

Paperwork Reduction Act Notice

We ask for the information on these forms to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file the following forms will vary depending on individual circumstances. The estimated average times are:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
8609	8 hr., 37 min.	2 hr., 35 min.	2 hr., 50 min.
Sch. A (8609)	6 hr., 41 min.	1 hr., 29 min.	1 hr., 38 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Internal Revenue Service at the address listed in the instructions for the tax return with which these forms are filed.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Item To Note

The Revenue Reconciliation Act of 1993 (1993 Act) permanently extended the low-income housing credit and made other applicable changes reflected throughout these instructions.

Purpose of Form

Sections 38 and 42 allow owners of residential low-income rental buildings to claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to obtain a housing credit allocation from the housing credit agency. A separate Form 8609 must be issued for each building in a multiple building project. Form 8609 and related **Schedule A (Form 8609)**, Annual Statement, are also used to certify certain information required under section 42.

Section 502(a) of the Tax Reform Act of 1986 provides transitional relief from the passive loss rules for qualified investors in a qualified low-income housing project. However, if any person has been allowed any benefit under section 502(a) for the project, the low-income housing credit is not allowed for the project.

Housing Credit Agency.—This is any state or local agency authorized under section 42 to make low-income housing credit allocations within its jurisdiction.

Owner of Building.—Owners must complete Part II of this form and a separate Schedule A (Form 8609), even if an allocation of credit by a housing credit agency is not required, and attach both the form and the schedule to their income tax return. See **Specific Instructions** before completing Part II.

Building Identification Number (BIN).—This number is assigned by the housing credit agency (see Notice 88-91, 1988-2 C.B. 414).

The BIN initially assigned to a building must be used for any allocation of credit to the building that requires a separate Form 8609 (see **Multiple Forms 8609** on this page). For example, rehabilitation expenditures treated as a separate new building under section 42(e) should not

have a separate BIN if the building already has one. Use the number first assigned to the building.

Allocation of Credit.—For an owner to claim a low-income housing credit on a building (except as explained under **Tax-Exempt Bonds** below), the housing credit agency must make an allocation of the credit by the close of the calendar year in which the building is placed in service, unless:

- The allocation is the result of an advance binding commitment by the credit agency made not later than the close of the calendar year in which the building is placed in service (see section 42(h)(1)(C));
- The allocation relates to an increase in qualified basis (see section 42(h)(1)(D)); or
- The allocation is made in a year in which the taxpayer has incurred more than 10% of its reasonably expected basis in the project. See sections 42(h)(1)(E), 42(h)(1)(F), Notice 89-1, 1989-1 C.B. 620, and Regulations section 1.42-6 for other details. Notice 89-1 applies to carryover allocation documents entered into prior to May 2, 1994, and Regulations section 1.42-6 applies to carryover allocation documents entered into after May 1, 1994.

The agency can only make an allocation to a building located within its geographical jurisdiction. Once an allocation is made, the credit is allowable for all years during the 10-year credit period. A separate Form 8609 must be completed for each building to which an allocation of credit is made.

Multiple Forms 8609.—Allocations of credit in separate calendar years require separate Forms 8609. Also, when a building receives separate allocations for acquisition of an existing building and for rehabilitation expenditures, a separate Form 8609 must be completed for each credit allocation.

Tax-Exempt Bonds.—No housing credit allocation is required for any portion of the eligible basis of a qualified low-income building that is financed with tax-exempt bonds taken into account for purposes of the volume cap under section 146. An allocation is not needed when 50% or more of the aggregate basis of the building and the land on which the building is located (defined later) is financed with

certain tax-exempt bonds for buildings placed in service after 1989.

However, the owner still must get a Form 8609 from the appropriate housing credit agency (with the applicable items of Part I completed, including an assigned building identification number (BIN)).

Land on which the building is located.—This includes only land that is functionally related and subordinate to the qualified low-income building (see Regulations sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) for the meaning of "functionally related and subordinate").

When To File

Housing credit agencies should issue a copy of Form 8609 (Part I completed only) with instructions to the owner of the building. The housing credit agency must keep a copy and send the original to the IRS with **Form 8610**, Annual Low-Income Housing Credit Agencies Report.

Owners must attach completed Forms 8609 and accompanying Schedules A (Form 8609) to **Form 8586**, Low-Income Housing Credit, and file these forms with their income tax returns by the due date of the return for each tax year in which the credit is claimed. They must also attach Forms 8609 and Schedules A to their returns each year thereafter throughout the 15-year compliance period.

