

# Low Income Housing Credit Newsletter

Internal Revenue Service

Issue #33, December 2008

The LIHC newsletter provides a forum for networking and sharing information about IRC §42, the Low-Income Housing Credit and communicating technical knowledge and skills, guidance and assistance for developing LIHC issues. We are committed to the development of technical expertise among field personnel. Articles and ideas for future articles are welcome!! The contents of this newsletter should not be used or cited as authority for setting or sustaining a technical position.

It's time to make some lists and check them twice (at least)....

## Notices:

The IRS has issued notices suspending certain requirements under IRC §42 to provide emergency housing relief on a temporary basis for displaced individuals as a result of devastations in major disaster areas.

1. Notice 2008-56: IRC §42 Relief, Indiana
2. Notice 2008-58: IRC §42 Relief, Iowa
3. Notice 2008-61: IRC §42 Relief, Wisconsin
4. Notice 2008-66: IRC §42 Relief, Missouri

Notice 2008-109 provides guidance for implementing provisions of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, which includes relief measures under IRC §1400N for the Hurricane Ike disaster areas in Louisiana and Texas, and the Midwestern Disaster Area, which includes counties in Arkansas, Illinois, Indiana, Iowa, Missouri, Nebraska, and Wisconsin.

On July 30, 2008, Congress enacted the Housing Assistance Tax Act of 2008. Since that time, the IRS has issued two implementing notices.

1. Notice 2008-79 provides information for an amendment to IRC §142(d) excluding military basic allowance payments from income with determining if a household is income-qualified
2. Notice 2008-106 clarifies that the 9% Applicable Percentage floor for non-Federally subsidized new buildings that are placed in service after July 30, 2008, and before December 31, 2013, applies notwithstanding an irrevocable election by the taxpayer under former IRC §42(b)(2)(A)(ii) made on or before July 30, 2008.

## Revenue Procedures:

Rev. Proc. 2008-60 provides procedures for taxpayers maintaining disposition bonds (or Treasury Direct Accounts) to elect to be subject to the reporting requirements under IRC §42(j)(6) as amended by the Housing Assistance Tax Act of 2008 for disposition of IRC §42 projects (or interests therein) after July 30, 2008.

The Housing and Economic Recovery Act of 2008 provides a temporary increase in the state housing credit ceiling for 2008 and 2009. As identified in Rev. Proc. 2008-66, the amount used to calculate the State housing credit ceiling is the greater of (1) \$2.30 multiplied by the State's population, or (2) \$2,665,000.

## Revenue Rulings:

In Rev. Rul. 2008-6, the IRS determined that rental assistance payments made to an owner of IRC §42 property on behalf of a tenant under the Indian Housing Block Grant Program authorized by the Native American Housing Assistance and Self-Determination Act of 1996 are not grants for purposes of IRC §42(d)(5)

## Chief Counsel Advice Memos:

Chief Counsel Advisory 200812023 provides guidance for issues involving the allocation of tax credits when special allocations in the partnership agreement result in the actual allocation of depreciation being different from the allocations provided for in the partnership agreement. See Newsletter #30 for detailed discussion.

## SBSE\* Memorandum:

The IRS made an IRS memorandum for examiners auditing LIHC issues available to the public. The memorandum was distributed at the National

Council of State Housing Agencies' Miami conference in June 2008.

The memo provides guidance regarding the treatment of taxpayers who fail to comply with IRC §42 requirements at all times during the 15-year compliance period. The memo, titled "Low-Income Housing Credit (LIHC) – Noncompliance Resulting from Conflicting Program," is dated August 20, 2007 and signed by Glenn DeLoria, Program Manager for Examination Specialization and Technical Assistance.

\* Small Business/Self-Employed is an operating division within the IRS.

## Newsletters:

Four LIHC Newsletters were issued this year (five if you include this one).

1. Issue #29, February - includes a summary of a change to the student exceptions under IRC §42(i)(3)(D)(ii)(I) for single parents and their children that was made as part of the Mortgage Forgiveness Debt Relief Act of 2007.
2. Issue #30, June – the lead (and only) article is about CCA 200812023 and the application of IRC §704(b); i.e., the allocation of credit among a partnership's partners.
3. Issue #31, July – another single topic edition of the newsletter, this time focusing on the First Year Certification under IRC §42(l)(1) and updating information provided in the 6<sup>th</sup> edition of the newsletter issued in June of 2002.
4. Issue #32, October – provides guidance for implementing of an amendment to IRC §142(d)(3)(A) that is applicable to 100% LIHC projects under IRC §42(g)(4). As part of the Housing Assistance Tax Act of 2008, owners of IRC §42 project, where all the residential units are low-income units, can immediately stop completing the annual tenant income recertification otherwise required.

## The Thrice Checked List:

In the last newsletter, when answering questions about the amendment to IRC §142(d)(3), I stated that the exemption from the annual tenant income certification applied to tax-exempt bond projects only if the project also had IRC §42 credits under IRC §42(h)(4).

I was mistaken and should have checked my answer one more time. The new exemption applies to IRC §42 projects, and IRC §142 housing projects, *regardless* of whether the project has credits under IRC §42(h)(4).

## Subscribing to the LIHC Newsletter

The LIHC Newsletter is distributed free of charge through e-mail. If you would like to subscribe, just contact Grace Robertson at [Grace.F.Robertson@irs.gov](mailto:Grace.F.Robertson@irs.gov).

## ♪ Grace Notes ♪

*It's early morning and I'm again sitting at the kitchen table, looking out the doors to the deck. I can tell that it's going to be another rainy, icy cold winter day that's only slightly less gloomy than last night's evening news. I've been listening to a Barry Manilow CD of holiday music and the words of the last song keep drumming through my brain....*

*When I'm worried and I can't sleep,  
I count my blessings instead of sheep,  
And I fall asleep counting my blessings.*

*And I remember something that happened to me a long time ago...I was in a car pool with a man who wasn't, well...exactly a morning person, and on one particularly cold wintry morning when I greeted him with a slightly too enthusiastic "good morning!," he barked back at me, "So what's so good about it?"*

*I had no problem listing the most obvious reasons, starting with the fact he woke up that morning...I think he was sorry he asked!*

*I've grown old enough to embrace the "holidays" and the plurality of traditions and celebrations that the term is intended to acknowledge. And, in a moment of insight, appreciate that the commonality of the "holidays" is the expression of our grateful hearts. So, as I commute around the Washington beltway, I count my blessing, including insulated cups, seat warmers, Star Trek CDs...and the convergences of fortuitous coincidences.*

*Happy Holidays*

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*P.S. The song is called "Count Your Blessings" and written by Irving Berlin.*