

Low Income Housing Credit Newsletter

Internal Revenue Service

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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.

Examiners Q&A

Q1: During an examination of a taxpayer owning IRC §42 property, I reviewed a sample of tenant files. For some of the tenants, the owner secured tax returns to document that the household was income-qualified. What should I do if I find tax issues? For example, a married person claiming "head of household" status and the Earned Income Credit (EIC) for children that were not listed on the lease.

A1: Information about a tenant's possible non-compliance with federal income tax laws discovered during an IRS audit should be submitted for evaluation and possible enforcement action using Form 5346, Examination Information Report. See IRM 4.10.8.14 for detailed instructions;

Note: Form 5346 is for use by IRS employees *only*.

Q2: What is a building identification number?

A2: A Building Identification Numbers (BIN) is assigned by a state housing agency to every building in a qualified low-income housing project that includes low-income residential housing units. The BIN consists of the two character state postal abbreviation followed by a two digit designation representing the year the credit is allocated, and a five digit numbering designation the state agency uses to identify the projects and buildings within the project.

For example, the identification number for one of 25 buildings allocated a credit by the Connecticut Housing Finance Authority might read CT-01-01023 to designate that the credit was allocated in 2001 to the 23rd building in project #1.

The building's BIN remains the same from that point forward and is used to identify the building for IRC §42 purposes; e.g., Forms 8809, 8609-A, and 8823.

Q3: What's the difference between a low-income unit and a single-room occupancy (SRO) unit under IRC §42(i)(3)(B)(i)?

A3: Eligible Basis includes the adjusted basis of depreciable property subject to IRC §168 and the property qualifies as residential rental property under §103. Under Treas. Reg. 1.103-8(b)(8)(i), the term "unit" means any accommodation containing *separate* and *complete* facilities for living, sleeping, eating, cooking, and sanitation. Such accommodations may be served by centrally located equipment, such as air conditioning or heating. For example, an apartment containing a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink, all of which are separate and distinct from other apartments, would constitute a unit.

As explained in the legislative history, SRO units can qualify for the IRC §42 credit even though kitchen, bathroom, and dining facilities are shared.

The significance for IRC §42 purposes is that while tenants in low-income units are expected to sign leases of at least 6 months to establish the non-transient nature of the tenancy, occupants of SRO units can enter into month-by-month agreements.

State Housing Agencies Q&A

Q1: Every year we file Form 8610, Annual Low-Income Housing Credit Agencies Report, with the IRS to reconcile our credit allocations and remaining credit ceiling. We are also required to certify that we are compliant with the compliance monitoring and notification requirements under Treas. Reg. 1.42-5. What is the legal authority for the requirement and are we required to report monitoring activities for IRC §42 projects that have completed their 15-year compliance period?

A1: The legal authority is IRC §42(l)(3), which requires state housing credit agencies to annual report: (1) the amount of credit allocated during the year to individual buildings, (2) sufficiently identify the taxpayer owning the building, and (3) other information as the Secretary (IRS) may require. Some reminders:

Forms 8610 were due March 2nd this year. State housing agencies are subject to a failure to file penalty under IRC §6652 if not filed timely. Timeliness is determined based on the date and time stamped by the Post Office on the envelope, the same as for the filing of tax returns.

Only one Form 8610 per state. If a state has authorized more than one housing agency to allocate IRC §42 credits, the agencies must coordinate and file one combined Form 8610.

Lines 14, 15, and 16 provide for a reconciliation of compliance monitoring requirement on a three year cycle based on the year the last building in the project was placed in service. State agencies are not required to include projects if:

1. The buildings are no longer subject to compliance monitoring because the buildings are no longer participating in the IRC §42 low-income housing credit program.
2. The 15-year compliance period ended more than three years before the beginning of the reporting period. For example, if the compliance period ended December 31, 2005, the project would not be included in the reconciliation on line 14 of Form 8610 for 2008.

Note: the 10-year credit period under IRC §42(f)(1) and the 15-year compliance period under IRC §42(i)(1) begin on the *first* day of the tax year in which the buildings are placed in service, or if the taxpayer elects, the following year. The 15-year compliance period ends on the *last* day of the tax year, which is December 31st of the 15th year for calendar year taxpayers.

