LIHC Newsletter

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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 content of this newsletter should not be used or cited as authority for setting or sustaining a technical position.

INSIDE THIS ISSUE:

New Analyst Joins the IRC §42 Program

Milton Pagan, a senior program analyst at the Internal Revenue Service, has joined SBSE's Technical Issues group and will be working with the IRC §42 program. Although new to the IRC §42 program, Milton has been with the Service for over 27 years, with assignments including the Examination of Income, Ponzi/Investment Theft Losses, Fraud, and the Whistleblower Program. Milton is located in San Diego, California. Communications should be directed to the IRC §42 mailbox.

IRS Completes Audit Technique Guide For IRC §42, Low-Income Housing Credit

The new audit technique guide (ATG) for IRC §42, Low-Income Housing Credit, is finished. The ATG was prepared to assist IRS examiners audit taxpayers, usually partnerships, owning IRC §42 projects. It is organized in the order an examiner might address issues during an examination, starting with an overview of the credit and how to complete a precontact analysis through calculating an adjustment to the credit and writing the audit report. Two related topics, auditing partners and completing the Examination of Income, are also addressed.

IRC §42 ATG v. Form 8823 Guide

The new IRC §42 ATG does not replace the Form 8823 Guide, which was written to assist state housing agencies evaluate taxpayer compliance with IRC §42 requirements and report noncompliance to the IRS. The two documents are complementary, however, and the Form 8823 Guide is referenced in the IRC §42 ATG rather than duplicating information.

Industry Review

A draft of the guide was released for public comment last December. Comments were due by the end of March and 19 groups and individuals responded. The comments covered a wide range of issues and included technical corrections, suggestions for additional topics, and one group even checked citations, which was very much appreciated.

Internal Review

The draft was also shared with interested revenue agents, field group managers, and program analysts. Their comments are also reflected in the final document.

Revisions

Here are some of the changes made to the January 2014 draft:

(Continued on page 4)

ATG Tidbits:

- *Appendix A is a compilation of IRC §42 terms.*
- *Appendix B is a listing of IRC §42 references, with complete citations and summary of the document. If a complete reference is not provided in the ATG, you'll find it in Appendix B.*
- *Appendix C answers the most frequently asked IRC §42 question: whether an asset or cost is includable in Eligible Basis.*

Building Identification Numbers (BIN)

A Building Identification Number (BIN) is assigned to every building receiving an allocation of IRC §42 credit, or, as described in IRC §42(h)(4), is financed with tax-exempt bonds subject to the volume cap under IRC §146. The rules for assigning BINs are outlined in Notice 1988-91.

Purpose

The BIN is comparable to an individual's Social Security Number (SSN) or an entity's EIN (Employer Identification Number), which are sometimes collectively referred to as Taxpayer Identification Numbers (TIN). BINs are identified on the following forms:

- Form 8609, Low-Income Housing Credit Allocation and Certification.
- Form 8610-A, Carry-Over Allocation of Low-Income Housing Credit.
- Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition
- Form 8609-A, Annual Statement for Low-Income Housing Credit
- Form 8611, Recapture of Low-Income Housing Credit, if there is a recapture event under IRC §42(j).

Format

The BIN consists of a two character state designation (the postal state abbreviation) followed by a two digit designation identifying the year the *first* credit allocation is made, and a five digit number designation assigned by the state housing agency.

For example, the identification number for one of 25 buildings allocated a credit in 1987 by the Connecticut Housing Finance Authority (the only housing credit allocating agency in the state) might read CT-87-00023.

Unique BIN

The BIN must be unique to the building and the same BIN must be used for all allocations of credit. As described in See Treas. Reg. 1.42-6(d)(2)(x):

> The BIN must reflect the year an allocation is first made to the building, regardless of the year that the building is placed in service. This BIN must be used for all allocations of credit for the building. For example, rehabilitation expenditures treated as a separate new building under section 42(e) should not have a separate BIN if the building to which the rehabilitation expenditures are made has a BIN. In this case, the BIN used for the rehabilitation expenditures shall be the BIN previously assigned to the building, although the rehabilitation expenditures must have a separate Form 8609 for the allocation. Similarly, a newly constructed building that receives an allocation of credit in different calendar years must have a separate Form 8609 for each allocation. The BIN assigned to the building for the first allocation must be used for the subsequent allocation.

