

**Low-Income Housing Credit
Allocation Certification**

New for 2001 — On May 5, 2000, Governor Pataki signed into law Chapter 63 of the Laws of 2000. This Chapter, in part, added Article 2-A to the Public Housing Law to provide for the *New York State Low-Income Housing Tax Credit Program*. This Chapter also amended the Tax Law under Article 9-A (Franchise Tax on Business Corporations), Article 22 (Personal Income Tax), Article 32 (Franchise Tax on Banking Corporations), and Article 33 (Franchise Taxes on Insurance Corporations) to provide a tax credit to encourage the construction and rehabilitation of low-income housing in New York State.

General information

The New York State low-income housing tax credit program coordinates with the federal low-income housing credit program provided for in section 42 of the Internal Revenue Code (IRC). The state credit, like the federal credit, will be administered by the New York State Division of Housing and Community Renewal (DHCR) and is available for an eligible low-income building(s) for which an eligibility statement has been issued by the New York State Commissioner of Housing and Community Renewal. The credit amount allocated to a project by the Commissioner is allowed each year for a credit period of 10 years, but the project must continue to qualify as low-income housing for a 15-year compliance period to avoid partial recapture of the credit.

This credit is not refundable. However, any amount of credit not deductible in the current tax year may be carried over to the following year or years.

In general, the provisions of IRC section 42 shall apply to the credit except where the provisions of Article 2-A of the Public Housing Law provided for a different rule.

Who is eligible

You may claim this credit if you are any of the following:

- A corporation that is subject to tax under Article 9-A.
- An individual, estate, or trust subject to tax under Article 22.
- A partner in a partnership (including a member of an LLC that is treated as a partnership for federal income tax purposes).
- A shareholder of a New York S corporation.
- A beneficiary of an estate or trust.
- A banking corporation subject to tax under Article 32.
- An insurance corporation subject to tax under Article 33.

Purpose of form

Form DTF-625 is used to obtain a New York State housing credit allocation from DHCR. A separate Form DTF-625 must be issued for each building in a multiple building project. Form DTF-625 and Form DTF-625-ATT, *Low-Income Housing Credit Annual Statement*, are also used to certify certain information.

Owner of building — Owners must complete Part II of this form and a separate Form DTF-625-ATT and attach them to their returns even if an allocation of credit by DHCR is not required. See *Part II - First-year certification* on page 3, before completing Part II.

Building identification number (BIN) — This number is assigned by DHCR. The BIN initially assigned to a building must be used for any allocation of credit to the building that requires a separate Form DTF-625 (see *Multiple Forms DTF-625*, below). For example, rehabilitation expenditures treated as a separate new building 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), DHCR 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 DHCR made not later than the close of the calendar year in which the building is placed in service (see IRC section 42(h)(1)(C)).
- The allocation relates to an increase in qualified basis (see IRC section 42(h)(1)(D)).
- The allocation is made:
 - (1) For a building placed in service no later than the second calendar year following the calendar year in which the allocation is made, if the building is part of a project in which the taxpayer's basis is more than 10% of the project's reasonably expected basis as of the end of that second calendar year.
 - (2) For a project that includes more than one building if:
 - (a) the allocation is made during the project period,
 - (b) the allocation applies only to buildings placed in service during or after the calendar year in which the allocation is made, and
 - (c) the portion of the allocation that applies to any building is specified by the end of the calendar year in which the building is placed in service.

See IRC sections 42(h)(1)(E) and 42(h)(1)(F), and IRC regulations section 1.42-6 for more information.

Once an allocation is made, the credit is allowable for all years during the 10-year credit period. A separate Form DTF-625 must be completed for each building to which an allocation of credit is made.

Multiple Forms DTF-625 — Allocations of credit in separate calendar years require separate Forms DTF-625. Also, when a building receives separate allocations for acquisition of an existing building and for rehabilitation expenditures, a separate Form DTF-625 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 IRC 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 on page 2) is financed with certain tax-exempt bonds. However, the owner must still get a Form DTF-625 from DHCR (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 IRC 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

DHCR will issue a copy of Form DTF-625 (with only Part I completed) with instructions to the owner of the building. DHCR will keep the original Form DTF-625.