Q2: The credit allocated to states this year is the greater of \$2.20 multiplied by the state's population or \$2,555,000. How did the IRS calculate the \$2,555,000?

A2: IRC §42(h)(3)(C)(ii)(II) provides a minimum credit ceiling for states with small populations. For 2008 and 2009 only, under IRC §42(h)(3)(I)(ii), the minimum credit ceiling is increased by an amount equal to 10% of the minimum credit ceiling after the cost-of-living adjustment and rounded to the next *lowest* multiple of \$5,000.

Rev. Proc. 2008-66 provides that, for calendar year 2008, the state minimum amount is \$2,325,000. So, \$2,325,000 plus \$230,000 (\$232,500 rounded down the next lowest \$5,000) equals \$2,555,000.

Q3: How do I know if someone claiming to be an IRS revenue agent and conducting an audit of one of our owners really works for the IRS?

A3: At the time initial contact is made, the revenue agent should provide you with contact information, including name, telephone number and employee ID or badge number. In addition, revenue agents use pocket commissions to present proof of authority to perform his or her official duties. (See IRM 4.2.4.2.1.)

Taxpayer Q&A

Q1: Now that the Forms 8609 are no longer filed with my tax return, should I file my certification every year with the LIHC Compliance Unit in the Philadelphia Campus?

A1: No. It is a one-time filing to satisfy the IRC §42(l)(1) certification with respect to the first year of the credit period. Keep in mind:

1. In order to claim the credit, you must have an original, signed Form 8609 (or copy thereof) issued by a housing credit agency assigning a identification number for the building (BIN), even if no allocation is required; e.g., certain buildings financed with tax-exempt bonds. Any owner claiming credit without receiving a completed Form 8609 that is signed and dated by an authorized official of the state housing agency is subject to having the credit disallowed.
2. The most common error when filing Form 8609, Part II is failing to identify the first year of the credit period on the line to the right of where the taxpayer's name is printed.

3. Remember to make copies of the completed Forms 8609 for your records before submitting the originals to the IRS.

Taxpayers are also required to submit an information report to the IRS under IRC §42(l)(2), which is included on Form 8609-A, Part I, and filed annually with the taxpayer's tax return for each year in the 15-year compliance period. There are five questions (A-E).

Tax Return Preparers Q&A

Q1: There have been some changes to Form 8586 and Form 3800. Why?

A1: Under §3022(b) of the Housing Assistance Tax Act of 2008, IRC §38(c)(4)(B) was amended to allow IRC §42 credit against Alternative Minimum Tax (AMT) if the credit is attributable to buildings placed in service after December 31, 2007.

So, Form 8586, Low-Income Housing Credit, has been revised and now includes two parts:

Part I is for buildings placed in service before January 1, 2008, and is subject to the same AMT rules as in prior years.

Part II is new and is used to identified the IRC §42 credit associated with buildings placed in service after December 31, 2007.

Form 3800, General Business Credit, has also been revised to account for credits that are allowed against AMT. Credits attributable to buildings placed in service before January 1, 2008 are included are line 1d and credits attributable to buildings placed in service after January 31, 2007 are accounted for on line 29d.

Other reminders:

General business credits reported on Form 3800 are treated as used on a first-in, first-out basis by offsetting the earliest-earned credits first. Therefore, the order in which the credits are used in any tax year is:

1. Carryforwards to that year, the earliest ones first,
2. The general business credit in that year, and
3. the carryback to that year.

If the general business credit includes more than one kind of credit, then the ordering rules under IRC §38(d) dictate that credits are used as listed in IRC §38(b), which just happens to be the same order the credits are lists on Form 3800, line 1(a)-(z).

For recordkeeping purposes, a taxpayer usually documents the allowable IRC §42 credit using the Schedules K-1.

1. Any credit coded A or B is attributable to buildings placed in service before January 1, 2008.
2. Any credit coded C or D is attributable to buildings placed in service after December 31, 2007.

