2) that, because of a disaster that led to a major disaster declaration, has suffered a reduction in qualified basis that would cause it to be subject to recapture or loss of credit will not be subject to recapture or loss of credit if the building's qualified basis is restored within a reasonable restoration period. The Agency that monitors the building for compliance with § 42 shall determine what constitutes a reasonable restoration period, not to exceed 24 months after the end of the calendar year in which the President issued a major disaster declaration for the area where the building is located. If the Owner of the building fails to restore the building within the reasonable restoration period determined by the Agency, the Owner shall lose all credit claimed during the restoration period and suffer recapture for any prior years of claimed credit under the provisions of § 42(j)(1).

.02 To determine the credit amount allowable during the reasonable restoration period, an Owner described in section 8.01 of this revenue procedure must use the building's qualified basis at the end of the taxable year that preceded the President's major disaster declaration.

.03 Section 1.42-5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency that monitors the building for compliance with § 42 whether or not an Owner obtains the relief provided in section 8.01 of this revenue procedure.

.04 As part of its review procedure adopted under § 1.42-5(c)(2), an Agency must determine whether the Owner described in section 8.01 of this revenue procedure has restored the building's qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any failure to restore qualified basis within such period because some or all of the low-income units continue to be unsuitable for occupancy.

SECTION 9. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date the building is restored and placed back into service under section 8.01 of this revenue procedure.

.02 The granting of compliance monitoring relief to an Agency does not extend the compliance monitoring deadlines for Owners in major disaster areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a major disaster, the Agency must report the noncompliance on the Form 8823 and describe how the major disaster contributed to the noncompliance.

SECTION 10. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings in the first year of the credit period that are located in a major disaster area and are severely damaged or destroyed, or cannot otherwise be occupied as a result of a major disaster, an Agency has the discretion to treat the allocation as returned credit to the Agency in accordance with the requirements of § 1.42-14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1) until the project is restored. The tolling time period shall not extend more than 24 months after the end of the calendar year in which the President declared the area a major disaster area under the Stafford Act. No qualified basis shall be established until the building is restored and no low-income housing credit shall be claimed during the restoration period of such first-year buildings.

.02 An Agency that provides the relief in section 10.01 of this revenue procedure must report to the Service those projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

SECTION 11. AMOUNT OF CREDIT ALLOWABLE TO A RESTORED BUILDING

.01 Except as provided in section 11.02 of this revenue procedure, in the case of a building for which a credit is allowed under § 42, no additional credit is permitted under § 42 for costs to restore, by reconstruction or replacement, the building to its pre-casualty condition under § 42(j)(4)(E).

.02 An Agency may allocate credits for rehabilitation expenditures, as defined under § 42(e), that are in excess of the eligible basis immediately prior to the casualty. For this purpose, the eligible basis immediately prior to the casualty includes the original eligible basis and any subsequent rehabilitation expenditures treated as a separate new building under § 42(e).

SECTION 12. EMERGENCY HOUSING RELIEF

.01 Approval of Housing Credit Agency. Without prior authorization from the Service, an Agency may permit some or all Owners within the Agency's jurisdiction to suspend certain § 42 requirements to provide emergency housing relief after a major disaster to displaced individuals without regard to income. A displaced individual means an individual that was displaced from his or her principal place of residence as a result of a major disaster and the principal place of residence was in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the major disaster. The suspension will apply to low-income housing projects approved by the Agency, in which vacant units are rented to displaced individuals.

(1) If the major disaster did not occur within the Agency's jurisdiction, then the Agency may permit some or all Owners within its jurisdiction to provide emergency housing relief to displaced individuals only with the approval of the Agency having jurisdiction over the location of the major disaster.

(2) If an individual cannot return to his or her principal place of residence due to another major disaster (later disaster) occurring after the disaster that caused the individual to be a displaced individual, and the principal place of residence is in a jurisdiction designated for Individual Assistance by the FEMA for the later disaster, the individual also is considered a displaced individual for the later disaster.

(3) Prior to housing any displaced individuals, the Owner must obtain written approval from the Agency in its state to provide emergency housing relief. An Owner may provide emergency housing relief to displaced individuals for a period that the Agency will determine for each project, not to extend beyond the date that is 12 months from the last day of the month following the month in which the President made the major disaster declaration under the Stafford Act.

(4) If displaced individuals certify that they are income eligible under § 42(g)(1), but cannot provide the documentation required under § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) to substantiate income eligibility due to the disaster, then the Agency and Owner should provide emergency housing relief to the displaced individuals providing the income-eligibility certification before providing emergency housing relief to any other displaced individuals. The Agency and Owner may rely on individuals' certification signed under penalties of perjury that the individuals are income eligible under § 42(g)(1).

. 02 Units in the First Year of the Credit Period. A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) is treated as a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as elected by the project owner under § 42(g)(1). After the end of the emergency-housing-relief period established by the Agency, a displaced individual will continue to be treated as a qualified low-income tenant if the individual can provide documentation for certification under the requirements of § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) as a qualified low-income tenant as of the beginning of his or her tenancy. Alternatively, if the displaced individual cannot provide such documentation, then the individual may certify under § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) that he or she is a qualified low-income tenant as of the end of the emergency housing relief period.

