TABLE NO. 3.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
203.03	.....do	Limited—at least literate and able to communicate in English.	Unskilled	Not disabled.
203.04	.....do	.....do	Skilled or semi-skilled—skills not transferable.	Do.
203.05	.....do	Limited or less	Skilled or semi-skilled—skills transferable.	Do.
*	*	*	*	*	*	*

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

7. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

8. Amend § 416.964 by revising the last sentence of paragraph (b), revising paragraph (b)(1), removing paragraph (b)(5), and redesignating paragraph (b)(6) as paragraph (b)(5), to read as follows:

§ 416.964 Your education as a vocational factor.

* * * * *

(b) *How we evaluate your education.* * * * In evaluating your educational level, we use the following categories:

(1) *Illiterate or unable to communicate in English.* We consider an individual to be within the education level of illiterate or unable to communicate in English if he or she is illiterate, or unable to communicate in English, or both.

(i) *Illiterate.* Illiterate means either unable to read in English, unable to write in English, or both. Generally, a person who cannot read or write in English has had little or no formal schooling in English. We consider someone illiterate if he or she either cannot read or cannot write (or both) a simple message, such as instructions or inventory lists in English. If an individual can sign his or her name in English or read or write in another language, this does not mean that we will consider him or her to be literate in English. We will make this decision based on all of the evidence.

(ii) *Inability to communicate in English.* Because the ability to speak and understand English is generally learned or enhanced at school, we consider this as an education factor. Because English is the primary language of this country, it may be more difficult for someone who does not speak English or does not understand English to adjust to other work than it is for someone who can speak and understand English, regardless of the amount of education the person may have in another language. We consider an individual to be unable to communicate in English if he or she either cannot speak English, or cannot understand English, or both.

* * * * *

[FR Doc. 03–16859 Filed 7–3–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131997–02]

RIN 1545–BA85

Section 42 Carryover and Stacking Rule Amendments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that amend several existing regulations concerning the low-income housing tax credit. These proposed regulations primarily reflect changes to the law made by the Community Renewal Tax Relief Act of 2000 and affect owners of low-income housing projects who claim the credit and the State or local housing credit agencies who administer the credit. This document also contains a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments, requests to speak, and outlines of topics to be discussed at the public hearing scheduled for September 23, 2003, must be received by September 5, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–131997–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–131997–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauren R. Taylor, (202) 622–3040, or Christopher J. Wilson, (808) 539–2874; concerning submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554) (2000 Act) amended various provisions in section 42 of the Internal Revenue Code (Code), including provisions relating to the time for meeting the 10 percent basis requirement for carryover allocations under section 42(h)(1)(E) and (F), and the order in which housing credit dollar amounts are allocated from the different components of a State's housing credit ceiling under section 42(h)(3)(C). To conform the existing regulations to these changes, the proposed regulations contain amendments to § 1.42–6 (Buildings qualifying for carryover allocations) and § 1.42–14 (Allocation rules for post-1989 State housing credit

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.

Finally, the 2000 Act amended the stacking rule to provide that credit is allocated first from the unused carryforward component, then from the sum of the population, returned credit, and national pool components. The 2000 Act also amended the computation of the unused carryforward component. The proposed regulations amend the existing regulations to reflect these changes and clarify that under the 2000 Act changes, amounts remaining unallocated from the national pool component in a calendar year are included as part of the unused carryforward component of the following calendar year's Credit Ceiling.

Proposed Effective Date

The proposed regulations that reflect the changes made by the 2000 Act will be effective for housing credit dollar amounts allocated after the date these regulations are published as final regulations in the **Federal Register**. However, the proposed regulations that reflect the changes made by the 2000 Act may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and before the effective date of the final regulations. The proposed regulations that facilitate the electronic filing of income tax returns will be effective for forms filed after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a new collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. The collection of information contained in this notice of proposed rulemaking has been previously 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 1545–1102. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, comments are specifically requested on the clarity of the proposed regulations and how they can be revised to be more easily understood. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 23, 2003, at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area at the Constitution Avenue entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed (with the time to be devoted to each topic) by September 5, 2003.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Christopher J. Wilson and Lauren R. Taylor, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.42–6 is amended by:

1. Revising paragraph (a).

2. Amending Example 1. of paragraph (b)(4) by removing the word ''September'' and by adding the word ''May'' in its place; by removing the date ''1993'' each place it appears and by adding the date ''2003'' in its place; and by removing the date ''1995'' and adding the date ''2005'' in its place.

