

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, section 42.)

Rev. Proc. 99-11

SECTION 1. PURPOSE

This revenue procedure 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 Internal Revenue Code. Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security. Procedures for establishing the Treasury Direct Account are provided in section 3 of this revenue procedure.

SECTION 2. BACKGROUND

Section 42(a) allows a 10-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986. 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, § 42(j)(1) provides that the taxpayer's tax for the tax year shall be increased by the credit recapture amount under § 42(j)(2).

Section 42(j)(6) provides that 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. Guidance on the amount of bond considered satisfactory by the Secretary and the period of the bond required by the Secretary under § 42(j)(6) is provided in Rev. Rul. 90-60, 1990-2 C.B. 3.

Section 7101 provides that a person required to furnish a bond under Title 26 may, in lieu thereof, deposit certain Treasury securities as provided in 31 United States Code (U.S.C.) § 9303.

Under 31 U.S.C. § 9303 if a person is required under a law of the United States to give a surety bond, the person may give a Government obligation as security instead of a surety bond. The obligation

shall: 1) be given to the official having authority to approve the surety bond; 2) be in an amount equal at par value to the amount of the required surety bond; and 3) authorize the official receiving the obligation to collect or sell the obligation if the person defaults on a required condition. A "Government obligation" is defined as a public debt obligation of the United States Government whose principal and interest are unconditionally guaranteed by the Government.

Over the years, taxpayers have reported difficulty in obtaining surety bonds because of the relatively small pool of surety companies that offer surety bonds for low-income housing buildings. Consequently, this program is being established to allow taxpayers to pledge Treasury securities in lieu of a surety bond to secure the taxpayer's liability for credit recapture under § 42(j). Upon furnishing Treasury securities, the taxpayer will be treated, solely for purposes of applying § 42(j), as if the taxpayer had not disposed of the interest and the taxpayer will be deemed to continue to own the disposed-of-interest under the rules of § 42(c). The taxpayer will not, however, be treated as claiming any additional low-income housing credit for the disposed-of-interest for any period following the disposition. If the qualified basis of 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 Treasury securities may be forfeited in whole or in part.

SECTION 3. PROCEDURES FOR ESTABLISHING A TREASURY DIRECT ACCOUNT

The procedures for establishing a Treasury Direct Account with the Service are as follows:

.01 Taxpayers must complete the Form 8693, Low Income Housing Tax Credit Disposition Bond, (see, however, any further revisions to the Form 8693 and its instructions for any changes in reporting) to determine the required amount of Treasury securities to be pledged as follows:

(1) write the words "TREASURY DIRECT ACCOUNT" across the top of Form 8693;

(2) complete Part I of the Form 8693 which includes lines 1 through 5 (substi-

tuting the word "security" wherever the word "bond" appears in line 4), skip line 6, and indicate on line 7a the name and address of the taxpayer;

(3) sign the perjury statement under Part II;

(4) complete Part III, if applicable;

(5) compute the bond amount by completing the worksheet in the instructions; and

(6) submit the completed Form 8693 to:

Internal Revenue Service
Low-Income Housing Tax Credit
Examination Group
Room 3426
P.O. Box 12040
Philadelphia, PA 19105

.02 Upon receipt of the Form 8693, the Service will verify that the appropriate dollar amount of Treasury securities has been pledged and will provide the taxpayer with a Treasury Direct collateral customer package and approval memorandum authorizing the establishment of the Treasury Direct Account. The taxpayer must then:

(1) complete the Bureau of Public Debt New Account Request Form (PD 5182) including the following information:

(a) taxpayer identification number (TIN);

(b) taxpayer mailing address;

(c) telephone number; and

(d) the direct deposit information for the taxpayer's bank account to which payments will be credited and purchases debited.

(2) submit the PD 5182 with the Service approval memorandum to:

Bureau of the Public Debt
IRS Collateral - DCS (PD-DCS)
200 Third Street
P.O. Box 428
Parkersburg, WV 26106

.03 Upon receipt of PD 5182, the Bureau of the Public Debt (PD-DCS) will establish a zero par collateral account (that is, an account without a balance). Taxpayers will then have 60 days to fund the account through original issue or secondary market purchases of eligible Treasury securities, which are: 26-week Treasury bills, \$1,000 minimum, \$1,000 multiples; and 52-week Treasury bills, \$1,000 minimum, \$1,000 multiples.

