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:

Hurricane Sandy: IRS Relief Measures

According to Wikipedia, Hurricane Sandy devastated portions of the Caribbean, Mid-Atlantic, and Northeastern United States, with lesser impacts in the Southeastern States, Midwestern States, and Eastern Canada. In total, 24 states, including the entire eastern seaboard from Florida to Maine and west across the Appalachian Mountains to Michigan and Wisconsin, were affected. The storm was the largest Atlantic hurricane on record with a diameter of winds spanning 1,100 miles. Losses dues to damages and business interruption are estimated at more the $65.5 billion, second only to damages caused by Hurricane Katrina. At least 253 people in seven countries lost their lives.

IRS Relief Measures

The IRS is providing tax relief for victims of Hurricane Sandy. It's too long a list to include here, but information is available on the IRS website.

IRC §42 Relief Measures

Rev. Proc. 2007-54 provides temporary relief measures for state housing credit agencies and owners of IRC §42 projects in locations declared major disaster areas by the President.

- Relief measures are provided based on stage of development; i.e., under construction, in the first year of the 10-year credit period, and beyond the first year of the credit period but within the 15-year compliance period.
- The time for state agencies to complete their compliance monitoring activities for damaged buildings is extended.
- Under specific circumstances and with agency approval, owners of IRC §42 projects within the agency's jurisdiction can provide temporary emergency housing to displaced low-income individuals that were living within the agency's jurisdiction at the time of the major disaster.

On November 5th, 2012, the IRS released Notice 2012-48 to provide additional relief measures specific to Hurricane Sandy. With the approval of the housing agency having jurisdiction, IRC §42 housing outside the disaster areas can be *temporarily* rented to households displaced by the hurricane, without regard to the household's income.

Pre-Contact Analysis: Revenue Agent Q&A

I'm auditing a taxpayer owning IRC §42 low-income housing. The taxpayer filed Form 8586, Low-Income Housing Credit, and claimed a $750,000 credit on line 3 for buildings placed in service before 2008. On line 1, the taxpayer indicated that there 20 Forms 8609-A, Annual Statement for Low-Income Housing Credit. I'm working on the pre-contact analysis and have a few questions.

Question #1: I reviewed the Forms 8609-A and discovered, based on the building identification numbers (BIN) on line A, that there are two Forms 8609-A for each BIN. Why are there two Forms 8609-A for each of the 10 buildings?

Answer #1: A taxpayer must file a Form 8609-A for each allocation of credit and a low-income building may receive more than one allocation of credit. Two common examples:

- The taxpayer may have acquired an existing building and substantially rehabilitated the building as residential rental units. The cost of acquisition would qualify for the 30% present value credit and the rehabilitation costs would qualify for the 70% present value credit.
- The taxpayer may have incurred more costs than anticipated and received an additional or "supplemental" allocation of credit in a year subsequent to the year of the original allocation of credit.

Credit allocations are documented on Form 8609, Low-Income Housing Credit Allocation and Certification, and there should be a one-to-one match between the Forms 8609 documenting the credit allocations and Forms 8609-A filed with the tax return. The Forms 8609 should be requested from the taxpayer.

Question #2: I also noticed that the taxpayer didn't answer the questions in Part I of the Forms 8609-A filed with the tax return. Is that a problem?

Answer #2: Part I satisfies the annual certification requirement under IRC §42(l)(2), which reads:

> (2) Annual reports to the Secretary. The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for (A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,
> (A) the information described in paragraph (1)(C) for the taxable year, and
> (B) such other information as the Secretary may require.
> (C) each taxable year setting forth--
>
> The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

Line A identifies the low-income building by its BIN and Line B describes the type of building (newly constructed, existing building, or rehabilitated building). Without the information on these two lines, it is difficult to match the Forms 8610-A to the associated Forms 8609.

Lines C, D, and E provide a certification of compliance with IRC §42 requirements.