3. Revising Example 2. of paragraph (b)(4).

4. Revising paragraph (c)(1).

5. Amending the first and last sentences of paragraph (c)(2) by removing the language ''by the close of the calendar year of the allocation'' and adding the language ''by the close of the calendar year of the allocation (for allocations made before July 1) or by the close of the date that is 6 months after the date the allocation is made (for allocations made after June 30)'' in its place.

6. Revising paragraph (c)(3).

7. Revising paragraph (d)(2)(viii).

8. Revising paragraph (d)(4)(i).

9. Amending paragraph (d)(4)(ii) by removing the language '', 'Carryover Allocation of the Low-Income Housing Credit,' ''.

10. Amending the first sentence of paragraph (e)(2) by removing the language ''before the close of the calendar year of the allocation'' and adding the language ''by the close of the calendar year of the allocation (for allocations made before July 1) or by the close of the date that is 6 months after the date the allocation is made (for allocations made after June 30)'' in its place.

The revisions read as follows:

§ 1.42–6. Buildings qualifying for carryover allocations.

(a) *Carryover allocations*—(1) *In general.* A carryover allocation is an allocation that meets the requirements of section 42(h)(1)(E) or (F). If the requirements of section 42(h)(1)(E) or (F) that are required to be satisfied by the close of a calendar year are not satisfied, the allocation is not valid and is treated as if it had not been made for that calendar year. For example, if a carryover allocation fails to satisfy a requirement in § 1.42–6(d) for making an allocation, such as failing to be signed or dated by an authorized official of an allocating agency by the close of a calendar year, the allocation is not

valid and is treated as if it had not been made for that calendar year.

(2) *10 percent basis requirement.* A carryover allocation may only be made with respect to a qualified building. A qualified building is any building which is part of a project if, by the date specified under paragraph (a)(2)(i) or (ii) of this section, a taxpayer's basis in the project 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 the allocation is made. For purposes of meeting the 10 percent basis requirement, the determination of whether a building is part of a single-building project or multi-building project is based on whether the carryover allocation is made under section 42(h)(1)(E) (building-based allocation) or section 42(h)(1)(F) (project-based allocation).

(i) *Allocation made before July 1.* If a carryover allocation is made before July 1 of a calendar year, a taxpayer must meet the 10 percent basis requirement by the close of that calendar year. If a taxpayer does not meet the 10 percent basis requirement by the close of the calendar year, the carryover allocation is not valid and is treated as if it had not been made.

(ii) *Allocation made after June 30.* If a carryover allocation is made after June 30 of a calendar year, a taxpayer must meet the 10 percent basis requirement by the close of the date that is 6 months after the date the allocation was made. If a taxpayer does not meet the 10 percent basis requirement by the close of the required date, the carryover allocation must be returned to the Agency. Unlike a carryover allocation made before July 1, if a taxpayer does not meet the 10 percent basis requirement by the close of the required date, the carryover allocation is treated as a valid allocation for the calendar year of allocation, but is included in the ''returned credit component'' for purposes of determining the State housing credit ceiling under section 42(h)(3)(C) for the calendar year following the calendar year of the allocation. See § 1.42–14(d)(1).

(b) * * *

(4) * * *

(iii) * * *

Example 2. (i) *Facts.* D, an accrual-method taxpayer, received a carryover allocation from Agency, the state housing credit agency of State X, on September 12, 2003. As of that date, D has not begun construction of the low-income housing building D plans to build and D does not have basis in the land on which D plans to build the building. From September 12, 2003, to the close of March 12, 2004, D incurs some costs related to the planned building, including architects' fees. As of the close of March 12, 2004, these costs do not exceed 10 percent of D's reasonably expected basis in the single-building project as of the close of 2005.

(ii) *Determination of whether building is qualified.* Because D's carryover-allocation basis as of the close of March 12, 2004, is not more than 10 percent of D's reasonably expected basis in the single-building project, the building is not a qualified building for purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section. Accordingly, the carryover allocation to D must be returned to the Agency. The allocation is valid for purposes of determining the amount of credit allocated by Agency from State X's 2003 State housing credit ceiling, but is included in the returned credit component of State X's 2004 housing credit ceiling.

