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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9228

RIN 1545-BE50

Low-Income Housing Credit Allocation and Certification; Revisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations that reduce the burden for taxpayers filing Form 8609, "Low-Income Housing Credit Allocation and Certification." The regulations affect owners of low-income housing projects who claim the low-income housing credit.

DATES: Effective Date: These regulations are effective November 7, 2005.

Date of Applicability: For date of applicability, see ' 1.42-1(j).

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2004, the Treasury Department and IRS published Treasury Decision 9112 in the **Federal Register** (69 FR 3826), which removed impediments to the electronic filing of Form 8609, "Low-Income Housing Credit Allocation and Certification,"

by revising former §1.42-1T(e)(1) and (h)(2) and adding §1.42-1(h). Former §1.42-1T(e)(1) and (h)(2) required an owner to include a third-party signature from an authorized State or local housing credit agency (Agency) official when filing the form with the owner's Federal income tax return for each year of the 15-year compliance period. Section 1.42-1(h) contains the filing requirement for Form 8609 and no longer requires the third-party signature when filing the form with the owner's Federal income tax return.

Explanation of Provisions

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from an Agency of the jurisdiction where the building is located.

Section 1.42-1(h) provides that a completed Form 8586, "Low-Income Housing Credit," must be filed with the owner's Federal income tax return for each taxable year the owner of a qualified low-income building is claiming the low-income housing credit under section 42(a). A completed Form 8609 must be filed with the owner's Federal income tax return for each of the 15 taxable years of the compliance period. Failure to comply with the requirement of the preceding sentence for any taxable year after the first taxable year in the credit period will be treated as a mathematical or clerical error for purposes of section 6213(b)(1) and (g)(2).

The IRS plans to reduce taxpayer burden by allowing taxpayers to file Form 8609 one time, instead of filing the form with the same information for 15 consecutive years.

Taxpayers currently file the form as part of their return with the Internal Revenue Service center that processes their return. Planned revisions to the form should improve administration of the low-income housing credit program by requiring taxpayers to send completed forms to the Philadelphia service center, where each Agency currently sends Part I of the form. The requirements for completing and filing Form 8609 will be addressed in the instructions to the form.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.42-1 is amended by revising paragraphs (h) and (j) to read as follows:

§1.42-1 Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency.

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(h) Filing of forms. Unless otherwise provided in forms or instructions, a completed Form 8586, "Low-Income Housing Credit," (or any successor form) must be filed with the owner's Federal income tax return for each taxable year the owner of a qualified low-income building is claiming the low-income housing credit under section 42(a). Unless otherwise provided in forms or instructions, a completed Form 8609, "Low-Income Housing Credit Allocation and Certification," (or any successor form) must be filed by the building owner with the IRS. The requirements for completing and filing Forms 8586 and 8609 are addressed in the instructions to the forms.

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(j) Effective dates. Section 1.42-1(h) applies to forms filed on or after November 7, 2005. The rules that apply for forms filed before November 7, 2005 are contained in §1.42-1T(h) and §1.42-1(h) (see 26 CFR part 1 revised as of April 1, 2003, and April 1, 2005).

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: October 26, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.