

Low Income Housing Credit Newsletter

Internal Revenue Service

Issue #27, December 2007

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.

LIHC Property Owners Subject to State Agency Reviews

Under Treas. Reg. 1.42-5(c)(2), state agencies are required to review LIHC properties. The first review must be completed by the end of the second calendar year following the year the last building in the project is placed in service, and at least once every three years thereafter.

The reviews consist of an on-site physical inspection of all the buildings in the project, and at least 20 percent of the units to ensure the property is suitable for occupancy. In addition, for each unit selected for the physical inspection, the state agency must also review the tenant file to ensure that (1) the household occupying the unit is income qualified, and (2) the rents are correctly restricted.

An owner is in compliance when requests for a site inspection and tenant file reviews are honored without unreasonable postponements. An owner is out of compliance when requests are denied or unreasonably postponed. The IRS, in the Guide for Completing Form 8823, has advised the state agencies that valid reasons for postponing an inspection or tenant file review should be accommodated. However, similar to IRS policy for rescheduling audit appointments, the site visits and file reviews should not be delayed more than 45 days, except under unusual circumstances. In any event, owners should not be allowed to unreasonably delay or circumvent the required compliance monitoring reviews.

In the event the taxpayer fails to respond to a state agency's request to conduct the physical inspection of the property or review the tenant files, the taxpayer is out of compliance with the requirements of IRC §42.

Effectively, the state agency cannot determine whether the property is physically suitable for occupancy, whether any of the households occupying the units are income-qualified, or whether the rents are correctly restricted. And, since the noncompliance is global in nature, the project is considered *entirely* out of compliance.

Under IRC §42(c)(1)(A)(i), the applicable fraction is determined as of the close of the taxable year. If the noncompliance persists and is not corrected by the end of the taxpayer's taxable year, the Applicable Fraction is zero. If the Applicable Fraction is zero, then the Qualified Basis is zero and no credit is allowable for that year, or for any year until the physical inspection and tenant file review is completed. The taxpayer is also subject to the recapture provisions under IRC §42(j).

Multiple Building LIHC Projects: Clarification of Election

The LIHC Newsletter (#26) for September 2007 included an article about multiple building projects. The article stated that a taxpayer makes the election to treat a building as part of a multiple building project when completing Form 8609, Low-Income Housing Credit Allocation and Certification.

A clarification is needed. If the project meets the criteria, the election to treat the buildings as part of a multiple building project is valid only if:

- The "yes" box for Line 8b on all the Forms 8609 for all the buildings to be included in the project is checked. Remember, there may be more than one Form 8609 per building!

AND

- A statement is attached to the Form 8609 that includes (1) the name and address of the

project and each building in the project, (2) the Building Identification Number of each building to be included in the project, (3) the aggregate credit dollar amount for the project, and (4) the amount of credit allocated to each building in the project.

Remember, even if the “yes” box is checked, failure to attach the statement with the information described above will result in each building being considered a separate project.

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

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.

♪ Grace Notes ♪

I know I'm having a bad day when:

1. *I have to explain to my manager that I was late for work because my cat took my contact case (with contacts inside) off the night table during the night and it took a "few" minutes to find it. Dare I say the cat actually "stole" something?*
2. *I have to dial a telephone number THREE times because my fingers "automatically" follow the layout of the numbers on my computer keyboard even though I consciously know the layout on the telephone is in the opposite direction. Why did they do that?*
3. *I persist in using a password because I believe it is the right one (it must be a typo) and I don't want to look it up again. The account locks and I spend twenty minutes on hold waiting for the help desk to pick up the phone, which then transfers me to another help desk line, which puts on hold again. I promise, I promise!!! I'll never do it again!! Besides, there's so much computer klutziness I haven't tripped over yet! "Klutziness" is a real word?*

Sometimes, not often enough, we reflect upon the good things, and those thoughts always center around those we love.¹

Joyous Holidays

Grace Robertson
Phone: 202-283-2516
Grace.F.Robertson@irs.gov

¹ *A favorite line from the song "Sometimes", words by Felice Mancini and music by Henry Mancini.*