(c) *Verification of basis by Agency*—(1) *Verification requirement.* An Agency that makes a carryover allocation to a taxpayer must verify that the taxpayer has met the 10 percent basis requirement of paragraph (a)(2) of this section.

(2) * * *

(3) *Time of verification.*—(i) *Allocations made before July 1.* For a carryover allocation made before July 1, an Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the calendar year of allocation or within a reasonable time following the close of the calendar year of allocation. The Agency will need to verify basis as provided in paragraph (c)(2) of this section to accurately complete the Form 8610, ''Annual Low-Income Housing Credit Agencies Report,'' and the Schedule A (Form 8610), ''Carryover Allocation of Low-Income Housing Credit,'' for the calendar year of the allocation. If the basis certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify before the Form 8610 is filed that the taxpayer has satisfied the 10 percent basis requirement for a carryover allocation made before July 1, the allocation is not valid and is treated as if it had not been made and the carryover allocation should not be reported on the Schedule A (Form 8610).

(ii) *Allocations made after June 30.* An Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the date that is 6 months after the date the allocation was made or within a reasonable period of time following the close of the date that is 6 months after the date the allocation was made. The Agency will need to verify basis as provided in paragraph (c)(2) of this section. If the basis certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify that the taxpayer has satisfied the 10 percent basis requirement for a carryover allocation made after June 30, the allocation must be returned to the Agency. The carryover allocation is a valid allocation for the calendar year of the allocation, but is included in the returned credit component of the State housing credit ceiling for the calendar year following the calendar year of the allocation .

(d) * * *

(2) * * *

(viii) For carryover allocations made before July 1, the taxpayer's basis in the project (land and depreciable basis) as of the close of the calendar year of the allocation and the percentage that basis bears to the reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year of allocation;

* * * * *

(4) *Recordkeeping requirements*—(i) *Taxpayer.* When an allocation is made pursuant to section 42(h)(1)(E) or (F), the taxpayer must retain a copy of the allocation document. The Form 8609 that reflects the allocation must be filed for the first taxable year that the credit is claimed and for each taxable year thereafter throughout the compliance period, whether or not a credit is claimed for the taxable year.

* * * * *

Par. 3. Section 1.42–8 is amended by:

1. Revising the second sentence of paragraph (a)(6)(i).

2. Revising paragraph (a)(6)(ii).

3. Redesignating the year ''1993'' as ''2003'' and the year ''1994'' as ''2004'' each place it appears in paragraph (a)(7), Example 1 and Example 2.

4. In *Example* 1. of paragraph (a)(7), revising the second to the last sentence of (ii), removing the second sentence of (iii), and revising (iv).

5. In *Example* 2. of paragraph (a)(7), removing the third sentence of (iii) and revising (iv).

6. Removing the third sentence of paragraph (b)(4)(i).

7. Revising paragraph (b)(4)(ii).

The revisions read as follows:

§ 1.42–8 Election of appropriate percentage month.

(a) * * *

(6) *Procedures*—(i) *Taxpayer.* * * * The taxpayer must retain a copy of the binding agreement and the election statement.

(ii) *Agency.* The Agency must retain the original of the binding agreement and election statement and, to the extent required by Schedule A (Form 8610), ''Carryover Allocation of Low-Income Housing Credit,'' account for the binding agreement and election statement on that schedule.

(7) * * *

Example 1. * * *

(ii) * * * Because allocations were made for the building in two separate calendar years, Agency must issue two Forms 8609, ''Low-Income Housing Credit Allocation Certification,'' to X. * * *

* * * * *

(iv) Agency retains the original of the binding agreement, election statement, and 2003 carryover allocation document. Agency accounts for the binding agreement, election statement, and 2003 carryover allocation on the Schedule A (Form 8610) that it files for the 2003 calendar year. After the building is placed in service in 2004, and assuming other necessary requirements for issuing a Form 8609 are met (for example, taxpayer has certified all sources and uses of funds and development costs for the building under § 1.42–17), Agency issues to X a copy of the Form 8609 reflecting the 2003 carryover allocation of $100,000. Agency accounts for the Form 8609 on the first Form 8610 that it files following the date the Form 8609 is issued to X. Agency also issues to X a copy of the Form 8609 reflecting the $50,000 allocation made in 2004 and accounts for the 2004 allocation on the Form 8610, ''Annual Low-Income Housing Credit Agencies Report,'' that it files for the 2004 calendar year. Agency retains copies of the Forms 8609 that are issued to X.

