

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 2003-74

Sections 412(b)(5)(B) and 412(l)(7)(C)(i) of the Internal Revenue Code provide that the interest rates used to calculate current liability for purposes of determining the full funding limitation under § 412(c)(7) and the required contribution under § 412(l) must be within a permissible range around the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year.

Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the

weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Code.

Section 417(e)(3)(A)(ii)(II) of the Code defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner

for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury Securities for October 2003 is 5.16 percent. Pursuant to Notice 2002-26, 2002-1 C.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

Section 405 of the Job Creation and Worker Assistance Act of 2002 amended § 412(l)(7)(C) of the Code to provide that for plan years beginning in 2002 and 2003 the permissible range is extended to 120 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 110% Permissible Range	90% to 120% Permissible Range
November	2003	5.28	4.75 to 5.81	4.75 to 6.33

Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Stern may be reached at 1-202-283-9703. Mr. Montanaro may be reached at 1-202-283-9714. The telephone numbers in the two preceding sentences are not toll-free.

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part I, § 42; 1.42-15.)

Rev. Proc. 2003-82

SECTION 1. PURPOSE

This revenue procedure provides safe harbors under which the Internal Revenue Service will treat a residential unit in a building as a low-income unit under § 42(i)(3)(A) of the Internal Revenue Code if the incomes of the individuals occupying the unit are at or below the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) before the beginning of the first taxable year of the building's credit period under § 42(f)(1), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period.

SECTION 2. BACKGROUND

.01 Questions have arisen regarding when individuals must satisfy the applicable income limitation under § 42(g)(1)

or § 142(d)(4)(B)(i) when they move into a residential unit in an existing building under § 42(i)(5) on or after the date a taxpayer acquires the existing building for rehabilitation under § 42(e), but before the beginning of the first taxable year of the building's credit period under § 42(f)(1). Because of these questions, some taxpayers require that the individuals' incomes not exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period, even though the individuals' income did not exceed the applicable income limitation when the individuals moved into the unit. This has resulted in some individuals being evicted, where permissible under local law, from low-income housing projects.

.02 Section 42(a) provides that, for purposes of § 38, the amount of the low-income housing credit determined for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

.03 Section 42(c)(2)(A) generally defines a qualified low-income building as any building which is part of a qualified low-income housing project at all times

during the building's compliance period (which is defined in § 42(i)(1) as the period of 15 taxable years beginning with the first taxable year of the credit period under § 42(f)(1)).

.04 Section 42(i)(4) defines a new building as a building the original use of which begins with the taxpayer. An existing building is defined in § 42(i)(5) as any building which is not a new building. Section 42(e)(1) provides that rehabilitation expenditures paid or incurred by the taxpayer with respect to any building are treated as a separate new building for purposes of § 42.

.05 Section 42(f)(1) defines the credit period as the period of 10 taxable years beginning with (A) the taxable year in which the building is placed in service, or (B) at the election of the taxpayer, the succeeding taxable year, but in each case only if the building is a qualified low-income building as of the close of the first year of the period. Under § 42(f)(5)(A), the credit period for an existing building must not begin before the first taxable year of the credit period for rehabilitation expenditures with respect to the building.

.06 Section 42(g)(1) defines a qualified low-income housing project as any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of the area median gross income, or (B) 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of the area median gross income. Under § 42(g)(2), a residential unit is rent-restricted for purposes of § 42(g)(1) if the gross rent for the unit does not exceed 30 percent of the imputed income limitation for the unit. Residential units that satisfy these rent and income requirements are defined in § 42(i)(3)(A) as "low-income units." Section 42(i)(3)(B), (C), (D), and (E) provide more requirements for low-income units. Under § 42(g)(4), a deep rent skewed project, as defined in § 142(d)(4)(B), is also a qualified low-income housing project. To be a deep rent skewed project, § 142(d)(4)(B)(i) requires that 15 percent or more of the low-income units in the project must be occupied by

individuals whose income is 40 percent or less of the area median gross income.

.07 Section 42(g)(2)(D)(i) provides that, notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under § 42(g)(1), the unit will continue to be treated as a low-income unit if the income of the occupants initially met the income limitation and the unit continues to be rent-restricted. However, under the available unit rule in § 42(g)(2)(D)(ii), if the income of the occupants of the unit increases above 140 percent of the income limitation applicable under § 42(g)(1), § 42(g)(2)(D)(i) ceases to apply to the unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds the applicable income limitation. In the case of a deep rent skewed project described in § 142(d)(4)(B), if the income of the occupants of the unit increases above 170 percent of the income limitation applicable under § 42(g)(1), § 42(g)(2)(D)(i) ceases to apply to the unit if any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income. See also § 1.42-15 of the Income Tax Regulations.

.08 Under § 42(h)(1), the amount of the credit determined under § 42(a) for any taxable year with respect to any building must not exceed the housing credit dollar amount allocated to the building. However, under § 42(h)(4)(A), a credit allocation generally is not necessary for the portion of a building's eligible basis financed by an obligation the interest on which is exempt from tax under § 103 and the obligation is taken into account under § 146. Under § 42(h)(4)(B), no credit allocation under § 42(h)(1) is necessary for any portion of a building's eligible basis if 50 percent or more of the aggregate basis of the building and the land on which it is located is financed with tax-exempt obligations.

