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!!

Reporting the LIHC Recapture Amount on Form 1040, Individual Income Tax Return

During 2003 you sold your LIHC building (or interest therein) and you've decided not to post a bond under IRC §42(j)(6). You diligently work your way through the computation on Form 8611 and get to Line 12. The instructions tell you to "enter the total on the appropriate line of your return." So, where's that?

The LIHC recapture amount is an increase in tax that should be included with "Other Taxes". For an individual, these additional taxes are included on lines 55-59 of Form 1040. So, you look at these lines, and there isn't a line for LIHC recapture. Now what do you do?

Recognizing that there isn't a specific line, write "LIHC Recapture F. 8611 and the dollar amount after "This is your total tax" on line 60. Then add the recapture amount to any other "Other Taxes" that need to be reported and report the total in the column for line 60.

What's NOT Included in Eligible Basis?

By Kent Rinehart, Program Analyst

As the needs of LIHC property owners change, so do the components of construction costs for such projects. Historically, LIHC properties have evolved from 100% low-income projects to more and more mixed-market projects. The evolution continues today, as it is not uncommon to see LIHC projects that now include commercial businesses, office space, community service facilities, and other common areas that warrant closer scrutiny when it comes to determining Eligible Basis.
IRC §42(d) lists all provisions for identifying Eligible Basis. For this article, we want to touch on some of the items that are not considered eligible basis.

IRC §42(d)(3) provides that Eligible Basis must be reduced by the cost of non-low-income units that are above the average quality standard of the low-income units in the building. If an owner is building one type of unit for LIHC households, and a much nicer unit for market rate tenants, the costs for such market rate units will not be included in Eligible Basis. There is an exception under IRC §42(d)(3)(B). If the difference in cost between the market-rate and LIHC units is not greater than 15% (and there's a definition for computing the 15%), then the taxpayer can elect to exclude just the excess cost from Eligible Basis.

IRC §42(d)(4)(A) provides that Eligible Basis is determined without regard to the basis of any property that is not residential rental property. Therefore, any commercial, industrial, retail or office space cannot be included as part of Eligible Basis. Likewise, land costs, the cost of permanent financing, syndication costs, and other non-residential rental property costs are not includable in Eligible Basis.

IRC §42(d)(4)(B) provides that common areas or amenities for LIHC projects are generally included in Eligible Basis, if the property is subject to depreciation. However, if the amenity is not designated for use by all tenants, the cost is excluded from Eligible Basis.

IRC §42(d)(4)(C) was recently added as part of the Community Renewal Tax Relief Act of 2000. It provides that costs for community service property are included in Eligible Basis with a couple of restrictions. First, the allocable costs for such community service property shall not exceed 10 percent of the Eligible Basis of the qualified LIHC project. Also, the community service facility must be designed to serve primarily individuals whose income is 60 percent or less of the area median gross income.

IRC §42(d)(5) provides that Eligible Basis is reduced by all federal grants that finance the cost of construction.

With all of the above variables, how might you allocate costs when a mixed-use building has market rate units that are twice as nice as the LIHC units, the building has commercial businesses on the ground level, and there's a "members only" swimming pool? To answer this multi-faceted question, the thing to do is to find a reasonable manner through which to allocate costs. Unfortunately, a simple square footage analysis may not be the most reasonable method especially considering that construction costs for commercial, market-rate, or exclusive lounges are probably higher than the building costs for LIHC units.

The first step should be to determine what the overall cost of the project was, as well as the project's total square footage. You can then determine an average cost per square foot for this project as a whole.

Then, based on your physical tour and inspection of the types and quality of construction, you can identify areas where the square footage cost was higher. It isn't an exact science, but the fact remains that if more work went into constructing a particular area—then a higher square footage cost should also apply to this area. Conversely, the areas of lesser work (most likely LIHC units) would, in turn, reflect a lower square footage cost compared to the overall average.

With more and more factors to consider, it is important to remember what types of costs are not includable in Eligible Basis. Once you identify all the attributes of a particular project, you will be better able to establish your own reasonable methodology for determining the cost for each attribute compared to the project as a whole.

And Now There Are Two: New LIHC Analyst Joins the Team

Kent Rinehart, a former LMSB Revenue Agent, has been selected for a Program Analyst position on SBSE's Examination Specialization and Technical Guidance team. Kent will continue to support the LIHC program and provide technical assistance to the field. He can be reached at 715-836-8751, ext. 239, or on e-mail at **Kent.H.Rinehart39@irs.gov** .

Updated Contact Information for the LIHC Compliance Unit

As many of you know, the LIHC Compliance Unit is responsible for processing the Forms 8823 submitted by the state agencies. This form is filed to report noncompliance identified during a state agency's review of the tenant files or inspection of the physical property. The forms are also reviewed when selecting LIHC returns for audit.

Examiners can call the LIHC Compliance Unit to get more information about the taxpayer under audit. The LIHC Compliance Unit also has the Forms 8609, Forms 8693, and Recertification Waivers. Here are the contacts, by state:

Steve Kennedy: (215) 516-7624 - Arkansas, District of Columbia, Hawaii, Montana, North Dakota, Rhode Island, Pennsylvania, Virgin Islands, Vermont

Sharon DiGiulio: (215) 516-7196 - Connecticut, Delaware, Michigan, Nevada, Ohio, South Dakota, Utah, Wyoming

Ann Grey: (215) 516-7613 - Alabama, Kansas, Kentucky, Missouri, New York, Washington, Wisconsin

Jim McGoldrick: (215) 516-7668 - Alaska, Georgia, Idaho, Indiana, Maine, New Mexico, Texas, West Virginia

Angie Kaminski (temporarily): (215) 516-4113 - Florida, Iowa, Illinois, Massachusetts, Mississippi, Puerto Rico, Tennessee
Donzella (Bonnie) King: (215) 516-7621 - Nebraska, New Hampshire, New Jersey, Oklahoma, Oregon, South Carolina, Virginia

Carol Orzechowicz: (215) 516-7147 - Arizona, California, Colorado, Louisiana, Maryland, Minnesota, North Carolina

If you need to contact the LIHC Compliance Unit by mail, here's their address.

Internal Revenue Service
P.O. Box 331
Philadelphia Campus, LIHC Unit, DP 607 South
Bensalem, PA 19020

Monitoring LIHC Cases

Project Code 670 has been established for LIHC audits. If you expand an audit to include additional years or taxpayers, please remember to update the Project Code on the new returns. Same for the Tracking Code, which is 9812.

Surveying LIHC Returns

Should it become necessary to survey a LIHC return, please complete Form 1900 and submit to Program Analyst Grace Robertson for approval. The form can be transmitted by e-mail or faxed to (202) 283-2240.

♫*Grace Notes*♫

We decided to include an article focusing on the costs NOT includable in Eligible Basis because determining the accuracy of the costs is a fundamental aspect of an LIHC audit. And it's not as if Eligible Basis is as straightforward as adding up the receipts!!!

Kent, in his article, identified attributes that will help you key in on audit issues:

- *Assets that are used for a purpose other than as residential rental property or a related amenity.*
- *Unequal treatment of market-rate households and LIHC households, such as access to amenities or the quality of the rental units.*
- *Duplicating of federal funds, such as a loan with below market rate interest.*

Of course, there are other considerations, as some costs should be associated with the land, or separate land improvements, and there are costs that should be allocated….and there are costs, such as the expense incurred to form a partnership, that are amortized independently…isn't accounting fun?

In future editions, we will continue to focus on these key areas of IRC §42. If there's something specific you would like us to address – just let me know.

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