As an owner, you must attach completed Form(s) DTF-625 and accompanying Form DTF-625-ATT, to Form DTF-624, *Claim for Low-Income Housing Credit*, and file these forms with your income tax or corporate franchise tax returns by the due date of the return for each tax year in which the credit is claimed. You must also attach Form(s) DTF-625 and Form(s) DTF-625-ATT to your returns for each later year in the 15-year compliance period.

Note to owners: Do not attach Form DTF-625 or Form DTF-625-ATT to Form DTF-624 if the only credit claimed on Form DTF-624 is from a partnership, New York S corporation, estate, or trust. The entity will complete those forms and attach them to the entity's return.

Definitions

Eligible low-income building means a building located in New York State which is either a low-income building as defined in IRC section 42(c), or would be a qualified low-income building under such section if the 20-50 test specified in subsection (g)(1) of section 42 were disregarded and the 40-60 test specified in subsection (g)(1) (requiring that at least 40% of residential units be both rent-restricted and occupied by individuals whose income is 60% or less of area median gross income) were a 40-90 test.

Applicable percentage means the applicable percentage (depending on whether a building is new, existing, or federally subsidized) prescribed by the secretary of the treasury for purposes of IRC section 42 for the month which is the earlier of:

- (1) the month in which the eligible low-income building is placed in service, or
- (2) at the election of the taxpayer:
 - the month in which you and DHCR enter into an agreement with respect to the building (which shall be binding on DHCR, you, and all successors in interest) as to the housing credit dollar amount to be allocated to the building, or
 - in the case of any building to which IRC section 42(h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

Qualified basis with respect to an eligible low-income building means the qualified basis of such building determined under IRC section 42(c), or which would be determined under such section if the 40-90 test referred to in the definition of *Eligible low-income building* above, applied under such section 42 to determine if such building were part of a qualified low-income project.

Credit period with respect to any eligible low-income building means the period of ten tax years beginning with:

- (1) the tax year in which the building is placed in service, or

- (2) at the election of the taxpayer, the succeeding tax year, but only if the building is an eligible low-income building as of the close of the first year of such period. This election once made shall be irrevocable.

Compliance period with respect to any building means the period of 15 tax years beginning with the first tax year of the credit period with respect to such building.

Line instructions

Part I — Allocation of credit

Completed by New York State Division of Housing and Community Renewal (DHCR) only.

Addition to qualified basis. Check this box if an allocation relates to an increase in qualified basis under section 42(f)(3) of the IRC. 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. For example, if there is a change in the amount of initial allocation before the close of the calendar year, file an amended Form DTF-625 instead of the original form.

Federal LIHC. Check this box if a federal Form 8609, *Low-Income Housing Credit Allocation Certification*, has been issued for this same building.

Identify the building for which this Form DTF-625 is issued. When there are multiple buildings with the same address, identify the specific building for which this form applies (for example, BLDG 6 of 8).

Line 1a — Generally, the date of allocation is the date the Form DTF-625 is completed, signed, and dated by an authorized official of DHCR. However, if an allocation is made under IRC section 42(h)(1)(E) or 42(h)(1)(F), the date of allocation is the date the authorized official of DHCR completes, signs, and dates the IRC section 42(h)(1)(E) or 42(h)(1)(F) document used to make the allocation. If no allocation is required (that is, 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 IRC 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 IRC 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 of IRC Regulations section 1.46-8 must be met. DHCR must keep the original binding agreement and the election statement. The maximum applicable credit percentage is published monthly in the Internal Revenue Bulletin. For new buildings that are not federally subsidized under IRC section 42(i)(2)(A), use the applicable percentage for the 70% present value credit. For new buildings that are federally subsidized, or existing buildings, use the applicable percentage for the 30% present value credit. See the instructions for line 6 for the definition of *federally subsidized*. A taxpayer may elect under IRC

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).