Four examples:

- A building may receive separate allocations of credit for the acquisition of the building and the rehabilitation of the building.
- A newly constructed building may receive credit allocations in different calendar years. A separate Form 8609 will be used for each allocation and the BIN assigned for the first allocation will be used for all the subsequent allocations.
- An owner received an allocation of credit to construct a new low-income building. The building was timely placed in service and has completed the 15-year compliance period. The building is still within the 30-year compliance period when it is sold to a new owner who applies for and receives an allocation of credit for acquiring and rehabilitating the existing building. The BIN assigned at the time the building was constructed will be used again, even though the allocation of credit is for a new owner and the 15-year compliance period has expired for the first allocation.
- An owner received an allocation of credit in 1988 to construct a new low-income building. The building began the credit period in 1989 and the 15-year compliance period ended in 2003. The building was never subject to an extended use agreement. In 2014, the building was sold to a taxpayer who applies for and receives an allocation of the credit for both the acquisition and rehabilitation of the building. The BIN assigned to the building in 1988 should be used for the new allocation of credit even though the building was not subject to IRC §42 requirements at the time it was acquired in 2014.

Assignment by Authorized Housing Credit Agency

The BIN will be assigned by the housing credit agency that is authorized to make the credit allocation. If there is more than one allocating agency in the state, the agencies should coordinate the assignment of BINs to ensure that BINs are not duplicated.

Form 8823: Reporting Noncompliance

Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, is filed with the IRS by state housing agencies to report noncompliance events. Before reporting the noncompliance, however, the owner is provided a period of time to correct the noncompliance. The correction period is not to *exceed* 90 days from the date of the notice to the owner that noncompliance was identified. The state agency may identify a shorter period depending on the nature of the noncompliance. The correction period may be extended by the state agency for up to 6 months, but only if the Agency determines there is good cause for granting the extension.

Regardless of whether the noncompliance was corrected during the correction period, the state agency must report the noncompliance to the IRS within 45 days after the end of the correction period using Form 8823. The form includes a list of noncompliance categories with a "out of compliance" and "compliance corrected" box.

- If the noncompliance was not corrected within the correction period, then the "out of compliance box" is checked and the noncompliance date is reported on line 8.
- If the noncompliance was corrected within the correction period, then *both* the "out of compliance" and "compliance corrected" boxes should be checked. The noncompliance date is reported on line 8 and the date the noncompliance was corrected is reported on line 9.
- If the noncompliance is corrected within three years after the end of the correction period and the agency has already filed a Form 8823 to report the noncompliance, then only the "noncompliance corrected" box is checked.

To summarize, there should always be a "out of compliance" and corresponding "noncompliance corrected," whether reported on the same Form 8823 or separate Forms 8823.

Form 8609 Part II, First-Year Certification: Line 7, Eligible Basis

The First-Year Certification requirement under IRC §42 (l)(1) is satisfied by completed Form 8609 Part II of the Form 8609 Part I executed by the state housing agency and then filing the form with the IRS. On line 7, the taxpayer reports the eligible basis for that credit allocation.

The form's instructions for line 7 includes "If the housing credit agency has entered an increased percentage in Part I, line 3b, multiply the eligible basis by the increased percentage and enter the result." The reference is to IRC §42 (d)(5)(B).

The line 3b instructions read:

> Line 3b. Special rule to increase basis for buildings in certain high-cost areas. If the building is located in a high-cost area (i.e., "qualified census tract," "difficult development area," Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone), the eligible basis may be increased as follows.
>
> - For new buildings, the eligible basis may be up to 130% of such basis determined without this provision.
> - For existing buildings, the rehabilitation expenditures under section 42(e) may be up to 130% of the expenditures determined without regard to this provision.
>
> Enter the percentage to which eligible basis was increased. For example, if the eligible basis was increased to 120%, enter "120."
>
> Buildings placed in service after July 30, 2008. For these buildings, the definition of a "difficult development area" has been expanded to include any building designated by the state credit agency in order to be financially feasible as part of a qualified low-income housing project.