Example 2. * * *

* * * * *

(iv) Agency retains the original of the binding agreements, election statements, and carryover allocation documents. Agency accounts for the binding agreement, election statement, and 2003 carryover allocation on the Schedule A (Form 8610) that it files for the 2003 calendar year. Agency also accounts for the binding agreement, election statement, and 2004 carryover allocation on the Schedule A (Form 8610) that it files for the 2004 calendar year. After each separate new building is placed in service, and assuming other necessary requirements for issuing a Form 8609 are met (for example, taxpayer has certified all sources and uses of funds and development costs for the building under § 1.42–17), the Agency will issue to X a copy of the Form 8609 reflecting the 2003 carryover allocation of $70,000 and a copy of the Form 8609 reflecting the 2004 carryover allocation of $50,000, respectively. Agency accounts for each Form 8609 on the Form 8610 that reflects the calendar year each Form 8609 is issued. Agency retains copies of the Forms 8609 that are issued to X.

(b) * * *

(4) * * *

(ii) *Agency.* The Agency must retain the original of the election statement and a copy of the Form 8609 that reflects the election statement. The Agency must file an additional copy of the Form 8609 with the Agency's Form 8610 that reflects the calendar year the Form 8609 is issued.

Par. 4. Section 1.42–12 is amended by revising paragraph (a) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

(a) *Effective dates*—(1) *In general.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12 are effective May 2, 1994. However, binding agreements, election statements, and carryover allocation documents entered into before May 2, 1994, that follow the guidance set forth in Notice 89–1, 1989–1 C.B. 620 (see § 601.601(d)(2)(ii)(b) of this chapter) need not be changed to conform to the rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12.

(2) *Community Renewal Tax Relief Act of 2000—In general.* Paragraphs (a), (b)(4)(iii) Example 1 and Example 2, (c), (d)(2)(viii), and (e)(2) of § 1.42–6 are effective for housing credit dollar amounts allocated after the date these regulations are published as final regulations in the **Federal Register**. However, the rules in paragraphs (a), (b)(4)(iii) Example 1 and Example 2, (c), (d)(2)(viii), and (e)(2) of § 1.42–6 may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and on or before the date these regulations are published as final regulations in the **Federal Register**. Otherwise, subject to the applicable effective dates of the corresponding statutory provisions, the rules that apply for housing credit dollar amounts allocated on or before the date these regulations are published as final regulations in the **Federal Register** are contained in § 1.42–6 in effect on and before these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2003).

(3) *Electronic filing simplification changes.* Section 1.42–6(d)(4) and § 1.42–8(a)(6)(i), (a)(6)(ii), (a)(7) *Example 1* and *Example 2*, (b)(4)(i), and (b)(4)(ii) are effective for forms filed after the date these regulations are published as final regulations in the **Federal Register**. The rules that apply for forms filed on or before the date these regulations are published as final regulations in the **Federal Register** are contained in § 1.42–6 and 1.42–8 in effect on and before these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2003).

* * * * *

Par. 5. Section 1.42–14 is amended by:

1. Revising the section heading and paragraph (a).
2. Removing paragraph (c).
3. Redesignating paragraph (b) as paragraph (c).
4. Adding a new paragraph (b).
5. Adding a new sentence at the end of paragraph (d)(2)(iv)(A).
6. Removing the second to the last sentence of paragraph (e).
7. Revising paragraph (g).
8. Revising paragraph (i)(2).
9. Revising paragraph (k).
10. Revising paragraph (l).

The revisions and addition read as follows:

§ 1.42–14. Allocation rules for post-2000 State housing credit ceiling amount.

(a) *State housing credit ceiling*—(1) *In general.* The State housing credit ceiling for a State for any calendar year after 2000 is comprised of four components. The four components are—

(i) The unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component);

(ii) The greater of—

(A) $1.75 ($1.50 for calendar year 2001) multiplied by the State population, or

(B) $2,000,000 (the population component);

(iii) The amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus

(iv) 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).

