

that member of the group that is allocated the greatest amount of the group credit under §1.41-6(c) based on the amount of credit reported on the original timely-filed Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a), the AIRC method of section 41(c)(4), or the ASC method of section 41(c)(5)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2008 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is \$10x. Under this method, A would be allocated \$5x of the group credit, which would be the largest share of the group credit under this method. For the credit year, the group credit using the AIRC method is \$10x. Under the AIRC method, B would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the AIRC method. For the credit year, the group credit using the ASC method is \$15x. Under the ASC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the ASC method. Because the group credit is greatest using the ASC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, if C makes a section 41(c)(5) election on its original timely-filed return for the credit year, that election is binding on all members of the group for the credit year.

(c) *Special rules*—(1) *Qualified research expenses (QREs) required in all years.* Unless a taxpayer has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the credit equals that percentage of the QREs for the taxable year provided by section 41(c)(5)(B)(ii).

(2) *Section 41(c)(6) applicability.* QREs for the three taxable years preceding

the credit year must be determined on a basis consistent with the definition of QREs for the credit year, without regard to the law in effect for the three taxable years preceding the credit year. This consistency requirement applies even if the period for filing a claim for credit or refund has expired for any of the three taxable years preceding the credit year.

(3) *Section 41(h)(2) applicability.* Solely for purposes of the computation under section 41(h)(2), the average QREs for the three taxable years preceding the taxable year for which the credit is being determined shall be treated as the base amount.

(4) *Short taxable years.* If one or more of the three taxable years preceding the credit year is a short taxable year, then the QREs for such year are deemed to be equal to the QREs actually paid or incurred in that year multiplied by 12 and divided by the number of months in that year. If a credit year is a short taxable year, then the average QREs for the three taxable years preceding the credit year are modified by multiplying that amount by the number of months in the short taxable year and dividing the result by 12.

(5) *Controlled groups.* For purposes of computing the group credit under §1.41-6, a controlled group must apply the rules of this paragraph (c) on an aggregate basis. For example, if the controlled group has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the controlled group applies the credit computation provided by section 41(c)(5)(A) rather than section 41(c)(5)(B)(ii).

(d) *Effective/applicability dates.* This section is applicable for taxable years ending after December 31, 2006. For certain transitional rules, see Division A, section 104(b)(3), (c)(2), and (c)(4) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432, 120 Stat. 2922).

(e) *Expiration date.* The applicability of this section expires on or before June 13, 2011.

[T.D. 9401, 73 FR 34189, June 17, 2008]

#### § 1.42-0 Table of contents.

This section lists the paragraphs contained in §§ 1.42-1 and 1.42-2.

## § 1.42-1

## 26 CFR Ch. I (4-1-09 Edition)

§ 1.42-1 [Reserved]

§ 1.42-2 *Waiver of requirement that an existing building eligible for the low-income housing credit was last placed in service more than 10 years prior to acquisition by the taxpayer.*

- (a) Low-income housing credit for existing building
- (b) Waiver of 10-year holding period requirement
- (c) Waiver requirements
  - (1) Federally-assisted building
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  - (e) Effective date of regulations

[T.D. 8302, 55 FR 21189, May 23, 1990]

### **§ 1.42-1T Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency.**

(a)-(g) [Reserved]. For further guidance, see § 1.42-1T(a) through (g).

(h) *Filing of forms.* Unless otherwise provided in forms or instructions, a completed Form 8586, "Low-Income Housing Credit," (or any successor form) must be filed with the owner's Federal income tax return for each taxable year the owner of a qualified low-income building is claiming the low-income housing credit under section 42(a). Unless otherwise provided in forms or instructions, a completed Form 8609, "Low-Income Housing Credit Allocation and Certification," (or any successor form) must be filed by the building owner with the IRS. The requirements for completing and filing Forms 8586 and 8609 are addressed in the instructions to the forms.

(i) [Reserved]. For further guidance, see § 1.42-1T(i).

(j) *Effective dates.* Section 1.42-1(h) applies to forms filed on or after November 7, 2005. The rules that apply for forms filed before November 7, 2005 are contained in § 1.42-1T(h) and § 1.42-1(h)

(see 26 CFR part 1 revised as of April 1, 2003, and April 1, 2005).

[T.D. 9112, 69 FR 3827, Jan. 27, 2004, as amended by T.D. 9228, 70 FR 67356, Nov. 7, 2005]

### **§ 1.42-1T Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency (temporary).**

(a) *In general*—(1) *Determination of amount of low-income housing credit.* Section 42 provides that, for purposes of section 38, a low-income housing credit is determined for a building in an amount equal to the applicable percentage of the qualified basis of the qualified low-income building. In general, the credit may be claimed annually for a 10-year credit period, beginning with the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. If, after the first year of the credit period, the qualified basis of a building is increased in excess of the qualified basis upon which the credit was initially determined, the allowable credit with respect to such additional qualified basis is determined using a credit percentage equal to two-thirds of the applicable percentage for the initial qualified basis. The credit for additions to qualified basis is generally allowable for the remaining years in the 15-year compliance period which begins with the first taxable year of the credit period for the building. In general, the low-income housing credit is available with respect to buildings placed in service after December 31, 1986, in taxable years ending after that date. See section 42 for the definitions of "qualified low-income building", "applicable percentage", "qualified basis", "credit period", "compliance period", and for other rules relating to determination of the amount of the low-income housing credit.

(2) *Limitation on low-income housing credit allowed.* Generally, the low-income housing credit determined under section 42 is allowed and may be claimed for any taxable year if, and to the extent that, the owner of a qualified low-income building receives a housing credit allocation from a State