SECTION 3. SCOPE

This revenue procedure only applies to residential units in a building where the incomes of the individuals occupying the unit are at or below the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) before the beginning of the first taxable year of the building's

credit period under § 42(f)(1), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period.

SECTION 4. SAFE HARBORS

.01 *Existing buildings under § 42(i)(5) and new buildings under § 42(e)(1).* A residential unit in an existing building under § 42(i)(5) or a new building under § 42(e)(1) will be considered a low-income unit under § 42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under § 42(f)(1) if:

(1) The individuals occupying the unit have incomes that are at or below the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) on either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later (based on the area median gross income on that date), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period (based on the area median gross income on that date);

(2) The incomes of the individuals occupying the unit are first tested for purposes of the available unit rule under § 42(g)(2)(D)(ii) and § 1.42-15 at the beginning of the first taxable year of the building's credit period;

(3) The unit has been rent-restricted under § 42(g)(2) from either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later, to the beginning of the first taxable year of the building's credit period;

(4) Either:

(a) Section 42(h)(1) applies to the building and the taxpayer either receives an allocation to rehabilitate the existing building or enters into a binding commitment for an allocation to rehabilitate the existing building by either the end of the taxable year the taxpayer acquired the existing building or the end of the taxable year the individuals started occupying the unit, whichever is later; or

(b) Section 42(h)(1) does not apply to the building by reason of § 42(h)(4) and the tax-exempt bonds for the project are issued by either the end of the taxable year the taxpayer acquired the existing building or the end of the taxable year the individuals

started occupying the unit, whichever is later; and

(5) The unit has been a low-income unit under § 42(i)(3)(B), (C), (D), and (E) from either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later, to the beginning of the first taxable year of the building's credit period.

.02 *New buildings under § 42(i)(4) (not including new buildings under § 42(e)(1)).* A residential unit in a new building under § 42(i)(4) will be considered a low-income unit under § 42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under § 42(f)(1) if:

(1) The individuals occupying the unit have incomes that are at or below the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) on the date the individuals started occupying the unit (based on the area median gross income on that date), but their incomes exceed the applicable income limitation in effect at the beginning of the first taxable year of the building's credit period (based on the area median gross income on that date);

(2) The incomes of the individuals occupying the unit are first tested for purposes of the available unit rule under

§ 42(g)(2)(D)(ii) and § 1.42-15 at the beginning of the first taxable year of the building's credit period;

(3) The unit has been rent-restricted under § 42(g)(2) from the date the individuals started occupying the unit to the beginning of the first taxable year of the building's credit period;

(4) The taxpayer elects under § 42(f)(1)(B) to treat the taxable year succeeding the taxable year the building was placed in service as the first taxable year of the credit period; and

(5) The unit has been a low-income unit under § 42(i)(3)(B), (C), (D), and (E) from the date the individuals started occupying the unit to the beginning of the first taxable year of the building's credit period.

SECTION 5. AUDIT PROTECTION

If the taxpayer currently uses a method consistent with the safe harbors for determining whether a unit is a low-income unit under § 42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under § 42(f)(1) (as described in section 4 of this revenue procedure), the issue will not be raised by the Service in a taxable year that ends before November 24, 2003. Also, if the taxpayer currently

uses a method consistent with the safe harbors for determining whether a unit is a low-income unit under § 42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under § 42(f)(1) (as described in section 4 of this revenue procedure) and the issue is under consideration (within the meaning of section 3.09 of Rev. Proc. 2002-9, 2002-1 C.B. 327) for taxable years in examination, before an appeals office, or before the U.S. Tax Court in a taxable year that ends before November 24, 2003, the issue will not be further pursued by the Service.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after November 24, 2003.

SECTION 7. DRAFTING INFORMATION

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

NOTE:

Following is a list of related instructions and forms for filing Form 1042-S Electronically/Magnetically:

- **Current Instructions for Form 1042-S**
- **Form 4419 — Application for Filing Information Returns Electronically/Magnetically**
- **Form 4804 — Transmittal of Information Returns Reported Magnetically**
- **Form 8508 — Request for Waiver From Filing Information Returns Magnetically**
- **Form 8809 — Request for Extension of Time To File Information Returns (Forms W-2, W-2G, 1042-S, 1098, 1099, 5498, and 8027)**
- **Notice 210 — Preparation Instructions for Media Labels**
- **Publication 515 — Withholding of Tax on Nonresident Aliens and Foreign Corporations (for general information and explanation of tax law associated with Form 1042-S)**
- **Publication 901 — U.S. Tax Treaties**

The Internal Revenue Service (IRS), Martinsburg Computing Center (MCC) encourages filers to make copies of the blank forms in the back of this publication for future use. These forms can also be obtained by calling 1-800-TAX-FORM (1-800-829-3676). You can also download forms and publications from the IRS Web Site at www.irs.gov.