A state agency made also determine that, although the building is located in an area qualifying for the increase in eligible basis, no increase was necessary for the financial feasibility and viability of the building as part of a qualified low-income housing project. In which case, the state agency would enter 100% on line 3b and the taxpayer would enter the actual eligible basis (without any increase) on line 7, even though the building was in a location qualifying for the increase.

New Audit Technique Guide

(Continued from page 1)

- Chapter 2, Precontact Analysis, now includes Exhibit 2-1, IDR & Crosswalk to Issues. This explanation of documents to request from the taxpayer includes references to the chapters in the ATG related to the documents.

- Chapter 7, No Longer Participating in the IRC §42 Program, includes an expanded discussion of the state agencies' authority to determine that a building is no longer participating in the program (see page 7-1).

- Chapter 8, Eligible Basis: Includable Costs:

  ◊ The definition of "Residential Rental Property" on page 8-1 has been expanded to reference Notice 88-91, which explains that a townhouse can be a "qualified low-income building" along with apartment buildings, single-family dwellings, rowhouses, duplexes, and condominiums.

  ◊ The discussion of deferred developer fees, starting on page 8-19, clarifies that a deferred developer fee may be documented by a note or by another document.

- Chapter 12, Applicable Fraction

  ◊ A new section titled "Units Occupied by On-Site Managers, Maintenance Personnel, and Security Guards" was added on page 12-9. Audit techniques for this issue are outlined on page 12-14.

  ◊ A new section titled "Emergency Housing Relief" was added on page 12-9, and references revenue procedures 2007-54 and 2014-49.

  ◊ "Deep Rent Skewing" on page 12-17 was revised to correct a technical error. #1 on the list now correctly explains that, for deep rent skewed units, the gross rent does not exceed 30% of the applicable *income limit* applicable to the individuals occupying the unit.

  ◊ "Casualty Losses in Federally Declared Disaster Areas" was expanded to include reference to newly released Rev. Proc. 2014-49.

  ◊ Examples #4 and #5 on pages 12-44 and 12-45 were expanded to demonstrate the computation of the applicable fraction for the first year of the credit period under IRC §42(f)(2)(A) using the lesser of the Unit Fraction or the Floor Space Fraction methods as required by IRC §42(c)(1)(B).

  ◊ "Project Defined" on page 12-47 now includes Treas. Reg. §1.103-8(b)(4)(ii) as a reference, as well as IRC §42(g)(7).

- Chapter 17, Examples, was expanded to include a new section on page 17-4 titled "Partial Disallowance of Credit During the 10-Year Credit Period."

- Appendix C, Treatment of Assets/Costs for IRC §42 Purposes, has also been expanded.

  ◊ Accounting Costs are separately addressed on page C-1.

  ◊ A new category titled "Acquiring Occupied Building: Tenant Relocation Costs" has been added on page C-10.

  ◊ The section titled "Real Estate Taxes" on page C-10 has been expanded to include taxes incurred during the pre-production period.

  ◊ IRC §266 is addressed in a new section titled "Carrying Charges Other Than Interest" on page C-11.

And all this just proves that it is perfectly fine to have a whole bunch of cooks in the kitchen, as long as just one cook stirs the pot! Thanks to all of you who contributed to making this ATG a better source document for information about IRC §42.

IRS Web and 508 Compliance

The finalized ATG will be available on IRS.gov as both a searchable html file and a 508 compliant Adobe .pdf document.

Administrative Procedures

Project/Tracking Codes:
All LIHC cases should include Project Code 0670 and 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 designations.

Revenue Protection:
Form 5344, Examination Closing Record, requires entries if you are reducing the amount of credit to be carried forward to a tax year you are not going to audit. Enter the amount of credit carryforward to be disallowed for Item 46. Code "L" should be entered for Item 47. See IRC 4.4.12.4.58 for an example.