(1) For original issue purchases, the taxpayer must:

(a) complete a Treasury Direct Tender Form (PD 5381) to

purchase non-competitively the security with the required value and term;

(b) select Debit Account Clearing House as the method of payment on the tender;

(c) submit the completed tender to the PD-DCS collateral desk to be entered via Public Debt's electronic site (PD-DCS will not process any tender received that does not include an already established account number for a Treasury Direct Account);

(d) receive a Treasury Direct Statement of Account that displays both the form of registration and the par amount of Treasury securities pledged; and

(e) submit within 30 days from receipt a copy of the Treasury Direct Statement of Account to the Service at the address cited in section 3.01(6) of this revenue procedure as evidence that the collateral pledge account has been funded.

(2) For secondary market purchases, the taxpayer must:

(a) purchase a Treasury security of the correct term and value on the secondary market through a broker/dealer;

(b) instruct the broker/dealer to transfer the Treasury security or securities into an established Treasury Direct Account;

(c) receive a Treasury Direct Statement of Account that displays both the form of registration and the par amount of Treasury securities pledged; and

(d) submit a copy of the Treasury Direct Statement of Account to the Service as evidence that the collateral pledge account has been funded.

.04 Taxpayers may purchase any combination of eligible Treasury securities to provide the required amount of collateral. All Treasury Direct Accounts are structured so that:

(1) Maturing securities are automatically reinvested in the same type of instruments previously held. If a like reinvestment option is not available upon a security's maturity, the proceeds are invested in the next offered 26 week Treasury bill. No interest accrues or is paid for any period between investments.

(2) PD-DCS reports to the Service all Form 1099 information concerning the accounts.

(3) All refund payments are credited electronically to the bank account of record on the previously established Treasury Direct Account. A refund payment on a Treasury bill is an amount equal to the difference between the face value and the price paid for the bill when purchased at original issue.

(4) Taxpayers are subject to annual maintenance or other fees applicable generally to investors holding Treasury securities in Treasury Direct. Refer to annual Federal Register notices for the schedule of maintenance fees.

.05 Taxpayers are not able, without written authorization from the Service, to transfer securities or initiate other changes to the collateral account. However, taxpayers may communicate directly with PD-DCS with any change in bank account information.

.06 At the end of the required posting period, the taxpayer must complete a Security Transfer Request Form (PD 5179), and forward the Request Form PD 5179 to the Service at the address noted in Section 3.01(6) of this revenue procedure. The

Service will review the taxpayer's request and notify PD-DCS to return the posted securities. PD-DCS will not process any transfer request from the taxpayer unless it has been reviewed by the Service.

.07 The taxpayer has two options in receiving back the securities from the Treasury Direct Account. The taxpayer may:

(1) establish a new Treasury Direct Account using the Public Debt New Account Request Form or designate an existing Treasury Direct Account in the taxpayer's name and complete the Security Transfer Request Form (PD 5179) to transfer the securities into the new or existing Treasury Direct Account; or

(2) complete the Security Transfer and Sale Request Form (PD-5179-1) to transfer the securities to the commercial market's National Book-Entry System (NBES). The securities are transferred from the Treasury Direct system into the Federal Reserve's Bank of Chicago's account in NBES to be sold on the secondary market.

.08 Questions regarding the computation of the required amount of collateral can be directed to:

Internal Revenue Service

Low Income Housing Tax Credit
Examination Group
Room 3426
P.O. Box 12040
Philadelphia, PA 19105
Phone Number: (215) 861-1212
(Ext. 144)

.09 Administrative questions concerning the establishment of the Treasury Direct Account should be directed to:

Bureau of the Public Debt
IRS Collateral-DCS
200 Third Street
P.O. Box 428
Parkersburg, WV 26106
Phone Number: (304) 480-6158

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective (Insert date of publication).

DRAFTING INFORMATION

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