For allocations to buildings for additions to qualified basis under IRC 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. IRC section 42(i)(3) provides for certain exceptions (for example, units that provide for transitional housing for the homeless may qualify as low-income units). See IRC 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 IRC section 42(d) for other exceptions and details.

Line 3b — Special rule to increase basis for buildings in certain high-cost areas. If the building is located in a high-cost area (that is, 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 IRC 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 IRC 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 "0" (do not leave this line blank).

Line 5 — The placed-in-service date for a residential rental building is the date 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 IRC 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 — Generally, 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.

However, 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.

Generally, no credit is allowable for acquisition of an existing building unless substantial rehabilitation is done. See IRC sections 42(d)(2)(B)(iv) and 42(f)(5). **Do not** issue Form DTF-625 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 DTF-625 is invalid unless Part I is completed by the New York State Division of Housing and Community Renewal (DHCR).

Line 7a — See the instructions for line 5. This date must correspond with the date certified to DHCR.

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 IRC 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 IRC section 42(e) incurred by the close of the first year of the credit period.

If DHCR 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. 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. You must reduce the eligible basis by the amount of any federal grant received. Also reduce the eligible basis 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 does not exceed by more than 15% the average cost of all low-income units in the building, and you elect to exclude this excess cost from the eligible basis by checking the Yes box for line 9b. See IRC 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. To make this election, check the Yes box in Part II, line 9a. Reduce the eligible basis by the principal amount of such loan or obligation proceeds before entering the amount on line 7b. 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.

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 — Each building is considered a separate project under IRC section 42(g)(3)(D) unless, before the close of the first calendar year in the project period (defined in IRC section 42(h)(1)(F)(ii)), each building that is (or will be) part of a multiple building project is identified by attaching a statement to your tax return (as required in the instructions for Form DTF-624, *Claim for Low-Income Housing Credit*, line 1) that includes:

- (a) the name and address of the project and each building in the project,
- (b) the building identification number (BIN) of each building in the project,
- (c) the aggregate credit dollar amount for the project, and
- (d) the credit allocated to each building in the project.

Two or more qualified low-income buildings may be included in a **multiple building project** only if they:

- (a) are located on the same tract of land (unless all of the dwelling units in all of the buildings being aggregated in the multiple building project are low-income units, see IRC section 42(g)(7)),
- (b) are owned by the same person for federal tax purposes,
- (c) are financed under a common plan of financing, and
- (d) have similarly constructed housing units. A *qualified low-income building* includes residential rental property that is an apartment building, a single-family dwelling, a town house, a row house, a duplex, or a condominium.

Line 9a — 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 and claim the 70% present value credit on the remaining eligible basis. However, if you make this election, you 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 10a — You may elect to begin the credit period in the tax year after the building is placed in service. Once made, the election is irrevocable.

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

Line 10b — Partnerships with 35 or more partners are 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. Once made, the election is irrevocable.

Line 10c and 10d — You must meet the minimum set-aside requirements under IRC section 42(g) or New York State Public Housing Law, Article 2-A, section 21(5)(b) for the project 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.
- (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 IRC section 142(d)(6)).


- (3) **40-90 test:** 40% or more of the residential units in the project must be both rent-restricted and occupied by individuals whose income is 90% or less of the area median gross income.

Once made, the election is irrevocable.


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 10e — The deep-rent-skewed 15-40 election is not an additional test for satisfying the minimum set-aside requirements of IRC 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 lines 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 IRC section 142(d)(4)(B). Once made the election is irrevocable.

Need help?

 **Telephone assistance** is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.
Business Tax information: 1 800 972-1233
Forms and publications: 1 800 462-8100
From outside the U.S. and outside Canada: (518) 485-6800
Fax-on-demand forms: 1 800 748-3676
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:30 a.m. to 4:25 p.m., eastern time)

 **Internet access:** www.tax.state.ny.us

 **Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.

 **If you need to write,** address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.