Note to owners: Do not attach Form 8609 or Schedule A (Form 8609) to Form 8586 if the only credit claimed on Form 8586 is from a partnership, S corporation, estate, or trust because that entity will complete those forms and attach them to its return.

Recordkeeping

To verify changes in qualified basis from year to year, you must keep a copy of this Form 8609 with all accompanying Schedule(s) A (Form 8609), Forms 8586, and 8611, for 3 years after the 15-year compliance period ends (unless this recordkeeping requirement is otherwise extended).

Specific Instructions

Part I—Allocation of Credit Completed by Housing Credit Agency Only

Check Boxes.—Check the box(es) that apply, as explained below.

Addition to Qualified Basis.—Check this box if an allocation relates to an increase in qualified basis under section 42(f)(3). Enter only the housing credit dollar amount for the increase. Do not include any portion of the original qualified basis when determining this amount.

Amended Form.—Check this box if this form amends a previously issued form. Complete all entries and explain the reason for the amended form. For example, if there is a change in the amount of initial allocation before the close of the calendar year, file an amended Form 8609 instead of the original form.

Item A.—Identify the building for which this Form 8609 is issued when there are multiple buildings with the same address (e.g., BLDG. 6 of 8).

Line 1a.—Generally, the date of allocation is the date the Form 8609 is completed, signed, and dated by an authorized official of the housing credit agency. However, if an allocation is made under section 42(h)(1)(E) or 42(h)(1)(F), the date of allocation is the date the authorized official of the housing credit agency completes, signs, and dates the section 42(h)(1)(E) or 42(h)(1)(F) document used to make the allocation. If no allocation is required (i.e., 50% or greater tax-exempt bond financed building), leave line 1a blank.

Line 1b.—Enter the housing credit dollar amount allocated to the building for each year of the 10-year credit period. The amount should equal the percentage on line 2 multiplied by the amount on line 3a. For tax-exempt bond projects for which no allocation is required, enter the housing credit dollar amount allowable under section 42(m)(2)(D).

Line 2.—Enter the maximum applicable credit percentage allocated to the building for the month the building was placed in service or, if applicable, for the month determined under section 42(b)(2)(A)(ii).

If an election is made under section 42(b)(2)(A)(ii) to use the applicable percentage for a month other than the month in which a building is placed in service, the requirements in Notice 89-1 must be met for elections made prior to May 2, 1994, and the requirements of Regulations section 1.46-8 must be met for elections made after May 1, 1994. The agency must keep a copy of the binding agreement and the election statement and file the original with the agency's Form 8610 for the year the allocation is actually made. The maximum applicable credit percentage is published monthly in the Internal Revenue Bulletin. For new buildings that are not federally subsidized under section 42(i)(2)(A) when placed in service, use the applicable percentage for the 70% present value credit. For new buildings that are federally subsidized when placed in service, or existing buildings, use the applicable percentage for the 30% present value credit. A taxpayer may elect under section 42(i)(2)(B) to reduce eligible basis by the principal amount of any outstanding below-market Federal loan or the proceeds of any tax-exempt obligation in order to obtain the higher credit percentage (see Part II, line 9a).

Note: *The 1993 Act revised section 42(i)(2) to provide that buildings receiving assistance under the Home Investment Partnership Act (as in effect on August 10, 1993) are not treated as federally subsidized if 40% or more of the residential units in the building are occupied by individuals whose income is 50% or less of the area median gross income. Buildings located in New York City receiving this assistance are not treated as federally subsidized if 25% or more of the residential*

units in the building are occupied by individuals whose income is 50% or less of the area median gross income.

For allocations to buildings for additions to qualified basis under section 42(f)(3), do not reduce the maximum applicable credit percentage even though the building owner may only claim a credit based on two-thirds of the credit percentage allocated to the building.

Line 3a.—Enter the maximum qualified basis of the building. To figure this, multiply the eligible basis of the qualified low-income building by the smaller of:

1. The percentage of low-income units to all residential rental units (the "unit percentage"), or
2. The percentage of floor space of the low-income units to the floor space of all residential rental units (the "floor-space percentage").

Generally, a unit is not treated as a low-income unit unless it is suitable for occupancy and is used other than on a transient basis. Section 42(i)(3) provides for certain exceptions (e.g., units that provide for transitional housing for the homeless may qualify as low-income units). See sections 42(i)(3) and 42(c)(1)(E) for more information.

Except as explained in the instructions for line 3b, below, the **eligible basis** for a new building is its adjusted basis as of the close of the first tax year of the credit period. For an existing building, the eligible basis is its acquisition cost plus capital improvements through the close of the first tax year of the credit period. See the instructions for Part II, line 7b, and section 42(d) for other exceptions and details.