Taxpayer should also keep a separate record of the amount of credit from different sources so that the 10-year credit period can be correctly identified and any credit recapture can be correctly computed.

Administrative Reminders

Expanding Audits, Project/Tracking Code: All LIHC cases should include Project Code 0670 and ERCS Tracking Code 9812. If the audit is expanded to include additional years or related taxpayers, the additional returns should also carry the LIHC project code and tracking code designation.

Form 5344, Revenue Protection: The Examination Closing Record, Form 5344, contains four blocks of information to account for adjustments that reduce a credit carryforward. Blocks 44 through 47 identify the type of credit and the extent of any adjustment made. See IRM 104.3.12.4.55 through 58 for details.

Surveying LIHC Tax Returns: If you believe it is appropriate to survey an LIHC return, please fax Form 1900 to Grace Robertson, at 202-283-7008, for signature approval.

TEFRA Requirements: As LIHC property owners are almost always partnerships, and are likely to be subject to TEFRA procedural requirements, please remember document actions taken and decisions made by completing:

Form 12813, TEFRA Procedures
Form 13814, TEFRA Linkage Package
Checksheet
Form 13828, Tax Matters Partner (TMP)
Qualification Checksheet
Form 13827, Tax Matters Partner (TMP)
Designation Checksheet

More information is available on the TEFRA website, along with a list of TEFRA Coordinators who can help walk you through the procedures.

http://tefra.web.irs.gov/m1/1a_home.asp

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♪ Grace Notes ♪

March 2nd: I'm working at home today and sitting at the kitchen table again. There's a blizzard raging outside, the wind is ferocious and I can't see to the end of the driveway. March is making a grand entrance like a roaring lion, but it feels more like February is an unwelcome guest who has already stayed way too long and has just announced it having so much fun that it has decided to stay another week. Is February really the shortest month of the year?

March 4th: For only the second time this year, I had to shovel iced footprints and snow off the sidewalks, but the kids and dogs must have had a wonderful time playing in the powder snow. I'm not complaining.

March 6th: Before leaving for work at 5:30 am, I roll the garbage can out to the curb. It's so warm that I decided to leave the scarf and gloves at home and wore a light rain coat instead of my heavy winter coat with the hood. I drive east in the morning and at certain times of the year, like now, there's a hint of light at the horizon peeking through the bare tree skeletons. It's like a personal "good morning" from the universe. I'm a little disappointed when reminded to set all my clocks an hour ahead on Saturday night.

March 9th, 7:00 am: I'm working at home again. It's early and I'm preparing for a day away from the office. I have company at the kitchen table this morning, as both Hannah and Olivia (my cats)

are comfortably perched together on their shelf in the window. While that may sound quite ordinary and cozy, I know these two cats do not like to actually "touch" and they've been snuggled together for quite a while now without a territorial dispute. What's more, I realize that their ears are all a twitter. I look up from my computer to see them sitting at attention, heads and tails moving from left to right and back again like synchronized swimmers. I look out the window, too, and find they are drooling over a robin; a really big, red-breasted robin. He's chirping away and bouncing around the yard and, when he moves out of sight, Olivia hurries to another window to continue her vigil. Hannah stays put and stretches out on the self. I realize there are more than a single bird out there...it's beginning to sound like a whole a cappella choir!

So, since March roared in like a lion, I look forward to it departing as gently as a lamb without freezer burning my Hyacinths and Daffodils any worse than February's agonizing finale. I'm pretty sure I will again be greeted by beautiful sunrises in another few weeks, and I expect to hear the Canadian geese honking overhead as they pass by on their trek home for the summer. I'm so hopeful that I've started saving coupons for discounts at the garden center!

March 9th, 9:30 am: The wind is picking up and Hannah is twisting her head around and around to watch the dead leaves I didn't rake up last fall dance around with the dust in the yard like miniature tornados. Olivia is too busy watching the beautiful black and white big-as-a-horse greyhound passing by with his head leaning into the wind, pulling against his leash, and shivering just a little. Guess I'll keep the winter coat out just a little longer.

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