

## Chapter 24 Line 13 Building Disposition

### Definition

Recapture of the accelerated portion of credits may be caused not only by noncompliance with the LIHC program requirements, but by either the sale or other disposition of an LIHC building or the sale of an ownership interest in such a building. It is important to report all dispositions of low-income buildings that will *not* continue to be operated as a qualified low-income building after the disposition so that the IRS can determine whether the taxpayer has complied with the requirements of IRC §42(j); i.e., the credits have been appropriately recaptured.<sup>1</sup>

### Types of Building Dispositions

Line 13a on Form 8823 identifies four categories of building dispositions.

1. SALE - Types of activities that would constitute a “sale” (which does not necessarily involve the seller receiving money) include:
  - a. Fee Title Sale of Building - Fee title passes from the seller to a whole new entity (buyer)
  - b. Termination of Partnership
2. FORECLOSURE - Foreclosure is the legal process reserved by a lender to terminate the borrower's interest in a property after a loan has been defaulted. On foreclosure, the *owner* is deemed to have made a sale of the property for the outstanding amount of the mortgage debt.
  - a. Deed of Property in Lieu of Foreclosure - the owner voluntarily conveys the property to the mortgage holder to avoid foreclosure proceedings.
3. DESTRUCTION - Destruction is related to a building's *physical structure*, and not to the ownership interest in the building. The destruction affects the building *in its entirety*, i.e., the eligible basis of the property is reduced to \$0. The destruction is *permanent* and the building is not expected to operate as a tax credit project again. Violations of the physical inspection standards, or casualty losses that are temporary in nature should not be reported as destruction, which is permanent.
4. OTHER (Attach Explanation) – Any event, not listed above, which results in the disposition of a low-income housing credit unit, building, or property.

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<sup>1</sup> See Exhibit 24-1 for an explanation of the recapture requirements

**State Agency  
Responsibility  
for Reporting  
Property  
Dispositions**

The owner of a low-income housing building is the entity identified on the Form 8609. State agencies should confirm that the ownership has not changed as part of their monitoring and inspection responsibilities.

**Example 1: Owners Sells LIHC Building**

ABC, a limited partnership, owns and operates an LIHC building, and is identified as the owner on Form 8609. Mr. Jones is the general partner. There are two limited partners, Mr. Smith and the XYZ investment fund. On September 17, 2008, ABC sells the building to E&F, a limited partnership, which intends to continue operating the building as an LIHC building. As included in the extended use agreement, the state agency approved the sale. The state agency is required to report the disposition on Form 8823.

**Example 2: Owner Loses Ownership in Foreclosure Proceeding**

FGH, a limited partnership, owns and operates an LIHC building, and is identified as the owner on Form 8609. Mr. Jones is the general partner and the limited partner is the XYZ investment fund. On December 1, 2008, the partnership lost ownership of the building in a foreclosure proceeding. The new owner will not operate the building as a qualified low-income building. The state agency is required to report the disposition on Form 8823.

LIHC buildings are generally owned by partnerships and identifying changes in the composition of the ownership entities is not required.

**Example 3: State Agency Reviews Owner's Annual Certification**

ABC, a limited partnership, owns and operates an LIHC building, and is identified as the owner on Form 8609. Mr. Jones is the general partner. There are two limited partners, Mr. Smith and the XYZ investment fund. As part of the regular monitoring procedures, the state agency reviews the owner's annual certification to confirm that ownership has not changed. The state agency is not required to ask whether Mr. Jones, Mr. Smith, or XYZ has disposed of their interest (or a portion of their interest).

**References**

1. IRC §42(j)(6) No recapture on disposition of building which continues in qualified use.
2. IRC §42(f)(4) Dispositions of property. If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

3. Rev. Rul. 91-38, 1991-26 I.R.B. 5, Q&A #5, "...For purposes of section 42(f)(4) of the Code, the owner who has held the property for the longest period during the month in which a transfer occurs is deemed to have held the property for the entire month and may claim a credit accordingly. In cases in which the transferor and transferee have held the property for the same amount of time during the month of the transfer, the transferor is deemed to have held the property for the entire month and the transferee's ownership of the property is deemed to begin the first day of the following month..."