Line 3b. Special rule to increase basis for buildings placed in service in calendar years beginning after 1989.—If the building is located in a high-cost area (i.e., a "qualified census tract" or a "difficult development area"), the eligible basis may be increased as follows:

- For new buildings, the eligible basis may be up to 130% of such basis determined without this provision.
- For existing buildings, the rehabilitation expenditures under section 42(e) may be up to 130% of the expenditures determined without regard to this provision.

Enter the percentage to which eligible basis was increased. For example, if the eligible basis was increased to 120%, enter 120. See section 42(d)(5)(C) for definitions of a qualified census tract and a difficult development area, and for other details.

Note: *Before increasing eligible basis, the eligible basis must be reduced by any Federal subsidy that the taxpayer elects to exclude from eligible basis and any Federal grant received.*

Line 4.—Enter the percentage of the aggregate basis of the building financed by certain tax-exempt bonds. If this amount is zero, enter zero (do not leave this line blank).

Line 5.—The placed-in-service date for a residential rental building is the date on which the first unit in the building is ready and available for occupancy under state or local law. Rehabilitation expenditures treated as a separate new building under section 42(e) are placed in service at the close of any 24-month period over which the expenditures are aggregated, whether or not the building is occupied during the rehabilitation period.

Line 6.—A building is treated as federally subsidized if at any time during the tax year or any prior tax year there is outstanding any tax-exempt bond financing or any below-market Federal loan, the proceeds of which are used (directly or indirectly) for the building or its operation.

Note: *Generally, no credit is allowable for acquisition of an existing building after 1989 unless substantial rehabilitation is done. See sections 42(d)(2)(B)(iv) and 42(f)(5). DO NOT issue Form 8609 for acquisition of an existing building unless substantial rehabilitation under section 42(e) is placed in service.*

Part II—First-Year Certification

Completed by Building Owner for the First Year of Credit Period Only

Note: *Form 8609 is invalid unless Part I is completed by the appropriate housing credit agency.*

Line 7a.—See the instructions for Part I, line 5. This date must correspond with the date certified to the housing credit agency.

Line 7b.—Enter the eligible basis (in dollars) of the building. Determine eligible basis at the close of the first year of the credit period (see sections 42(f)(1), 42(f)(5), and 42(g)(3)(B)(iii) for determining the start of the credit period).

For new buildings, the eligible basis is generally the cost of construction or rehabilitation expenditures incurred under section 42(e).

For existing buildings, the eligible basis is the cost of acquisition plus rehabilitation expenditures not treated as a separate new building under section 42(e) incurred by the close of the first year of the credit period.

If the housing credit agency has entered an increased percentage in Part I, line 3b, multiply the eligible basis by the increased percentage and enter the result.

Residential rental property may qualify for the credit even though part of the building in which the residential rental units are located is used for commercial use. To figure the eligible basis of the property, do not include the cost of the nonresidential rental property. However, you may generally include the basis of common areas or tenant facilities, such as swimming pools or parking areas, provided there is no separate fee for the use of these facilities and they are made available

on a comparable basis to all tenants in the project. See section 42(d).

You may elect to reduce the eligible basis by the principal amount of any outstanding below-market Federal loan or the proceeds of any tax-exempt obligation to obtain a higher credit percentage. If you make this election, check the Yes box in Part II, line 9a, and reduce the eligible basis by the principal amount of such loan or obligation proceeds before entering the amount on line 7b. In addition, you must reduce the eligible basis by the amount of any Federal grant received.

Note: You must reduce the eligible basis by the principal amount of such loan or obligation proceeds or any Federal grant received before multiplying the eligible basis by the increased percentage in Part I, line 3b.

The eligible basis must also be reduced by the entire basis allocable to non-low-income units that are above the average quality standard of the low-income units in the building. You may, however, include a portion of the basis of these non-low-income units if the cost of any of these units (a) does not exceed by more than 15% the average cost of all low-income units in the building, and (b) you elect to exclude this excess cost from the eligible basis by checking the "Yes" box for line 9b.

Finally, the eligible basis may not include any portion of a building's adjusted basis for which an election was made under section 167(k) prior to November 5, 1990.

Line 8a.—Multiply the eligible basis of the building shown on line 7b by the smaller of the unit percentage or the floor space percentage as of the close of the first year of the credit period and enter the result on line 8a. Low-income units are units occupied by qualifying tenants, while residential rental units are all units, whether or not occupied. See the instructions for Part I, line 3a, on page 3.