.03 Units After the First Year of the Credit Period. A unit temporarily occupied by a displaced individual after the first year of the credit period:

(1) Is treated as a low-income unit under § 42(i)(3)(A)(ii) for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as elected by the project owner under § 42(g)(1), if the displaced individual provides a self-certification that his or her income did not exceed the applicable income limits of § 42 at the beginning of the individual's tenancy. After the end of the temporary housing period established by the Agency, a displaced individual will continue be treated as a qualified low-income tenant if the displaced individual can provide the documentation for certification under the requirements of § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) as a qualified low-income tenant as of the beginning of his or her tenancy. Alternatively, if the individual cannot provide such documentation, then the tenant may certify under § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) that he or she is a qualified low-income tenant as of the end of the emergency housing relief period; or

(2) Retains the status of the vacant unit (that is, market-rate, low-income for purposes of § 42, or never previously occupied) if the unit is temporarily occupied by a displaced individual whose income exceeds the applicable limit under § 42(g)(1). If a vacant unit is occupied by a displaced individual whose income exceeds the applicable limit under § 42(g)(1), then a low-income or market-rate unit that was vacant before

occupancy by a displaced individual will continue to be treated as a vacant low-income or market-rate unit. Similarly, if a unit that was never previously occupied is occupied by a displaced individual whose income exceeds the applicable limit under § 42(g)(1), then the unit will continue to be treated as a unit that has never been previously occupied. Thus, the fact that a vacant unit becomes occupied by a displaced individual whose income exceeds the applicable limit under § 42(g)(1) will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis under § 42(c)(1), nor will it affect the 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City. If the income of displaced individuals occupying a unit exceeds 140 percent of the applicable income limitation, then the temporary occupancy of the unit by displaced individuals will not cause application of the available unit rule under § 42(g)(2)(D)(ii). A displaced individual whose income exceeds the applicable limit under § 42(g)(1) may become a qualified low-income tenant starting immediately after the end of the emergency-housing-relief period if the displaced individual can provide the documentation for certification under the requirements of § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) to be a qualified low-income tenant.

.04 Self-Certification of Status as Displaced Individual. An individual requesting emergency housing relief must provide a self-certification to the Owner stating the individual was displaced from his or her principal place of residence as a result of a major disaster and the individual's principal place of residence is in a city, county, or

other local jurisdiction designated by FEMA for Individual Assistance as a result of the major disaster. The displaced individual must sign the self-certification under penalties of perjury. An Agency and Owner may rely on an individual's self-certification that meets these requirements.

.05 Rent Restrictions. Rents for the low-income units housing displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

.06 Protection of Existing Tenants. Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

.07 Suspension of Non-Transient Requirements. The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the emergency-housing-relief period described in this revenue procedure.

.08 Recapture. The temporary housing of displaced individuals in low-income units under this revenue procedure will not cause the building to suffer a reduction in qualified basis that would cause the recapture of low-income housing credits.

.09 Recordkeeping. To comply with the requirements of § 1.42-5, Owners must maintain and certify certain information concerning each displaced individual temporarily housed in the project. Specifically, that information is: the displaced individual's name and social security number, the address of the damaged residence, the self-certification

of income, if applicable, and the self-certification of status as a displaced individual.

The Owner must also maintain and report to the Agency at the end of the emergency-housing-relief period, a list of the names of the displaced individuals, and the dates the displaced individuals began and ceased temporary occupancy. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Agency and must be provided to the Service upon request.

SECTION 13. OTHER RELIEF

Under the authority granted in § 42(n) and in accordance with § 1.42-13(a), the Service will consider granting relief similar to that described in sections 6.02, 6.03, 8.01, or section 12 of this revenue procedure for situations that are brought to its attention but not covered by this revenue procedure.

SECTION 14. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2007-54, 2007-2 C.B. 293, is modified and superseded.

SECTION 15. EFFECTIVE DATE

This revenue procedure is effective for a major disaster declaration issued by the President under the Stafford Act on or after **[INSERT DATE REVENUE PROCEDURE IS RELEASED]**.

SECTION 15. 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-XXXX.

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 collection of information in this revenue procedure is in sections 7, 8, 9, 10, and 12. This information is required to enable the Service to verify whether building owners and individuals affected by the devastation caused in a major disaster declared by the President under the Stafford Act warrant relief. The collection of information is required to obtain a benefit. The likely respondents are individuals and businesses.

The estimated total annual recordkeeping burden is XX hours.

The estimated annual burden per recordkeeper is approximately XX minutes.
The estimated number of recordkeepers is XX.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue

laws. Generally, returns and return information are confidential, as required by 26 U.S.C. § 6103(a).

SECTION 16. DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Selig on (202) 622-3040 (not a toll free call).