Low Income Housing Credit Newsletter

Internal Revenue Service

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The purpose of this newsletter is to provide a forum for networking and sharing information among LIHC program coordinators and examiners. It is a means by which to communicate technical information, issues developed through examination activity, industry trends and any other pertinent information which surfaces from time to time. Articles and ideas for future articles are most welcome!!

This edition of the LIHC newsletter is dedicated to answering some of those little questions – like stocking stuffers! Happy Holidays!!!!

Noncompliance After A Disposition: *Who is Responsible?*

Question: A LIHC building was sold to a new owner who keeps the building in the program. Shortly after the purchase, a compliance review of a building revealed noncompliance that existed prior to the sale, is outstanding at the time of the review, and remains out of compliance at the end of the correction period. How should this be reported to the IRS?

Answer: The Form 8823 should indicate the date the noncompliance began (line7) and since the current owner has not corrected the noncompliance, the date the noncompliance was corrected is blank (line 8). The owner's information (lines 2 and 4) should identify the current owner. For purposes of reporting noncompliance, it doesn't matter whether the property was sold.

The new owner will be held accountable for correcting the noncompliance, even though the former owner is responsible for creating the noncompliance. There may be a disallowance of credit in years open by statute and recapture under IRC §42(j). If the former owner posted a bond, the IRS could collect the recapture from the bond.

Recapture Bonds: *Where can you find a bonding company?*

Bond companies can be found at www.fms.treas.gov/c570/c570.html

Recordkeeping: *How long does a taxpayer need to keep tenant files?*

Under Treas. Reg. §1.42-5(b)(2), taxpayers must retain records for 6 years after the due date (with extensions) for filing the tax return for that year. Treas. Reg. §1.42-5(b)(1) includes a list of 9 specific items taxpayers need to retain.

Example: A taxpayer files the 2001 tax return on May 20, 2002, (with an extension). 2001 is *not* the first year of the credit period. The records must be retained until May 20, 2008.

There is an exception for the first year of the credit period. These records must be maintained for at least six years after the due date (with extensions) of the tax return for the last year of the 15-year compliance period of the building, of 21 years.

Example: A taxpayer files the 2001 tax return on May 20, 2002, (with an extension). 2001 is the first year of the credit period. The records must be maintained until May 20, 2023.

Why so long for the first year?

The taxpayer will need the records to document the Applicable Fraction for Form 8609 Schedule A:

- Line 2, Applicable Fraction
- Line 7, Qualified Basis
- Line 17, the deferred credit

Form 8609, Schedule A, is filed with the taxpayer's tax return for *every year of the 15-year compliance period.*

Student Rules: *What if a newly married couple has never filed a joint tax return?*

Under IRC §42(i)(3)(D)(ii)(II), a unit will not fail to be considered a LIHC unit because it is occupied by a full-time students *if the students are married and file a joint return.*

If the couple is applying for a LIHC unit during the year in which they were married and, therefore, cannot provide a copy of a filed joint return, ask the couple for a copy of their marriage certificate to establish that the couple is entitled to file a joint return. They can provide a copy of their tax return when it is filed.

DDAs and Census Tracts: *What's the difference?*

Difficult to Develop Areas (DDA)

As defined in IRC §42(d)(5)(C)(iii)(I), Difficult to Develop Areas are defined as areas where the costs of construction, land, and utilities are high compared to the Area Median Gross Income. Under IRC §42(d)(5)(C)(i), the Eligible Basis of building in a DDA is "stepped up" to 130% of what it would otherwise be. In these locations, more credit is needed to subsidize costs that cannot be supported by debt or repayment from the future cash flow from rents.

Census Tracts

Census tracts are defined by the character of the population; i.e., more individuals fitting the "low income" definition within a limited area. Under IRC §42(d)(5)(C)(ii)(I), a "qualified" census tract is any census tract where:

- 50% or more of the households have income less than 60% of the Area Median Gross Income,

OR

- A poverty rate of at least 25%.

In addition to the 130% stepped-up basis under IRC §42(d)(5)(C)(i), the Eligible Basis of buildings in qualified census tracts can include the cost of community service facilities; the cost cannot exceed 10% of the eligible basis of the qualified low-income housing *project* of which it is a part. See Rev. Rul. 2003-77 for complete discussion.

Where can I find a list of DDAs and Qualified Census Tracts?

You can find lists of DDAs and Qualified Census Tracts at www.huduser.org/datasets/qct.html.

How do I know if the credit is computed on a "stepped up" Eligible Basis?

The percentage will be identified on Form 8609, Part I, line 3b.

Statutes of Limitations: *What are they?*

Generally, the statute of limitation is the amount of time the IRS has to audit or make a change to a tax return after it is filed. Normally, it is three years from the due date for filing the return or the date the return is actually filed, whichever is later. See IRC §6501(a).

What if a return is filed fraudulently?

In the case of a false or fraudulent return, or the willful attempt to evade tax, the assessment of tax can be made at any time. The IRS can also begin a proceeding in Court to collect tax. See IRC § 6501(c)(1) & (2).

What if a taxpayer doesn't file a tax return?

The statute of limitation doesn't begin until the tax return is filed. The assessment of tax, or beginning of a proceeding in Court to collect tax, can be made at any time. See IRC §6501(c)(3).

How do Statutes of Limitations apply to tax returns with IRC §42 credits?

Taxpayers claiming low-income housing credits are subject to the same rules as everyone else; i.e., there is a three-year statute of limitation triggered by the filing of a tax return.

However…

Because the taxpayer claims the credit over a ten-year credit period, but must provide low-income housing for a fifteen-year period, a portion of each year's credit is associated with the future provision of the housing. If the taxpayer does not provide the housing, there is a recapture event.

Under IRC §42(j), the IRS has authority to "recapture" the portion of credit from prior years associated with the promise to provide affordable housing in the future if the taxpayer does not provide the promised housing. Even though the statute of limitation may have expired, the credit can be recaptured from all the prior year returns for which the credit was allowable - *all the way back to the first year of the credit period* – because of this special rule. And interest will accrue all the way back to the time the credit was originally claimed.

IRS Audits: *What's the difference between the disallowance of credits and the recapture of credits?*

Disallowed Credits

When the IRS audits a LIHC tax return and determines that the taxpayer *claimed* too much LIHC, the amount of excess is "disallowed"; i.e., it is not allowable. This is an adjustment to *current* year credits.

Recaptured Credit

If, under the rules in IRC §42(j), it is necessary to "recapture" credits claimed in prior years because the taxpayer did not provide the affordable housing in future years. This is an adjustment to account for excess credit claimed in prior years.

? *Grace Notes* ?

At this time of year, when we reflect upon our accomplishments and set new goals for the coming year, I thought I would share the values included in the Kwanzaa celebration.

Umoja- Unity
Kujichagulia – Self Determination
Ujimaa – Collective Work and Responsibility
Ujamaa - Cooperative Economics
Nia – Purpose
Kuumba – Creativity
Imani – Faith

You can find out more about Kwanzaa at http://www.officialkwanzaawebsite.org

I like setting aside the week between Christmas and New Years, and focusing my attention on one value each day. I don't limit myself to the seven presented here, but include those that might have more immediate meaning in my life right now.

I hope that this holiday season of celebration will include a moment or two for reflection, gratitude and preparation for the coming year.

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