Line 8b.—Check the appropriate box on line 8b to indicate whether or not the building for which basis is entered on line 8a is part of a multiple building project. A multiple building project is a project that includes more than one qualified low-income building that must (a) be located on the same tract of land (unless all of the dwelling units in the project are low-income units), (b) be owned by the same person for Federal income tax purposes, (c) be financed under a common plan of financing, and (d) have similarly constructed housing units. See section 42(g)(7). A qualified low-income building includes residential rental property that is an apartment building, a single family dwelling, a townhouse, a rowhouse, a duplex, or a condominium. Taxpayers must check the "Yes" box if they are electing under section 42(g)(3)(B) to aggregate buildings to satisfy the minimum set-aside requirement elected for the project under section 42(g)(1).

Line 9a.—Section 42(i)(2)(B) allows an owner to elect to reduce the eligible basis by the principal amount of any outstanding below-market Federal loan or the proceeds of any tax-exempt obligation and claim the 70% present value credit on the remaining eligible basis. However, if such an election is made, the taxpayer may not claim the 30% present value credit on the portion of the basis that was financed with the below-market Federal loan or the tax-exempt obligation.

Line 9b.—See the instructions for Part II, line 7b, on page 3.

Line 10.—Check the appropriate box(es) for the election(s) you make.

Line 10a.—Section 42(f)(1) allows an owner of a building to elect to begin the credit period in the tax year after the building is placed in service.

Note: Section 42(g)(3)(B)(iii) provides special rules for determining the start of the credit period for certain multiple building projects.

Line 10b.—Section 42(j)(5) requires partnerships with 35 or more partners to be treated as the taxpayer for purposes of recapture unless an election is made not to treat the partnership as the taxpayer. Check the "Yes" box if you do **not** want the partnership to be treated as the taxpayer for purposes of recapture.

Line 10c.—The owner of a qualified low-income housing project must meet the minimum set-aside requirements under section 42(g) by electing one of the following tests:

(1) **20-50 Test:** 20% or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income, or

(2) **40-60 Test:** 40% or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 60% or less of the area median gross income.

Note: Owners of buildings in projects located in New York City may **not** use the 40-60 test. Instead, they may use a **25-60 Test:** 25% or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 60% or less of the area median gross income (see also section 142(d)(6)).

Caution: The minimum set-aside requirement must be met by the close of the first year of the credit period in order to claim any credit for the first year or for any subsequent years.

Line 10d.—The deep-rent-skewed 15-40 election is not an additional test for satisfying the minimum set-aside requirements of section 42(g). The 15-40 test is an election that relates to the determination of a low-income tenant's income. Generally, a continuing resident's income may increase up to 140% of the applicable income limit (50% or less OR 60% or less of the area median gross

income under the minimum set-aside rules in **Line 10c** above). When the deep-rent-skewed election is made, the income of a continuing resident may increase up to 170% of the applicable income limit. If this election is made, at least 15% of all low-income units in the project must be occupied at all times during the compliance period by tenants whose income is 40% or less of the area median gross income. A deep-rent-skewed project itself must meet the requirements of section 142(d)(4)(B).

Once made, the elections under **Line 10** above cannot be revoked. For details, see sections 42(g) and 142(d).

Signature

Because Form 8609 requires an original signature each year and the form is not issued annually by the housing credit agency, complete the following steps after you receive the form from the agency:

1. Complete Part II of the form (do not sign it).
2. After completing Part II, make a copy of the form.
3. Complete all items in the signature section of the copy that you file. Keep the original copy you receive from the housing credit agency so that copies can be made from the unsigned original copy and used for filing with your future years' income tax returns.
4. Complete Schedule A (Form 8609) for each building and attach it to the signed copy of Form 8609 you attach to your income tax return. See the instructions for Schedule A for details on completing Schedule A. You can get Schedule A from most Internal Revenue Service offices.
5. If the maximum applicable credit percentage allocated to the building in Part I, line 2, reflects an election made under section 42(b)(2)(A)(ii), the taxpayer must attach a copy of the election statement and, if the binding agreement specifying the housing credit dollar amount is contained in a separate document, a copy of the binding agreement to Form 8609 for the first tax year in which the credit is claimed.

6. If the housing credit dollar amount allocated in Part I, line 1b, reflects an allocation made under section 42(h)(1)(E) or 42(h)(1)(F), the taxpayer must attach a copy of the allocation document to Form 8609 for the first tax year in which the credit is claimed. (See Notice 89-1.)

Note: If you received more than one allocation (e.g., an allocation the year the building was placed in service and a second allocation based on an addition to qualified basis), attach signed copies of both Forms 8609 to your return.

