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The Multiple Building Development Election— How to Answer IRS Form 8609 Line 8b

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A single low-income housing tax credit (LIHTC) allocation will often be awarded to a development that consists of more than one physical building. Each building will receive its own Internal Revenue Service (IRS) Form 8609. Unless otherwise elected on IRS Form 8609 by the taxpayer, each building in an LIHTC development will be treated as its own development/entity.

Line 8b of IRS Form 8609 reads as follows: “Are you treating this building as part of a multiple building development for purposes of section 42?” A taxpayer can choose to group buildings that are within the same LIHTC allocation into one development or divide them into separate developments, by selecting “Yes” on line 8b and including a statement that identifies which buildings should be included as part of a multiple building development. It is important to review what this election means and how it affects the operation of an LIHTC development.

Multiple Building Developments

A LIHTC development that has multiple buildings can be divided in the following ways:

- All the buildings in the development treated as one LIHTC development for LIHTC compliance and calculation purposes.
- All the buildings in the development treated as separate developments for LIHTC compliance and calculation purposes.
- Taxpayer can opt for a combination of the above options, where some of the buildings are treated as one development and some of the buildings are treated as a separate development.

Answering “No” on Line 8b

Answering “no” on line 8b of Form 8609 means that even though two buildings have the same LIHTC allocation they are viewed by the IRS as being two separate developments.

Answering “Yes” in Line 8b

Answering “yes” on line 8b of Form 8609 means that buildings in a development that are identified as a group in the 8b statement (attached to the Form 8609 in the one-time IRS filing) should be treated as one, multiple building development for the purposes of LIHTC compliance.

Certain information is required to be attached to IRS Form 8609 if “yes” is selected on line 8b. The following information must be attached to each Form 8609 where “yes” is selected for this question:

1. The name and address of the development and each building in the development;
2. The building identification number of each building in the development;
3. The aggregate credit dollar amount for the development; and
4. The credit allocated to each building in the development.

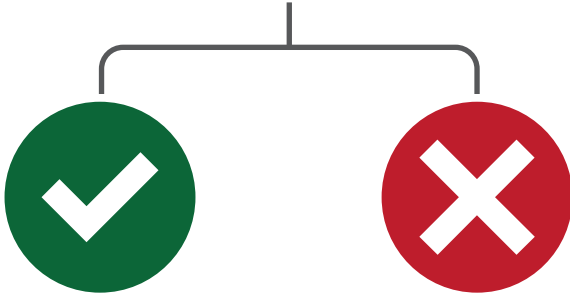
Please note that two or more qualified buildings may be included in a multiple building development only if they are:

- Located on the same tract of land (including contiguous parcels), unless all of the dwelling units in all of the

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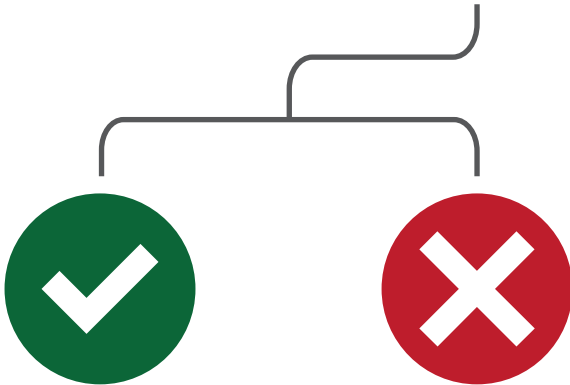
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Is your development 100% affordable?



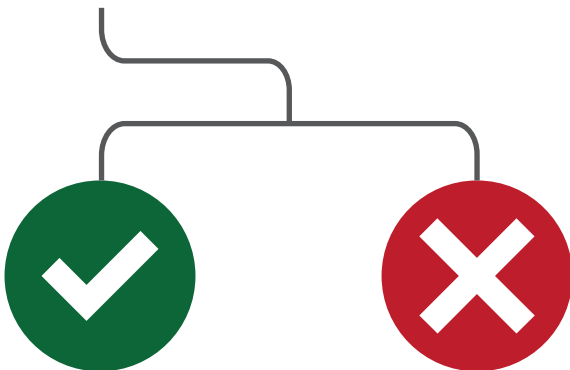
Check Yes on Line 8b.
See comments in Note 1.

Are any buildings within the development less than 100% affordable?



Do any of the buildings need other buildings to meet the set aside test?

Check Yes on Line 8b.
See comments in Note 1.



