

## Section 42.—Low-Income Housing Credit

26 CFR 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

### T.D. 9112

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Low-Income Housing Credit Allocation Certification; Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations that facilitate the electronic filing of Form 8609, “*Low-Income Housing Credit Allocation Certification*.” The regulations affect taxpayers who file Form 8609.

DATES: *Effective Date*: These regulations are effective January 27, 2004.

*Applicability Date*: 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

In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105-206 (112 Stat. 685) (1998). Section 2001(a) of RRA 1998 states that the policy of Congress is that paperless filing should be the preferred and most convenient means of filing Federal tax returns. Section 2001(a) of RRA 1998 also sets a long-range goal for the IRS to have at least 80 percent of all Federal tax returns filed

electronically by 2007. Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

The IRS has identified §1.42-1T(e)(1) and (h)(2) as regulatory provisions that impede electronic filing of Form 8609, “*Low-Income Housing Credit Allocation Certification*,” by requiring a taxpayer to include a third-party signature from an authorized State or local housing credit agency (Agency) official when filing the form. This Treasury decision eliminates that requirement.

##### 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 1.42-1T(d)(8)(ii) provides that housing credit allocations are deemed made when Part I of Form 8609 is completed and signed by an authorized Agency official and mailed to the owner of the qualified low-income building. Under §1.42-1T(e)(1), an owner is required to complete the Form 8609 on which the Agency made the applicable housing credit allocation and submit a copy of it with the owner’s Federal income tax return for each year in the compliance period. Under §1.42-1T(h)(2), the owner is required to file a completed Form 8609 (or copy thereof) with the owner’s Federal income tax return for each of the 15 taxable years in the compliance period. Section 1.42-1T(h)(2) also provides other rules for completing Form 8609.

This Treasury decision facilitates the electronic filing of Federal tax returns by eliminating the requirements in §1.42-1T(e)(1) and (h)(2) that an owner file a copy of the completed Form 8609 that is signed by the authorized Agency official with the owner’s Federal income tax return for each of the 15 taxable years in the compliance period. Notwithstanding that the owner need not file a copy

of the Form 8609 signed by the Agency official, the building owner must continue to retain that form for 3 years after the due date, including extensions, of the building owner’s tax return for the tax year that includes the end of the 15-year compliance period. The other rules in §1.42-1T(h)(2) for completing Form 8609 are also deleted. The requirements for completing and filing Form 8609 are addressed in the instructions to the form.

##### Special Analysis

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.

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##### 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 \* \* \*

Section 1.42-1 also issued under 26 U.S.C. 42(n); \* \* \*

Par. 2. Section 1.42-1 is added to read as follows:

Pamela F. Olson,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on January 26, 2004, 8:45 a.m., and published in the issue of the Federal Register for January 27, 2004, 69 F.R. 3826)

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*§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.*

(a) through (g) [Reserved]. For further guidance, see §1.42-1T(a) through (g).

(h) *Filing of forms.* 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, “*Low-Income Housing Credit Allocation Certification,*” 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).

(i) [Reserved]. For further guidance, see §1.42-1T(i).

(j) *Effective date.* Section 1.42-1(h) applies to forms filed on or after January 27, 2004. The rule that applies for forms filed before January 27, 2004, is contained in §1.42-1T(h) in effect before January 27, 2004 (see 26 CFR part 1 revised as of April 1, 2003).

Par. 3. Section 1.42-1T is amended by:

1. Removing the last two sentences in paragraph (e)(1).

2. Revising paragraph (h).

The revision reads as follows:

*§1.42-1T 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 (temporary).*

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(h) *Filing of forms.* For further guidance, see §1.42-1(h).

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

Approved January 19, 2004.