

IRS Notice 88-91 (Definition of a Building)

Internal Revenue Service
Notice 88-91
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Notice 88-91

**PART I. LOW-INCOME
 HOUSING TAX CREDIT -
 ADDITIONAL
 CERTIFICATION
 REQUIREMENTS**

The purpose of this Notice is to inform owners of low-income housing that buildings that have been or will be allocated a low-income housing tax credit under section 42 of the Internal Revenue Code of 1986 (the "Code") must be assigned a building identification number (BIN). Buildings described in section 42(h)(4) of the Code (relating to buildings financed by tax-exempt bonds subject to the volume cap under section 146) must also receive a BIN from the applicable housing credit agency whether or not a separate housing credit allocation is required.

Section 42(l) of the Code requires owners of qualified low-income buildings and housing credit agencies to provide certain information to the Secretary. Forms 8586 and 8609 were developed, in part, to satisfy these requirements. Form 8586 is used by owners of qualified low-income buildings to claim the low-income housing credit. Form 8609 is used to obtain a housing credit allocation and serves as an annual statement from the building owner to the Secretary that the building continues to qualify as a qualified low-income building.

Forms 8586 and 8609 will be revised to provide the Service with information needed to identify buildings and transfers and to monitor compliance with the low-income housing tax credit requirements. The BIN is essential for this monitoring process. At the time a credit is allocated to a

building, that building must be assigned a BIN by the applicable housing credit agency. BINs must be assigned retroactively to buildings that previously were allocated a tax credit during 1987 or 1988. The retroactive assignment of a BIN will not require any building owner to file an amended return. However, the revised Forms must be attached to the owner's next-filed Federal income tax return and all subsequent income tax returns in accordance with the instructions on the Forms. In addition, all owners of buildings that have been allocated a low-income housing tax credit (including owners of buildings subject to the rules of section 42(h)(4)) must complete the revised Form 8609, including Part II of revised Form 8609, the first year certification requirement.

The BIN will consist of a two character state designation (identical to a postal state abbreviation) followed by a two digit designation representing the year the credit is allocated, and a five digit numbering designation. For example, the identification number for one of 25 buildings allocated a credit in 1987 by the Connecticut Housing Finance Authority (the only housing credit allocating agency in the state) might read CT-87-00023. The BIN will be assigned by the housing credit agency that is authorized to make the credit allocation and will be applicable throughout the building's 15-year compliance period. The BIN must be entered on all forms requesting a BIN.

Rehabilitation expenditures treated as a separate new building under section 42(e) of the Code will not be required to have a separate BIN if the building to which the rehabilitation expenditures were made has a BIN. In this case, the BIN used for such expenditures shall be the BIN previously assigned to the building.

It is imperative that agencies in states with multiple housing credit agencies coordinate to ensure that each building receiving a low-income housing credit allocation have a separate and distinct BIN. It is suggested that the state housing authority having primary oversight for administration of the tax credit act as a clearing house to avoid duplication of BINs.

Housing credit agencies will be provided revised Forms 8609 and 8586. In the case of a building to which a credit was allocated previously (including buildings described in section 42(h)(4) of the Code), the housing credit agency must supply the building owners with revised Forms by completing Part I of revised Form 8609 (including the assignment of a BIN) and forwarding the Form (along with revised Form 8586) to the owner. The suggested letter in Part II of this Notice may be used by the housing credit agency to accompany both revised Forms. The suggested letter explains the purpose of the new Forms and the responsibilities of the building owner.

A revised Form 8609 is required for *each* building eligible for a credit. Accordingly, housing credit agencies that have provided credits on a Form 8609 to a low-income housing project consisting of more than one building must reallocate those credits among the buildings in the project and provide a separate Form 8609 for each building. In no event may reallocation of credits to all buildings in a project be less than or exceed the amount of credits previously allocated to the project. In addition, the credit may only be taken to the extent of a building's qualified basis.

Final regulations will provide that the term "qualified low-income building" includes residential rental property that is either an apartment building, a single family dwelling, a

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townhouse, a rowhouse, a duplex, or a condominium. A qualified low-income building does not include residential rental property owned or leased by a cooperative housing corporation or a tenant-stockholder, as those terms are defined under section 216(b)(1) and (2) of the Code.

Part II. SUGGESTED LETTER FOR USE BY STATE HOUSING AGENCIES TO NOTIFY OWNERS OF LOW- INCOME HOUSING OF NEW BUILDING IDENTIFICATION NUMBER REQUIREMENT AND CHANGES TO FORMS 8609 AND 8586.

[The following is suggested language that may be used by agencies when notifying building owners of the building identification number (BIN) assigned to such owner.]

The Internal Revenue Service (the "Service") has amended Form 8609 (Low-Income Housing Credit Allocation Certification) and Form 8586 (Low-Income Housing Credit) to monitor compliance with the low-income housing tax credit requirements. Buildings receiving a credit allocation must be assigned a building identification number (BIN). A BIN must also be assigned to buildings described in section 42(h)(4) of the Internal Revenue Code of 1986 (the "Code") (relating to buildings financed by tax-exempt bonds subject to the volume cap under section 146), whether or not a separate housing credit allocation is required.

Rehabilitation expenditures treated as a separate new building under section 42(e) of the Code will NOT be required to have a separate BIN if a BIN is assigned to the building to which the rehabilitation expenditures have been made. In this case, the BIN used for such expenditures shall be the BIN assigned to the building.

Buildings that have previously been allocated a credit (including buildings subject to the rules of 42(h)(4)) are required to have a BIN assigned retroactively. This number shall apply to the building throughout the building's compliance period and must be reported by you on all forms for which a BIN is requested.

Attached are copies of revised Forms 8609 and 8586. We have completed Part I of revised Form 8609 and have assigned a BIN to your building. This will be the building's permanent identification number for purposes of filing any forms with the Service. The retroactive assignment of a BIN will not require you to file an amended return. However, the revised Forms must be attached to your next-filed Federal income tax return and all subsequent income tax returns in accordance with the instructions on the Forms. In addition, you must complete the revised Forms 8609 and 8586, including Part II of revised Form 8609, the first year certification requirement even if Part II of old Form 8609 has previously been completed. If you are subject to the rules of section 42(h)(4) you must also complete the revised Forms, including Part II of revised Form 8609. If you have received an allocation but have not filed a tax return, you should replace the old Forms 8609 and 8586 with completed revised Forms 8609 and 8586 and include such Forms with your next-filed Federal income tax return.

A Form 8609 (and BIN) is required for EACH building that is eligible for the credit. If you previously received a single Form 8609 for a low-income housing project consisting of more than one building, we are sending you a separate revised Form 8609 for each building in the project. Credits previously allocated to the project

have been reallocated to the buildings in the project based upon the information we received from you when applying for a credit allocation. Regardless of the amount of credit reallocated to each building, credits may only be taken to the extent of a building's qualified basis.

Part III. ADMINISTRATIVE PRONOUNCEMENT

This document serves as an "administrative pronouncement" as that term is described in section 1.6661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

The collection of information contained in this Notice has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0988. The estimated average burden associated with the collection of information in this Notice is 44 minutes per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Washington, D.C. 20224, Attention: IRS Reports Clearance Officer TR:FP; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Internal Revenue Service.

The principal author of this Notice is Christopher J. Wilson of the Legislation and Regulations Division. For further information regarding this Notice contact Mr. Wilson on (202) 566-4336 (not a toll-free call).