- Line C: Does the taxpayer have the related Form 8609 signed and issued by the state agency that allocated the credit? If a taxpayer does not have the Forms 8609 executed by the state agency, the taxpayer cannot complete the First-Year Certification required under IRC §42(l)(1). See Newsletter #31.
- Line D: Was the building part of a qualified low-income housing project at the end of the taxable year? A qualified low-income "project" must meet the minimum set-aside requirement under IRC §42(g)(1). The low-income housing "project," which may consist of more than one low-income building, will not qualify for *any* credit unless it includes a minimum number of qualified low-income rental units.
- Line E: Was there a decrease in qualified basis? A decrease in qualified basis affects the computation of the credit and if the qualified basis at the end of the taxable year under audit is less than the qualified basis at the end of the prior taxable year, the taxpayer is subject to the IRC §42(j) recapture provisions.

A taxpayer may simply overlook the Part I certification when computing the allowable credit. However, if completing the certification accurately means reporting possible reductions in the allowable credit

Regardless of type or class of tax return, IRM 4.10.2.3.2 requires examiners to review the return in its entirety for large, unusual, and questionable items. This review should include not only the line items and credits claimed, but also such things as the balance sheet, elections, schedules, or any other documents attached to the return.

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and/or identifying recapture events, a taxpayer may leave the certification blank rather than file an inaccurate certification. The failure to complete the annual certification should be addressed as part of the interview with the taxpayer.

Question #3: The taxpayer didn't claim any credit and there's an explanation at the bottom of the Forms 8609-A clarifying that the credit period has ended. Do I have an issue?

Answer #3: Yes. Even though the taxpayer didn't claim credit, the credit recapture provisions are still applicable. Any reduction in a low-income building's qualified basis resulting from an adjustment to either the Eligible Basis or Applicable Fraction may result in the recapture of a portion of the credit claimed in prior years.

Taxpayers claim the IRC §42 credit over a ten-year credit period, but are required to provide low-income housing for fifteen years. In effect, taxpayers are claiming credit in advance of providing the low-income housing during the last five year of the compliance period, after the credit period has ended. One-third of the credit claimed each year during the credit period is associated with providing housing during years 11 through 15 of the compliance period. This on-third portion of credit is commonly referred to as the "accelerated credit."

The "accelerated credit" claimed in prior years is subject to "recapture." Under IRC §42(j), the recapture provisions are applied when, as of the close of any taxable year in the 15-year compliance period, the building's qualified basis is less than the qualified basis as of the close of the preceding taxable year. So, even though the taxpayer doesn't claim credit in years 11 through 15, the recapture provisions still apply and may result in the assessment of additional tax.

Two caveats to the general rule explained above:

- Under IRC §42(f)(2), a taxpayer may claim credit in the 11th year that wasn't allowable in the first year. This credit is also subject to recapture.
- The "2/3 credit" for additions to qualified basis under IRC §42(f)(3) is not subject to recapture. If the taxpayer is claiming this credit, it is accounted for on Form 8609-A, lines 7 through 11.

Income Limits for 2013: New and Revised

HUD initially released the FY2013 Multifamily Tax Subsidy Program's (MTSP) income limits on December 4, 2012. Then, on December 11th, HUD released revised MTSP income limits to correct an error in the computation. HUD's webpage has this explanation:

> "Revised FY 2013 data published 12/11/2012, supersedes Medians and Income Limits posted on 12/4/2012 for all areas. In areas where income limits are adjusted (High Housing Cost, Capped, Floored, etc.) no changes to the income limits may be necessary if 12/4/2012 Limits used."

Since the December 11th income limits supersede the income limits released December 4th, the IRS will treat the income limits released December 11th as if they were released on December 4th for all IRC §42 purposes.

Rev. Rul. 94-57 provides that taxpayers may rely on the income limits published by HUD until 45 days after HUD releases a new list of income limits, or until HUD's effective date for the new list, whichever is later. This year, HUD did not include an effective date. Based on the December 4th release date, owners must start using the revised 2013 income limits for all purposes no later than 45 days after the December 4th release date, or January 18th, 2013.

Rev. Proc. 94-57 provides that taxpayers may designate the gross rent floor as taking effect on the date the building was placed in service. For buildings placed in service after December 4th, 2012 and before January 18th, 2013, taxpayers may choose to either (1) rely on the 2012 income limits, or (2) rely on the revised 2013 income limits, whichever provides the greater tax benefit. If a taxpayer placed a building in service between December 5th and December 11th (inclusive), 2012 and relied on income limits released by HUD on December 4th, the IRS will honor the designation, but the revised income limit released by HUD on December 11th should be used to calculate the gross rent floor.