(2) *Cost of Living Adjustment*—(i) *General rule.* For any calendar year after 2002, the $2,000,000 and $1.75 amounts in paragraph (a)(1)(ii) of this section are each increased by an amount equal to—

(A) The dollar amount, multiplied by

(B) The cost-of-living adjustment determined under section 1(f)(3) for the calendar year by substituting ''calendar year 2001'' for ''calendar year 1992'' in section 1(f)(3)(B).

(ii) *Rounding.* Any increase resulting from the application of paragraph (a)(2)(i) of this section which, in the case of the $2,000,000 amount, is not a multiple of $5,000, is rounded to the next lowest multiple of $5,000, and which, in the case of the $1.75 amount, is not a multiple of 5 cents, is rounded to the next lowest multiple of 5 cents.

(b) *The unused carryforward component.* The unused carryforward component of the State housing credit ceiling for any calendar year is the unused State housing credit ceiling, if any, of the State for the preceding calendar year. The unused State housing credit ceiling for any calendar year is the excess, if any, of—

(1) The sum of the population, returned credit, and national pool components for the calendar year, over

(2) The aggregate housing credit dollar amount allocated for the calendar year reduced by the housing credit dollar amounts allocated from the unused carryforward component for the calendar year.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(A) *Building not qualified within required time period.* * * * Also, a building that has received a post-June 30 carryover allocation is not qualified within the required time period if the taxpayer does not meet the 10 percent basis requirement by the date that is 6 months after the date the allocation was made (as described in § 1.42–6(a)(2)(ii)).

* * * * *

(g) *Stacking order.* Credit is treated as allocated from the various components of the State housing credit ceiling in the following order. The first credit allocated for any calendar year is treated as credit from the unused carryforward component of the State housing credit ceiling for the calendar year. After all of the credit in the unused carryforward component has been allocated, any credit allocated is treated as allocated from the sum of the population, returned credit, and national pool components of the State housing credit ceiling.

* * * * *

(i) * * *

(2) *Unused housing credit carryover.* The unused housing credit carryover of a State for any calendar year is the excess, if any, of—

(i) The unused carryforward component of the State housing credit ceiling for the calendar year, over

(ii) The total housing credit dollar amount allocated for the calendar year.

* * * * *

(k) *Examples.*—(1) The operation of the rules of this section is illustrated by the following examples. Unless otherwise stated in an example, Agency A is the sole Agency authorized to make allocations of housing credit dollar amounts in State M, all of Agency A's allocations are valid, and for calendar year 2003, Agency A has available for allocation a State housing credit ceiling consisting of the following housing credit dollar amounts:

A. Unused carryforward component	$50
B. Population component	110
C. Returned credit component	10
D. National pool component	0
Total	170

(2) In addition, the $10 of returned credit component was returned before October 1, 2003.

Example 1— (i) *Additional facts.* By the close of 2003, Agency A had allocated $80 of the State M housing credit ceiling. Of the $80 allocated, $17 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The $80 of allocated credit is first treated as allocated from the unused carryforward component of the State housing credit ceiling. The $80 of allocated credit exceeds the $50 attributable to the unused carryforward component by $30. Because the unused carryforward component is fully utilized no credit will be forfeited by State M to the 2004 National Pool. The remaining $30 of allocated credit will next be treated as allocated from the $120 in credit determined by aggregating the population, returned credit, and national pool components ($110 + 10 + 0 = $120). The $90 of unallocated credit remaining in State M's 2003 State housing credit ceiling ($120 − 30 = $90) represents the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(iii) *Nonprofit set-aside.* Agency A allocated exactly the amount of credit to projects involving qualified nonprofit organizations as necessary to meet the nonprofit set-aside requirement ($17, 10% of the $170 ceiling).

Example 2— (i) *Additional facts.* By the close of 2003, Agency A had allocated $40 of the State M housing credit ceiling. Of the $40 allocated, $20 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The $40 of allocated credit is first treated as allocated from the unused carryforward component of the State housing credit ceiling. Because the $40 of allocated credit does not exceed the $50 attributable to the unused carryforward component, the remaining components of the State housing credit ceiling are unaffected. The $10 remaining in the unused carryforward component is assigned to the Secretary for inclusion in the 2004 National Pool. The $120 in credit determined by the aggregating the population, returned credit, and national pool components becomes the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(iii) *Nonprofit set-aside.* Agency A allocated $3 more credit to projects involving qualified nonprofit organizations than necessary to meet the nonprofit set-aside requirement. This does not reduce the application of the 10% nonprofit set-aside requirement to the State M housing credit ceiling for calendar year 2004.

