Examination Specialization and Technical Guidance's

Low Income Housing Credit Newsletter

Internal Revenue Service Issue #29, February 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.

Congress Revises Student Rule for Single Parents

Congress, as part of the Mortgage Forgiveness Debt Relief Act of 2007, has revised IRC §42(i)(3)(D)(ii)(I), which addresses student households composed of a single parent and his or her children. The Code now reads:

> ….A unit shall not fail to be treated as a low-income unit merely because it is occupied…entirely by full-time students if such students are…single parents and their children and such parents are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children.

While most changes to the Code are prospective, this change is applied *retroactively* as well as prospectively. The new rule applies to all LIHC allocations made before, on, or after the date of enactment and all buildings financed with tax-exempt bonds under IRC 42(h)(4) that are placed in service before, on, or after the date of enactment.

Filing Reminder: IRC §42(l) Report & Certification

Annual Report

Under IRC §42(l)(2), taxpayers are required to provide annual reports regarding their LIHC properties. This requirement is fulfilled when filing Form 8609-A, Annual Statement for Low-Income Housing Credit, is filed with the tax return. As well as computing the credit in Part II, taxpayers must complete Part I, Compliance Information. Question C asks whether the taxpayer has the original Form 8609 (or copy) that was signed and issued by the housing credit agency.

In order to claim the credit, taxpayers must have an original, signed Form 8609 (or copy) issued by a housing credit agency assigning a Building Identification Number to the building. This requirement applies even if no allocation of credit is required (as is the case of a building financed with tax-exempt bonds).

Any building owner claiming a credit without receiving a completed Form 8609 that is signed and dated by an authorized official of the housing credit agency is subject to having the credits disallowed.

Certification

Under IRC §42(l)(1), taxpayers are required to certify to the Secretary certain information regarding the operation of the LIHC property. The certification is completed by completing and signing Part II of the Form 8609 received from the housing credit agency and filing *just one time* with the Philadelphia Campus. (Be sure to keep copies of the completed form for your records.) The certification must be submitted to the IRS no later than the due date (including extensions) of the first tax return with which Form 8609-A is filed.

The completed Forms 8609 should be sent to:

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

Failure to make the certification timely, unless shown to be due to a reasonable cause and not willful negligence, will result in no credit being allowable with respect to such building for any taxable year ending before the certification is made.

The one-time filing of Forms 8609 with the Philadelphia Campy is required even if the taxpayer previously filed the forms with its tax returns. So, even if a taxpayer has the Forms 8609 from the state and has been claimed the credit, the one-time certification must be completed.

Q&A From the Accountants' Corner

Q1: The 26th and 28th editions of the newsletter include articles about multi-building projects, but we're all standing around the coffee machine wondering about something you didn't address at all. On Form 8609, line 8b is used to designate which buildings are included in a multi-building project. Each building can stand alone as a separate project, and all the buildings can be included in the project, but can a taxpayer designate only some of the buildings as a project?

A1: Yes, a taxpayer can let each building stand on its own, or choose to include some or all of the buildings in the project. And just to recap from the prior newsletters:

- The buildings included in the project must meet specific criteria regarding proximity, ownership, financing, and comparability.
- The election is made by checking the "yes" box on all the Forms 8609 for all the buildings that will be included in the project and a statement is attached to the Forms 8609s with information about the buildings included in the project and the credit allocated to those buildings.
- At a minimum, the election will impact how the property is operated in at least four ways: (1) computation of the minimum set-aside, (2) ability to transfer tenants between buildings, (3) application of the Vacant Unit Rule, and (4) sampling used by the state agency when conducting tenant file reviews and physical inspections.

Q2: When completing the two Forms 8609 for an acquisition/rehabilitation project, and the acquisition placed-in-service date is in the year before the year the rehabilitation is completed, how do we complete question 10a, which asks whether the taxpayer is electing to begin the credit period the first year after the building is placed in service?

A2: Under IRC §42(f)(5), the credit period for the acquisition credit cannot begin before the first year of the credit period for the rehabilitation credit, so the idea is to match up the credit periods. For example, an owner places an acquired building in service on July 15, 2006 and completes the rehabilitation on June 9, 2007.

On the Form 8609 for the acquisition credit, the state agency reports that the placed in service date is July 15, 2006, on line 5 and the owner checks the line 10a box "yes" to elect to begin the *acquisition* credit period in the first year after the building is placed in service; i.e., 2007.

On the Form 8609 for the rehabilitation credit, the state agency reports that the placed in service date is June 9, 2007, on line 5 and the owner checks the line 10a box "no" to document that the owner is *not* electing to begin the *rehabilitation* credit period in the first year after the building is placed in service.

As a result, the credit period for both the acquisition and rehabilitation credit will begin at the same time; i.e., on the first day of the 2007 taxable year. If the owner is a calendar year taxpayer, both credit periods will start on January 1, 2007.

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♫

It's February 13th, a cold and rainy day in the Washington area. It rained all night and the trees are covered with ice, which looks beautiful, but makes for treacherous driving around the beltway. I'm not complaining, though, as friends further north report blizzards and sub-zero temperatures before factoring in the wind chill. 'Course, this isn't exactly Texas, where the temperature is a balmy 70 degrees and the tulips are popping up. But…it's all relative, I tell myself.

"Well, not everything," myself answers back. For example, owners of LIHC property are required to maintain the LIHC property in a manner "suitable for occupancy." HUD has developed, and the IRS has adopted, the Uniform Physical Condition Standards, which rather precisely define by description just exactly what isn't acceptable. If you want to know more, there's a nice discussion in the Guide for Completing Form 8823, Chapter 6, and there's a relatively short summary included with the instructions for Form 8823.

The UPCS are equally applicable to all LIHC projects, regardless of location or type of housing. Owners know what is expected, inspectors can make objective evaluations of compliance, state agencies can accurately report noncompliance to the IRS, and, therefore, the IRS can administer tax law with integrity and fairness for all.

"See," I tell myself, "It is too all related!"

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