For more information about "relying" on the income limits, refer to LIHC Newsletters #47 and #48.

Revenue Procedure 2012-41: Inflation-Adjusted Items

Rev. Proc. 2012-14 was issued on October 18th, 2012, to provide inflation-adjusted items for 2013, including two items for IRC §42.

Substantial Rehabilitation Costs

To treat rehabilitation expenses as a new building and qualify for the 70% present value credit, a minimum amount of rehabilitation costs must be expended. Under IRC §42(e)(3)(A)(ii), the amount of such expenditures during any 24-month period are the greater of either:

- 20% (or more) of the adjusted basis of the acquired building as of the first day of the 24-month period, or
- the qualified basis (applicable fraction x eligible basis) attributable to the rehabilitation costs is $6,000 or more. This is not a unit-by-unit determination; just divide the qualified basis by the number of LIHC units.

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Administrative Procedures

Project/Tracking Codes:
All LIHC cases should include Project Code 0670 and Tracking Code 9812 for all IRC 42 issues other than foreclosures. If the return is being audited for a foreclosure issue, use Tracking Code 6495. 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.

TEFRA Requirements:
As IRC §42 project owners are almost always partnerships and are likely to be subject to TEFRA procedural requirements, please remember to document actions taken and decisions made by completing:

- Form 13813, TEFRA Procedures
- Form 13814, TEFRA Linkage Package Checksheet
- Form 13828, Tax Matters Partner (TMP) Qualifications Checksheet
- Form 13827, Tax Matter Partner (TMP) Designation Checksheet

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IRC §42(e)(3)(D) provides an adjustment for inflation, so that the $6,000 above is multiplied by the cost-of-living adjustment under IRC §1(f)(3). For calendar year 2013, the per low-income unit qualified basis amount under IRC §42(e)(3)(A)(ii)(II) is $6,400.

State Housing Credit Ceiling

Under IRC §42(h)(3)(C)(ii), each state is annually allocated credit on a per capita basis. The amount is the greater of $1.75 per person or $2,000,000. IRC §42(h)(3)(H), however, provides an adjustment for inflation, so that for calendar year 2013, the credit allocated to each state is the greater of $2.25 per capita or $2,590,000.

Effective Date

This revenue procedure applies to transactions or events occurring in calendar year 2013.

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Guide for Completing Form 8823

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

♫ Grace Notes ♫

It's that time of year again…you know, between dinner time on Thanksgiving and the last football game on New Year's Day, when, having just recovered from a constant showing of horror movies in October, the television networks seem utterly compelled to provide a continuous stream of "holiday" movies…you know, helping Santa and the elves in a crisis (like losing Mrs. Claus), sappy romances, or yet another version of Scrooge… makes me wonder if Dickens' estate ever sues for copyright infringement.

So, in the midst of all this good will, I was delighted to watch *Madame Curie* with Greer Garson and Walter Pidgeon. Made in 1943, the movie tells the story of how the couple met and worked together to eventually discover radium after overcoming overwhelming difficulties and repeated failure. My favorite scene is when, after struggling for years, discouraged and finally admitting failure, the Curies return to their laboratory late at night and discover the dish of distilled radium glowing in the dark. Cool.

Madame Curie is an inspiring story of vision, dedication, and tenaciousness. But make no mistake, Greer Garson is beautiful and Walter Pidgeon handsome, and the dialogue is just stilted enough to qualify this movie as a "sappy romance," but at least it is a *true* story of enduring love.

Well, okay. The movie does belong on the holiday list – no Santa, no elves, and not because it happens to be a sappy, although true, romance. I'm not going to tell you how the story ends or why I think it belongs on the "holiday" list of "must see" movies; I don't want to spoil the ending and I think you should figure it out yourself. If you get the chance, you should watch it; just make sure you have some tissue handy.

Happy Holidays!

Grace Robertson
(202) 283-2516
Grace.F.Robertson@irs.gov