26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 56, 168, 1400I.)

Rev. Proc. 2003–38

SECTION 1. PURPOSE

This revenue procedure provides the time and manner for states to make allocations under § 1400I of the Internal Revenue Code of commercial revitalization expenditure amounts to a new or substantially rehabilitated building that is placed in service in a renewal community. This revenue procedure also explains how a taxpayer may make an election under § 1400I(a) to recover the cost of the building using a more accelerated method than is otherwise allowable under the depreciation provisions in § 168.

SECTION 2. BACKGROUND

.01 Section 1400I, as added by § 101(a) of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106–554, 114 Stat. 2763A–587 (December 21, 2000), allows a taxpayer to elect to recover the cost of a qualified revitalization building using a more accelerated method than is otherwise allowable under § 168. Pursuant to § 1400I(a), a taxpayer may elect either (1) to deduct one-half of any qualified revitalization expenditures chargeable to a capital account with respect to any qualified revitalization building for the taxable year in which the building is placed in service, or (2) to amortize all of these expenditures ratably over the 120-month period beginning with the month in which the building is placed in service. If the taxpayer makes a commercial revitalization deduction election as provided in this revenue procedure, a depreciation deduction is not allowable for the amounts deducted or amortized under § 1400I(a). The commercial revitalization deduction provided by § 1400I(a) is allowed for both regular tax and alternative minimum tax purposes.

.02 Under § 1400I(b)(1), a qualified revitalization building is any building and its structural components (such terms are defined in § 1.48–1(e) of the Income Tax Regulations) if: (1) the building is placed in service by the taxpayer in a renewal community (as defined in § 1400E) and the original use of the building begins with the taxpayer; or (2) the building is substantially rehabilitated (within the meaning of § 47(c)(1)(C)) by the taxpayer and is placed in service by the taxpayer after the rehabilitation in a renewal community.

.03 The term "qualified revitalization expenditure" is defined in § 1400I(b)(2)(A) as, in general, any amount properly chargeable to a capital account for property for which depreciation is allowable under § 168 and that is either (1) nonresidential real property (as defined in § 168(e)(2)(B)), or (2) § 1250 property (as defined in § 1250(c)) that is functionally related and subordinate to the nonresidential real property. However, pursuant to § 1400I(c), the aggregate amount that may be treated as qualified revitalization expenditures with respect to any qualified revitalization building cannot exceed the lesser of (1) $10 million, or (2) the commercial revitalization expenditure amount allocated to the building under § 1400I by the commercial revitalization agency for the state in which the building is located. Accordingly, a taxpayer may make a commercial revitalization deduction election for a qualified revitalization building only to the extent that qualified commercial revitalization expenditure amounts are allocated to the building. If the amount of that allocation exceeds the amount properly chargeable to a capital account for the building, the qualified revitalization expenditures eligible for the commercial revitalization deduction election are limited to the amount properly chargeable to a capital account for the building.

.04 Under § 1400I(d), the commercial revitalization agency for each state is permitted to allocate up to $12 million of commercial revitalization expenditure amounts with respect to each renewal community located within the state for each calendar year after 2001 and before 2010. Pursuant to § 1400I(e), the allocation must be made pursuant to a qualified allocation plan (as defined in § 1400I(e)(2)) that is approved by the governmental unit of which the commercial revitalization agency is a part. Further, the commercial revitalization agency must notify the chief executive officer (or its equivalent) of the local jurisdiction in which the qualified revitalization building is located of the allocation and provide that individual a reasonable opportunity to comment on the allocation. The term "commercial revitalization agency" is defined in § 1400I(d)(3) as any agency authorized by a state to carry out § 1400I. Neither the original nor a copy of the qualified allocation plan is to be sent to the Internal Revenue Service.

.05 Pursuant to § 1400I(d)(4), an allocation under § 1400I is made at the same time and in the same manner as under the low-income housing credit provisions in § 42(h)(1) and (7). Section 42(h)(1)(B) provides that, except in the case of an allocation that meets the requirements of § 42(h)(1)(C), (D), (E), or (F), an allocation must be made not later than the close of the calendar year in which the building is placed in service. Further, § 1.42–1T(d)(8)(i) provides that the allocation may not be made prior to the calendar year in which the building is placed in service. Accordingly, the low-income housing credit allocation is generally made in the calendar year in which the building is placed in service.

Nevertheless, certain allocations that meet the requirements of § 42(h)(1)(C), (D), (E), or (F) are not made in the calendar year in which the building is placed in service. An allocation meets the requirements of § 42(h)(1)(C) if there is a binding commitment, not later than the close of the calendar year in which the building is placed in service, by the state agency to allocate a specified dollar amount to the building beginning in a specified later taxable year. An allocation with respect to an increase in qualified basis meets the requirements of § 42(h)(1)(D) only if, among other things, the allocation is made not later than the close of the calendar year in which ends the taxable year to which the allocation will first apply. Pursuant to § 42(h)(1)(E) and (F) and § 1.42–6, a carryover allocation is allowed with respect to a single-building project or multi-building project that is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made, provided certain basis requirements set forth therein are met.

SECTION 3. GENERAL RULES FOR AN ALLOCATION OF COMMERCIAL REVITALIZATION EXPENDITURE AMOUNTS

.01 *Types of allocations allowed*. A commercial revitalization agency may make the following types of allocations of the commercial revitalization expenditure amount (commercial revitalization expenditure allocation):

(1) An allocation in the calendar year in which a qualified revitalization building is placed in service, as described in section 4 of this revenue procedure;

(2) A binding commitment to make an allocation of a specified dollar amount to a qualified revitalization building in the calendar year in which the building is placed in service, as described in section 5 of this revenue procedure; and

(3) A carryover allocation for a single-building project or a multi-building project, as described in section 6 of this revenue procedure.

.02 *Allocation must be made for each building*. A separate commercial revitalization expenditure allocation must be made for each qualified revitalization building whether new or substantially rehabilitated.

.03 *$12 million ceiling for each renewal community*. Each state is permitted to allocate up to $12 million of commercial revitalization expenditure amounts to each renewal community located within the state for each calendar year after 2001 and before 2010 (the commercial revitalization expenditure ceiling). The $12 million of commercial revitalization expenditure amounts for any renewal community may not be allocated, in whole or in part, to another renewal community. However, see section 8.02 of this revenue procedure for the special rule for the 2002 ceiling.

.04 *Carryforward of ceiling is not permitted*. If a commercial revitalization agency does not allocate all of the commercial revitalization expenditure ceiling for a renewal community for any given calendar year, the unused ceiling amount may not be carried forward to a later year. However, see section 8.01 of this revenue procedure for the special rule for any unused 2002 ceiling amount.

SECTION 4. ALLOCATIONS FOR BUILDINGS PLACED IN SERVICE IN THE ALLOCATION YEAR

.01 *Time for making a commercial revitalization expenditure allocation*. Except as provided in sections 5 and 6 of this revenue procedure, a commercial revitalization expenditure allocation to a qualified revitalization building must be made in the calendar year in which that building is placed in service by the taxpayer.

.02 *Manner for making a commercial revitalization expenditure allocation*.

(1) *In general*. A commercial revitalization expenditure allocation is made for a qualified revitalization building when an allocation document containing the information described in section 4.02(2) of this revenue procedure is completed, signed, and dated by an authorized official of the commercial revitalization agency. The agency must send a copy of the allocation document to the taxpayer receiving the allocation no later than 60 calendar days following the close of the calendar year in which the allocation is made. Neither the original nor a copy of the allocation document is to be sent to the Service.

(2) *Information required in the allocation document*. The allocation document must include:

(a) The name, address, and taxpayer identification number of the commercial revitalization agency making the commercial revitalization expenditure allocation;

(b) The name, address, and taxpayer identification number of the taxpayer receiving the allocation;

(c) The address of the qualified revitalization building, or if none exists, a specific description of the location of each building;

(d) The date of the allocation of the commercial revitalization expenditure amount;

(e) The commercial revitalization expenditure amount allocated to the qualified revitalization building on that date; and

(f) A certification under penalties of perjury by an authorized official of the commercial revitalization agency that the official has examined the information in the allocation document, and, to the best of the official's knowledge and belief, this information is true, correct, and complete.

SECTION 5. BINDING COMMITMENTS

Before or in the calendar year in which a qualified revitalization building is placed in service, a commercial revitalization agency of a state may enter into a binding commitment to allocate a specified dollar amount of the commercial revitalization expenditure ceiling in the calendar year in which the building is placed in service. This allocation must be made in accordance with section 4 of this revenue procedure. A binding commitment, in and of itself, is not an allocation.

SECTION 6. CARRYOVER ALLOCATIONS

.01 *In general*.

(1) *Definition of a carryover allocation*. A carryover allocation is an allocation that is made with respect to a qualified revitalization building that is placed in service by a taxpayer not later than the close of the second calendar year following the calendar year in which the allocation is made, provided the taxpayer's basis in the project of which the building is a part (as of the later of the date that is 6 months after the date that the allocation is made or the close of the calendar year in which the allocation is made) 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 in which the allocation is made. A carryover allocation may be for either a single-building project (a building-based allocation) or a multi-building project (a project-based allocation). A carryover allocation reduces the commercial revitalization expenditure ceiling for the calendar year in which the allocation is made. If a carryover allocation is made after June 30, 2002, and before January 1, 2003, see section 8.03 of this revenue procedure for the special rule for the 10 percent basis requirement.

(2) *Determination of reasonably expected basis*. The taxpayer's reasonably expected basis in a project is the taxpayer's reasonably expected adjusted basis in land and depreciable property, as determined under §§ 1012 and 1016, that is reasonably expected to be part of the project, whether or not these amounts are includible in the basis of the qualified revitalization building.

.02 *Time and manner for making a carryover allocation of commercial revitalization expenditure amounts*.

(1) *In general*. A carryover allocation of commercial revitalization expenditure amounts is made for a qualified revitalization building when a carryover allocation document containing the information described in section 6.02(2) of this revenue procedure is completed, signed, and dated by an authorized official of the commercial revitalization agency. The agency must send a copy of the carryover allocation document to the taxpayer receiving the carryover allocation no later than 60 calendar days following the close of the calendar year in which the carryover allocation is made. Neither the original nor a copy of the carryover allocation document is to be sent to the Service.

(2) *Information required in the carryover allocation document*. The carryover allocation document must include:

(a) The name, address, and taxpayer identification number of the commercial revitalization agency making the carryover allocation of the commercial revitalization expenditure amounts;

(b) The name, address, and taxpayer identification number of the taxpayer receiving the carryover allocation;

(c) The address of each qualified revitalization building in the project, or if none exists, a specific description of the location of each building;

(d) The date of the carryover allocation of the commercial revitalization expenditure amount;

(e) The commercial revitalization expenditure amount allocated to the qualified revitalization building in a single-building project or to the multi-building project, as applicable, on that date;

(f) The taxpayer's reasonably expected basis in the project (land and depreciable property) as of the close of the second calendar year following the calendar year in which the allocation is made;

(g) The date that each qualified revitalization building in the project is expected to be placed in service by the taxpayer; and

(h) A certification under penalties of perjury by an authorized official of the commercial revitalization agency that the official has examined the information in the carryover allocation document, and, to the best of the official's knowledge and belief, this information is true, correct, and complete.

SECTION 7. COMMERCIAL REVITALIZATION DEDUCTION ELECTION

.01 *In general*. The commercial revitalization deduction election provided by § 1400I(a) is made by each person owning the qualified revitalization building (for example, by the member of a consolidated group, the partnership, or the S corporation that owns the building). This election must be made for the taxable year in which the building is placed in service. The election only applies to the extent that qualified commercial revitalization expenditure amounts are allocated to the building by the commercial revitalization agency of the state in which the building is located. If the amount of that allocation exceeds the amount properly chargeable to a capital account for the building, the qualified revitalization expenditures eligible for the commercial revitalization deduction election are limited to the amount properly chargeable to a capital account for the building.

.02 *Time and manner for making the election.*

(1) *In general*. The commercial revitalization deduction election must be made by the due date (including extensions) of the federal tax return for the taxable year in which the qualified revitalization building is placed in service by the taxpayer. The election must be made in the manner prescribed in the instructions for Form 4562, *Depreciation and Amortization*. For 2002, the taxpayer should refer to the instructions for line 42 of Form 4562.

(2) *Limited relief for late election*.

(a) *Automatic 6-month extension*. Pursuant to § 301.9100–2(b) of the Procedure and Administration Regulations, an automatic extension of 6 months from the due date of the federal tax return (*excluding* extensions) for the placed-in-service year of the qualified revitalization building is granted to make the commercial revitalization deduction election, provided the taxpayer timely filed the taxpayer's federal tax return for the placed-in-service year and the taxpayer satisfies the requirements in § 301.9100–2(c) and § 301.9100–2(d).

(b) *Other extensions*. A taxpayer that fails to make the commercial revitalization deduction election for the qualified revitalization building as provided in section 7.02(1) or 7.02(2)(a) of this revenue procedure but wants to do so must file a request for an extension of time to make the election under the rules in § 301.9100–3.

.03 *Scope of the Election*. If a taxpayer placed in service more than one qualified revitalization building during a taxable year, the taxpayer may make the commercial revitalization deduction election for the placed-in-service year separately for each building as provided in section 7.02 of this revenue procedure. For example, a taxpayer that places in service in 2003 three qualified revitalization buildings for which commercial revitalization expenditure amounts are allocated, may elect to deduct one-half of the qualified revitalization expenditures for one building and elect to amortize the qualified revitalization expenditures for the other two buildings ratably over a 120-month period.

.04 *Revocation*. The commercial revitalization deduction election is revocable only with the prior written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling in accordance with the provisions of Rev. Proc. 2003–1, 2003–1 I.R.B. 1 (or its successor).

.05 *Failure to make commercial revitalization deduction election*. If a taxpayer does not make the commercial revitalization deduction election for a qualified revitalization building within the time and in the manner prescribed in section 7.02 of this revenue procedure, the amount of depreciation allowable for that property must be determined under § 168 for the placed-in-service year and for all subsequent years. Thus, the commercial revitalization deduction election cannot be made by the taxpayer in any manner other than as set forth in section 7.02 of this revenue procedure (for example, through a request under § 446(e) to change the taxpayer's method of accounting).

SECTION 8. SPECIAL RULES FOR CEILING, CARRYOVER ALLOCATION, AND ALLOCATION DOCUMENT

The following special rules apply to the 2002 or 2003 commercial revitalization expenditure ceiling, to certain carryover al-

locations made in 2002, and to any allocation document made in 2002:

.01 *Unallocated portion of 2002 ceiling*. The $12 million commercial revitalization expenditure ceiling for 2003 for a renewal community is increased by any portion of the 2002 commercial revitalization expenditure ceiling for that renewal community that was not allocated in 2002. For example, if State A has only one renewal community, RC, and only $7 million of the $12 million commercial revitalization expenditure ceiling for 2002 for RC was allocated to qualified revitalization buildings in RC in 2002, the commercial revitalization expenditure ceiling for 2003 for RC in State A is $17 million.

.02 *Aggregation of 2002 ceiling*. The 2002 commercial revitalization expenditure ceiling for each renewal community within a state may be aggregated and apportioned to any renewal community within the state. However, after 2002, no aggregation of the ceiling is permitted, including any portion of the 2003 ceiling that is attributable to the unallocated portion of the 2002 ceiling in accordance with section 8.01 of this revenue procedure (*see* section 3.03 of this revenue procedure).

For example, State B has two renewal communities, RC1 and RC2. For 2002, State B aggregated the $12 million ceilings for RC1 and RC2 resulting in a total 2002 ceiling of $24 million. Of that amount, $15 million was apportioned to RC1 and $9 million was apportioned to RC2 for 2002. This aggregation and apportionment of the 2002 ceiling for RC1 and RC2 are permitted pursuant to section 8.02 of this revenue procedure. In 2002, $12 million of the $15 million of RC1's 2002 ceiling was allocated to qualified revitalization buildings in RC1 and $7 million of the $9 million of RC2's 2002 ceiling was allocated to qualified revitalization buildings in RC2. Pursuant to sections 3.03 and 8.01 of this revenue procedure, the commercial revitalization expenditure ceiling for 2003 for RC1 is $15 million ($12 million ceiling for 2003 plus the $3 million not allocated from the 2002 ceiling) and for RC2 is $14 million ($12 million ceiling for 2003 plus the $2 million not allocated from the 2002 ceiling). In accordance with sections 3.03 and 8.02 of this revenue procedure, the $15 million ceiling for 2003 for RC1 and the $14 million ceiling for 2003 for RC2 may not be aggregated and apportioned.

.03 *Carryover allocation*. If a carryover allocation is made after June 30, 2002, and before January 1, 2003, the taxpayer must meet the 10 percent basis requirement set forth in section 6.01(1) of this revenue procedure by December 31, 2003.

.04 *Allocation document*. Any allocation document made in 2002 that is not made in the manner prescribed in section 4.02 or 6.02 of this revenue procedure, as applicable, will be deemed to meet the requirements of section 4.02 or 6.02 of this revenue procedure, as applicable, if the document contains sufficient information to identify the commercial revitalization agency, the taxpayer, the qualified revitalization building, the date of the allocation, and the commercial revitalization expenditure amount allocated to the qualified revitalization building in a single-building project or to the multi-building project, as applicable.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for qualified revitalization buildings placed in service after December 31, 2001.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have 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 1545–1818.

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 collections of information in this revenue procedure are in sections 4.02, 5, and 6.02 of this revenue procedure. This information is required to obtain an allocation of commercial revitalization expenditure amounts for a qualified revitalization building in a renewal community. This information will be used by the Service to verify that the taxpayer is entitled to the commercial revitalization deduction. The collections of information are required to obtain a benefit. The likely respondents are state or local governments and business or other for-profit institutions.

The estimated total annual reporting burden is 200 hours.

The estimated annual burden per respondent varies from 1 to 4 hours, depending on individual circumstances, with an estimated average of 2.5 hours. The estimated number of respondents is 80.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 11. REQUEST FOR COMMENTS

The Service and Treasury Department welcome comments on this revenue procedure. Comments should be submitted in writing by September 15, 2003, to:

Internal Revenue Service
Attn: CC:IT&A:RU
(REV. PROC. 2003–38), Room 5226
P.O. Box 7604
Benjamin Franklin Station
Washington, DC 20044.

Alternatively, comments may be submitted by e-mail to: *Notice.Comments@IRSCOUNSEL.TREAS.GOV*. Please refer to Rev. Proc. 2003–38 in the e-mail.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is Emily Kalovidouris of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Kalovidouris at (202) 622–3110 (not a toll-free call).