Surveying LIHC Tax Returns:
If you believe it is appropriate to survey an LIHC tax return, please fax Form 1900 to Grace Robertson at (202) 283-2485 for signature approval.

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The LIHC Newsletter is distributed free of charge through e-mail. If you would like to subscribe, just send an email to sbse.lihc@irs.gov. Please specify whether you would like the Adobe pdf format or the Word document.

Guide for Completing Form 8823

The "Guide" is available on the IRS website. There's a searchable html version and a downloadable pdf file.

On the IRS website, www.irs.gov, enter "ATG" in the search engine. Select the first link on the list of results for "Audit Technique Guides." Then select "L" from the alphabet list and the Guide will be listed as "Low-Income Housing Credit-Guide for Completing Form 8823." Clicking on the title will lead you to the html version and the link to the right of the title will link you to the pdf file.

♫ Grace Notes ♫

My life has a soundtrack. The overture includes my great-grandfather's favorite aria, my grandfather's favorite waltz, my grandmother's favorite hymn, the Liszt rhapsody that always makes my mother cry, and the Tchaikovsky concerto that my dad whistled while painting our home turquoise (it looked nicer than it sounds). I hear Sousa's Stars and Stripes Forever and I'm transported back at the old Utah state fair grounds on the 24th of July (Utah's founder's day), hot and dusty, watching the magnificent palomino horses with their silver bridles and saddles parading in formation around the grounds, the American flag leading the way…the piccolo solo still thrills me. Just mention the Tijuana Brass and I'm back in my 9th grade gym class (ugh!) doing exercise routines to Spanish Flea. Dark winter mornings riding on the school bus listening to the radio come back whenever I hear The Captain and Tennille singing about muskrats in love.

But it was Roger Whitaker's "The First Hello, The Last Goodbye" that played on a loop in my head during my senior year of high school. I'd emerge from deep sleep early in the morning to hear his rich deep baritone voice on the clock radio, singing the verses over and over (at least is seemed like it) until the words were etched on my brain, "…the end of the beginning is the beginning of the end….and the first time that we said hello began our last goodbye." There's a discreet period of time after the beginning and before the inevitable goodbye, an unknown measure of time.

Another song has been looping around in my thoughts lately. It's a song I learned from a friend long lost. It's titled "Sometimes" and the first verse begins, "…Sometimes, not often enough, we reflect upon the good things and those thoughts always center around those we love…" It's true. I have been welcomed among you and it has been the opportunity of a lifetime for me to work together with you for such a praiseworthy purpose. How blessed I have been. I have no words to express my gratitude but to say "thank you." It seems so totally inadequate. I wish I could give all of you a great big hug!

Do I have any recommendations for your soundtrack? Well…not really. But I do so hope you'll spend your measure of time wisely. I hope that wherever you go, you'll go wholeheartedly, and wherever you find yourself, I hope you will be do what's right and do it well. You are, after all, responsible for no one's actions but your own.

I've been the IRC §42 program analyst for 15 years now, and as a friend reminded me, my compliance period is about to expire. On September 26th, I will be commuting home around the Washington beltway for the last time. But there's no melancholy last goodbye for me. I'll be listening to the soundtrack from Star Trek VI: The Undiscovered Country.

I'll think about Captain Kirk and his crew, just three months from retirement, when they are called up for one last diplomatic mission, which (of course) goes all awry. I'll listen to the ominous overture leading up to the explosion of a Klingon moon, a lonely trumpet solo as Kirk and Dr. McCoy hike across a glacial expanse, and as I approach home, I'll hear the crew of the starship Enterprise, having saved the entire known civilization yet again, return safely back home to the bridge of the Enterprise. Chekov asks Captain Kirk, "Course setting, Captain?" And, with a sigh, knowing this is their last mission together, knowing that they are soon standing down, he gives his last command. As the Star Trek theme crescendos to a full orchestral swept, Kirk looks forward and commands, "Second star to the right and straight on 'til morning." It's all about the future and that's where you'll find me.

Until we meet again,

Grace Robertson