Check Yes on Line 8b.
See comments in Note 3.

Check No on Line 8b.
See comments in Note 2.

Note 1: Checking “yes” in these situations has the following pros and cons:

Pro: Tenants can transfer between buildings without having to complete a new certification. However, please note that tenants in mixed-income developments are not allowed to transfer if household income exceeds 140 percent of the limit at time of transfer. Tenants in 100 percent affordable developments can transfer between buildings even if their income exceeds 140 percent of the limit.

Con: The unit vacancy rule will apply across the entire development (this is mostly an issue for mixed-income developments).

Note 2: Checking “no” in these situations will mean each building is its own development, and has the following pros and cons:

Pro: Recertifications are not required for 100 percent affordable buildings.

Cons: Tenants will be required to complete a new initial certification when transferring between buildings. Each building will be its own development for compliance monitoring. The state is required to look at a minimum of 20 percent of units in each building, which could result in more units audited by the state than if the state looked at 20 percent of the entire development. Also, each building must meet the set-aside on its own.

Note 3: Checking “yes” in these situations has the following pros and cons:

Pro: Same as Note 1. Additionally, buildings that do not meet the minimum set-aside on their own can rely on other buildings in service in the same year to meet the minimum set-aside.

Con: Same as Note 1.

Other notes:

- Be sure to monitor for the minimum set-aside separately for buildings in service in different years. For example, if some buildings are in service in 2014 and some in 2015, then the buildings that are in service in 2014 must meet the minimum set-aside as a group separately from the buildings that are in service in 2015, unless the buildings in service in 2014 defer the credit period to 2015.
- You can check “yes” for some buildings (i.e., all 100 percent affordable buildings) and “no” for other buildings (non-100 percent affordable buildings). However, if you check “no” for a building, that building must meet the minimum set aside test on its own.

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buildings being aggregated in the multiple building development are rent-restricted units;

- Are owned by the same person for federal tax purposes;
- Are financed under a common plan of financing; and
- Have similarly constructed housing units.

LIHTC Compliance and Calculation Issues

There are a number of issues to consider. Some of the bigger issues include meeting the minimum set-aside, dealing with tenant transfers, and calculating income limits.

Minimum Set-Aside

Every LIHTC development must meet the minimum set-aside test. If a property owner divides an LIHTC development into multiple developments (i.e., by selecting “no” on line 8b), then each development must meet the minimum set-aside test on its own. This has the potential to be an issue in mixed income developments.

- Choosing “yes” on line 8b: Some buildings can be below the minimum set-aside as long as the entire development (all buildings in the aggregate) meets the minimum set-aside.
- Choosing “no” on line 8b: Each building must meet the minimum set-aside on its own.

Transfers

Tenants often request to transfer between buildings. In general, the IRS requirements regarding certifications when tenants transfer within and between buildings are as follows:

- Choosing “yes” on line 8b: Tenants are allowed to transfer between buildings within the same LIHTC development if the tenants meet the income requirements. A new income certification is not required by the IRS for transfers between buildings.
- Choosing “no” on line 8b: If a tenant transfers to a different building, the tenant is treated as moving out of one development and moving into a new development

and must be income qualified. If each building is a separate development, tenants over the income limit will not be able to transfer between the buildings.

Income Limits

Because the U.S. Department of Housing and Urban Development (HUD) discontinued its hold-harmless policy, income limits for counties can decrease from year to year. However, for LIHTC developments, the income limit can never be less than it was for the development in the previous year. This is commonly called the multifamily tax subsidy development (MTSP) hold-harmless policy. The MTSP hold-harmless policy starts when a development is placed in service and is determined on a development by development basis:

- Choosing “yes” on line 8b: The MTSP hold harmless for the income limit for all buildings in the development is determined by the date the first building was placed in service.
- Choosing “no” on line 8b: The MTSP hold harmless limit for each building is determined by the date each building was placed in service.

Is the 8b Election Irrevocable?

The short answer is that the election is not irrevocable, but it is difficult to change the election once made. The election is made when the IRS Forms 8609 are filed with the IRS’ Philadelphia office. The IRS had previously issued a series of private letter rulings that allowed taxpayers to change their answer from “no” to “yes” on line 8b.

Conclusion

It is important when operating an LIHTC development that owners and managers understand the ramifications of line 8b on IRS Form 8609. Property managers and asset managers need to understand how line 8b was answered, and the development team needs to plan ahead and discuss how to best answer line 8b. ❖

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