Example 3— (i) *Additional fact.* None of the applications for credit that Agency A received for 2003 are for projects involving qualified nonprofit organizations.

(ii) *Nonprofit set-aside.* Because at least 10% of the State housing credit ceiling must be set aside for projects involving a qualified nonprofit organization, Agency A can allocate only $153 of the $170 State housing credit ceiling for calendar year 2003 ($170 − 17 = $153). If Agency A allocates $153 of credit, the credit is treated as allocated $50 from the unused carryforward component and $103 from the sum of the population, returned credit, and national pool components. The $17 of unallocated credit that is set aside for projects involving qualified nonprofit organizations becomes the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

Example 4— (i) *Additional facts.* The $10 of returned credit component was returned prior to October 1, 2003. However, a $40 credit that had been allocated in calendar year 2002 to a project involving a qualified nonprofit organization was returned to the Agency by a mutual consent agreement dated November 15, 2003. By the close of 2003, Agency A had allocated $170 of the State M's housing credit ceiling, including $17 of credit to projects involving qualified nonprofit organizations.

(ii) *Effect of three-month rule.* Under the three-month rule of paragraph (d)(2)(iii) of this section, Agency A may treat all or part of the $40 of previously allocated credit as returned on January 1, 2004. If Agency A treats all of the $40 amount as having been returned in calendar year 2004, the State M housing credit ceiling for 2003 is $170. This entire amount, including the $17 nonprofit set-aside, has been allocated in 2003. Under paragraph (i)(3) of this section, State M qualifies for the 2004 National Pool.

(iii) *If three-month rule not used.* If Agency A treats all of the $40 of previously allocated credit as returned in calendar year 2003, the State housing credit ceiling for the 2003

calendar year will be $210 of which $50 will be attributable to the returned credit component ($10 + $40 = $50). Because credit amounts allocated to a qualified nonprofit organization in a prior calendar year that are returned in a subsequent calendar year do not retain their nonprofit character, the nonprofit set-aside for calendar year 2003 is $21 (10% of the $210 State housing credit ceiling). The $170 that Agency A allocated during 2003 is first treated as allocated from the unused carryforward component of the State housing credit ceiling. The $170 of allocated credit exceeds the $50 attributable to the unused carryforward component by $120. Because the unused carryforward component is fully utilized no credit will be forfeited by State M to the 2004 National Pool. The remaining $120 of allocated credit will next be treated as allocated from the $160 in credit determined by aggregating the population, returned credit, and national pool components ($110 + 50 + 0 = $160). The $40 of unallocated credit (which includes $4 of unallocated credit from the $21 nonprofit set-aside) remaining in State M's 2003 housing credit ceiling ($160 − 120 = $40) represents the unused carryforward component of State M's 2004 housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(l) *Effective dates*—(1) *In general.* Except as provided in paragraph (l)(2), the rules set forth in this section are effective January 1, 1994.

(2) *Community Renewal Tax Relief Act of 2000 changes.* Paragraphs (a), (b), (c), (e), (i)(2) and (k) of this section are effective for housing credit dollar amounts allocated after the date these regulations are published as final regulations in the **Federal Register**. However, paragraphs (a), (b), (c), (e), (i)(2) and (k) of this section may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and on or before the date these regulations are published as final regulations in the **Federal Register**. Otherwise, subject to the applicable effective dates of the corresponding statutory provisions, the rules that apply for housing credit dollar amounts allocated on or before the date these regulations are published as final regulations in the **Federal Register** are contained in this section in effect on and before these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2003).

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–16941 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–138495–02]

RIN 1545–BC36

Depreciation of Vans and Light Trucks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that modify the existing regulations promulgated under section 280F(a) of the Internal Revenue Code relating to limitations on the depreciation allowance for passenger automobiles. The temporary regulations, which amend the definition of passenger automobiles for purposes of section 280F(a), affect certain taxpayers that use vans and light trucks in their trade or business. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by October 6, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–138495–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand delivered Monday though Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–138495–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Comments may also be submitted electronically to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bernard P. Harvey, (202) 622–3110; concerning submissions and to request a hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 280F of the Internal Revenue Code of 1986 (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS or electronically generated comments that are submitted timely to the IRS. The IRS generally requests any comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *