



Instructions for Form DTF-625-ATT Low-Income Housing Credit Annual Statement

DTF-625-ATT-I

General information

A building owner files Form DTF-625-ATT to report compliance with the low-income housing provisions and to calculate the low-income housing credit. The building owner must file Form DTF-625-ATT for each year of the 15-year compliance period that begins after 2004.

File one Form DTF-625-ATT for the allocation(s) for the acquisition of an existing building and a separate Form DTF-625-ATT for the allocation(s) for rehabilitation expenditures.

If the building owner is a partnership, S corporation, estate, or trust (flow-through entity), the entity will complete Form DTF-625, *Low-Income Housing Credit Allocation and Certification*, and Form DTF-625-ATT. The entity will submit Form DTF-625-ATT with its tax return. If you are a partner, shareholder, or beneficiary in the flow-through entity that owns the building, file only Form DTF-624, *Claim for Low-Income Housing Credit*, to claim the credit using the information that the entity furnishes you.

Recapture of credit

If the qualified basis of the building has decreased from the qualified basis at the close of the previous tax year, you may have to recapture parts of the credits allowed in previous years. See Form DTF-626, *Recapture of Low-Income Housing Credit*.

Recapture and building dispositions – The disposition of a building or an interest in a building will generate the recapture of the credit unless it is reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period.

Exception to recapture – Recapture shall not apply to a reduction in qualified basis by reason of a casualty loss if it is determined that such loss is restored by reconstruction or replacement within a reasonable period. This determination shall be made by the Commissioner of Taxation and Finance in conjunction with the Commissioner of Division of Housing and Community Renewal (DHCR) (New York State Tax Law section 18(b)(5)(a)). Also see *De minimis recapture rule* under the line 17 instructions.

Sale of building

Upon a change of ownership, the seller should give the new owner a copy of the documents containing the allocation of credit and the first-year certification. These documents allow the new owner to substantiate the credit. The allocation of credit and the first-year certification are on Form DTF-625.

Specific instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Part 1 – Compliance information

Item B – You must file one Form DTF-625-ATT for a newly constructed or existing building. You must file a separate Form DTF-625-ATT for Internal Revenue Code (IRC) section 42(e) rehabilitation expenditures because these expenditures are treated the same as creating a new building.

Item C – To claim the credit, you must have an original signed Form DTF-625 (or a copy of the original) issued by DHCR assigning a BIN to the building. This applies even if an allocation is not required (as in the case of a building financed with tax-exempt bonds). Mark an **X** in the *Yes* box to certify that you have the required Form DTF-625 in your records.

Caution – Any building owner must have a completed, signed, and dated Form DTF-625 from an authorized official of DHCR before claiming a credit, or the credit may be disallowed.

Item D – If *No*, stop here, and see Form DTF-626 to find out if you have to recapture part of the credit allowed in prior years.

Item E – If *Yes*, see the instructions for line 2 to figure the reduced qualified basis. Also see Form DTF-626 to find out if you have to recapture part of the credit allowed in prior years.

If *No*, and the entire credit was claimed in prior tax years (generally this can occur after the 11th year for which the credit was claimed for the building), **do not** complete Part 2.

Part 2 – Computation of credit

Line 1 – Generally, the eligible basis of a building for its entire 15-year compliance period is the amount of eligible basis entered on Form DTF-625, line 7b.

Basis increase for buildings in certain high-cost areas – In order to increase the allocated credit for buildings in certain high-cost areas, DHCR may increase the eligible basis of buildings located in these areas (after adjustments for federal subsidies and grants). DHCR may make this increase under the high-cost-area provisions of IRC section 42(d)(5)(B). For buildings placed in service before July 31, 2008, the high cost area provisions under former IRC section 42(d)(5)(C) apply.

DHCR shows the increased percentage of the eligible basis on Form DTF-625, line 3b. The eligible basis entered on Form DTF-625 should reflect this percentage increase.

Note: This increase cannot cause the credit on line 16 of Form DTF-625-ATT to exceed the credit amount allocated on Form DTF-625, line 1b.

Basis reductions for buildings placed in service before July 31, 2008 – The amount of eligible basis entered on Form DTF-625 does not include the cost of land or the amount of any federal grant received for the building during the first year of the credit period. Do not reduce the eligible basis on line 1 of Form DTF-625-ATT by the amounts of any federal grants received after the first year of the credit period. The calculation for line 15 of Form DTF-625-ATT will reduce the credit by the amount of any federal grants received during the compliance period that did not reduce the eligible basis during the first year of the credit period.

For more details on determining eligible basis, see the instructions for Form DTF-625, line 7b.

Basis reductions for buildings placed in service after July 30, 2008 – The amount of eligible basis entered on Form DTF-625 does not include the cost of land or the amount of any costs financed with the proceeds of a federally funded grant. Do not reduce the eligible basis on line 1 of Form DTF-625-ATT by the amounts of any federal grants received after the first year of the credit period. The calculation for line 15 of Form DTF-625-ATT will reduce the credit for any costs financed with the proceeds of a federal grant.

For more details on determining eligible basis, see the instructions for Form DTF-625, line 7b.

Line 2 – Only the portion of the basis on line 1 attributable to the low-income rental units in the building at the close of the tax year qualifies for the credit. This is the **smaller** of:

- the fractional amount of low-income units to all residential rental units (the *unit fraction*), **or**
- the fractional amount of floor space of the low-income units to the floor space of all residential rental units (the *floor space fraction*).

This fraction must be shown on line 2 as a decimal rounded to the fourth decimal place (for example, $50/100 = 0.5000$). Low-income units are units occupied by qualifying tenants, while residential rental units are all units, whether or not occupied.

Generally, a unit is not treated as a low-income unit unless it is suitable for occupancy, used other than on a transient basis, and occupied by qualifying tenants. IRC section 42(i)(3) provides for certain exceptions (for example, units that provide transitional housing for the homeless may qualify as low-income units). See IRC section 42(i)(3) for more details. Also see IRC section 42(g)(2)(D) regarding the available-unit rule and IRC Regulations section 1.42-5(c)(1)(ix) regarding the vacant-unit rule.

If you dispose of the building, or your entire interest in the building, before the close of the tax year, the low-income portion must be determined on the date you disposed of the building. If you dispose of less than your entire interest in the building, the low-income portion must be determined at the close of the tax year.

First-year modified percentage – For the first year of the credit period, you must use a modified percentage on line 2 to reflect the average portion of a 12-month period that the units in a building were occupied by low-income individuals. Find the low-income portion as of the end of each full month that the building was in service during the year. Add these percentages together and divide by 12. Round to the fourth decimal place and enter the result on line 2.

Example: *A building was in service for the last three full months of your tax year, and was half occupied by low-income tenants at the end of each of those three months. Assuming the smaller fractional amount was the unit fraction, you would enter 0.1250 on line 2 (that is, $[\.5 + \.5 + \.5] \div 12 = 0.1250$).*

This first year adjustment does not affect the amount of qualified basis on which the credit is claimed in the remaining nine years of the credit period. In general, the credit is claimed in the remaining nine years by reference to the qualified basis at the close of each tax year.

Because the first year credit is not determined solely by reference to the qualified basis at the close of the first year of the credit period, any reduction in credit resulting from the application of the first year adjustment may be claimed in the 11th year. See the instructions for line 18.

Line 3 – Generally, multiply line 1 by line 2 to figure the portion of the eligible basis of the building attributable to the low-income residential rental units.

Imputed qualified basis of zero – However, the qualified basis of the building (line 3) is zero if any of the following conditions apply.

1. The minimum set-aside requirement elected for the project is not met (Form DTF-625, line 10c or 10d), or the entire building is out of compliance with the requirements under IRC section 42 and New York State Public Housing Law, Article 2-A.
2. The deep-rent skewed test (15-40 test) elected for the project is violated (Form DTF-625, line 10e). The 15-40 test is not an additional test for satisfying the minimum set-aside requirements of IRC section 42(g)(1). The 15-40 test is an election that relates to the determination of a low-income tenant's income. If this test is elected, 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 (or when applicable, national non-metropolitan median income).
3. You disposed of the building or your entire interest in the building during the tax year. In addition to using an imputed basis of zero on line 3, you may have to recapture a portion of the credit(s) previously taken unless it is reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period. This paragraph affects only those who dispose of the building or their entire interest therein. Those acquiring the building (or any interest therein) are not affected and, if the minimum set-aside requirements are otherwise satisfied, they may take a credit for the fraction of the year the building is owned by them.

Regulations under IRC section 42(j) may provide other instances where you will have an imputed qualified basis of zero.

Note: If the qualified basis of the building is zero, or if the building has an imputed qualified basis of zero, you may **not** claim a credit for the building for the tax year. You must enter **0** on lines 3 and 17, and skip lines 4 through 16 and lines 18 and 19.

At-risk limitation for individuals and closely held corporations – The basis of property may be limited if you borrowed against the property and are protected against loss, or if you borrowed money from a person who has other than a creditor interest in the property. See IRC section 42(k).

Line 4 – If you disposed of a building or your entire interest therein during the tax year and it is reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period, you may claim a credit based only on the number of days during the tax year for which you owned the building or an interest therein. Similarly, if you previously had no interest in the building, but you acquired the building or an interest therein during the tax year, you may claim a credit based only on the number of days during the tax year for which you owned the building or an interest therein.

If the building is owned by a flow-through entity, the entity does not need to make any adjustment unless the entity either:

- a. disposes of the building or its entire interest therein, **or**
- b. acquires the building or an interest therein during the tax year (and the entity previously had no interest in the building).

Do not make an adjustment for changes in the interests of the members of the flow-through entity during the tax year. Instead, the entity must reflect these changes in the amount of credit it passes through to its members.

If you owned the building, or an interest therein, for the entire year (that is, the full 12 months in your tax year), enter **0** and go to line 5. If you had no ownership interest in the building for a portion of the year, multiply the qualified basis on line 3 by a fraction, the numerator of which is the number of days during the tax year that you owned the building and the denominator of which is 365 (for example, if line 3 is \$100,000 and the building was owned for 90 days, then line 4 would be \$24,658 ($90/365 \times \$100,000$)) and enter the result on this line.

Line 5 – If DHCR has made an allocation on Form DTF-625, enter the credit percentage allowable for the building's original qualified basis shown on Form DTF-625, line 2. This percentage must be shown on line 5 as a decimal rounded to the fourth decimal place (for example, 9.123% would be shown as 0.0912).

Buildings placed in service before July 31, 2008 – If you were allocated a 70% present value credit percentage for a building that was not federally subsidized (as defined on the date the building was placed in service) and the building later receives a federal subsidy, your credit percentage is reduced to the 30% present value credit that was in effect during the month the building was placed in service, or for the month elected under former IRC section 42(b)(2)(A)(ii), whichever applies. The 30% present value credit applies to the building for the year the federal subsidy was received and for the remainder of the compliance period, whether or not the federal subsidy is repaid. For the definition of *federal subsidy* that was in effect before July 31, 2008, see IRC section 42(i)(2) (as in effect before July 31, 2008).

Buildings placed in service after July 30, 2008 – If you were allocated a 70% present value credit percentage for a building that was not federally subsidized (as defined on the date the building was placed in service) and the building later receives a federal subsidy, your credit percentage is reduced to the 30% present value credit that was in effect during the month the building was placed in service, or the month elected under IRC section 42(b)(1)(A)(ii), whichever applies. The 30% present value credit applies to the building for the year the federal subsidy was received and for the remainder of the compliance period, whether or not the federal

subsidy is repaid. For the definition of *federal subsidy* that was in effect after July 30, 2008, see IRC section 42(i)(2) (as in effect after July 30, 2008).

Line 6 – If you owned the building, or had an interest therein, for the entire tax year, multiply line 3 by line 5. If you had no ownership interest in the building for a portion of the tax year, multiply line 4 by line 5.

Lines 7 through 12

If you are **not** claiming a credit for additions to qualified basis on line 7, skip lines 7 through 12 and go to line 13.

Note: You may claim a credit for an addition to qualified basis only if credit amounts have been allocated by DHCR to cover these additions.

Line 7 – An addition to qualified basis results when there is an increase in the number of low-income units or an increase in the floor space of the low-income units over that which existed at the close of the first year of the credit period (before application of the modified percentage calculation). Credits for an addition to qualified basis are claimed at the reduced credit percentage of two-thirds of the credit percentage (expressed as a decimal rounded to the fourth decimal place) on line 5 through the end of the 15-year compliance period.

If you are claiming a credit for additions to qualified basis, you must subtract the original qualified basis of the building at the close of the first year of the credit period (see Form DTF-625, line 8a) from the building's qualified basis entered on line 3 of Form DTF-625-ATT. Enter the result on this line. If the result is zero or less, skip lines 8 through 12 and enter the credit from line 6 on line 13.

Line 8 – If you disposed of a building or your entire interest therein during the tax year and it is reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period, your credit is adjusted to reflect the number of days during the tax year that you owned the building or an interest therein (also see instructions for line 4).

Similarly, if you previously had no interest in the building, but you acquired the building or an interest therein during the tax year, your credit for the year is adjusted to reflect the number of days during the tax year you owned the building or an interest therein.

If the building is owned by a flow-through entity, the entity does not need to make any adjustment, unless the entity either:

- disposes of the building or its entire interest therein, or
- acquires the building or an interest therein during the tax year (and the entity previously had no interest in the building).

Do not make an adjustment for changes in the interests of the members of the flow-through entity during the tax year. Instead, the entity must reflect these changes in the amount of credit it passes through to its members.

If you owned the building, or an interest therein, for the entire tax year, enter **0** on this line and go to line 9. If you had no ownership interest in the building for a portion of the tax year, multiply the additions to qualified basis on line 7 by a fraction, the numerator of which is the number of days during the tax year you owned the building and the denominator of which is 365 and enter the result on this line.

Line 9 – The credit for additions to the building's qualified basis is determined using two-thirds of the credit percentage allowable for the building's original qualified basis. Therefore, one-third of the credit percentage on line 5 is not allowed. To arrive at two-thirds of the credit percentage allowable, enter one-third of the amount shown on line 5. This amount must be reported as a decimal rounded to the fourth decimal place (*for example, if the credit percentage entered is 0.0912, one-third of that percentage would be expressed as 0.0304*). See IRC section 42(f)(3).

Line 10 – If you owned the building, or had an interest therein, for the entire tax year, multiply line 7 by line 9. If you had no ownership interest in the building for a portion of the tax year, multiply line 8 by line 9.

Line 11 – Additions to qualified basis must be adjusted to reflect the average portion of the year that the low-income units relating to the increase were occupied. This adjustment is required if the increase in the qualified basis of the building exceeds the qualified basis (including additions to qualified basis) of the building in any prior tax year. To determine this adjustment amount, complete the *Line 11 Worksheet*.

Line 15 – The eligible basis on line 1 must be reduced by federal grants received. If a reduction does not apply, because this is the first year of the credit period (line 1 already reflects the reduction or noninclusion of a federal grant) or no federal grant was received, enter **0**. Otherwise, follow the instructions that apply for the date the building was placed in service.

Buildings placed in service before July 31, 2008 – Reduce the eligible basis on line 1 by the amount of any federal grant for the building, or the operation thereof, received during the 15-year compliance period.

Buildings placed in service after July 30, 2008 – Reduce the eligible basis on line 1 by the amount of any costs financed by the proceeds of a federal grant.

Regardless of the date the building was placed in service, compute the reduction as follows.

Step 1 – Divide the total amount of all federal grants received for the building during the compliance period that did not already reduce the amount of the eligible basis (reported on Form DTF-625-ATT, line 1) by the eligible basis of this Form DTF-625-ATT, line 1. Express the result as a decimal rounded to the fourth decimal place.

Note: If the eligible basis of this Form DTF-625-ATT, line 1 was increased by a percentage allowable under IRC section 42(d)(5)(B) (former IRC section 42(d)(5)(C) for buildings placed in service before July 31, 2008) (and reflected either on Form DTF-625, line 3b, or in a separate statement issued to you by DHCR), then increase the total amount of all federal grants in Step 1 (above) by this percentage increase, and divide this amount by the eligible basis of this Form DTF-625-ATT, line 1.

Example: *If the percentage increase is 130% and all federal grants total \$11,000, multiply \$11,000 by 1.3000 and divide the result (\$14,300) by the eligible basis on line 1.*

Step 2 – Multiply the decimal amount determined in Step 1 (above) by the credit on line 14 and enter the result on this line.

Line 17 – To determine the amount to enter, you must take into account the applicable rules listed in paragraphs A, B, C, and the *Special rules* below.

- If the building is owned completely by one taxpayer, enter the line 16 credit (after adjustment for any applicable special rule below) on line 17.
- If the building is owned by more than one taxpayer, and those taxpayers are not members of a flow-through entity, then the line 16 credit (after adjustment for any applicable special rule below) must be distributed according to each taxpayer's respective ownership interest in the building.

Example: *If a building is owned by individuals X and Y (60% by X and 40% by Y), each would complete a separate Form DTF-625-ATT as follows: lines 1 through 16, would be the same for each, assuming no part-year adjustments are necessary. However, X would enter 60% of line 16 on line 17, and Y would enter 40% of line 16 on line 17.*

Enter your share of the line 16 credit for the building that relates to your interest in the building. If your interest increases or decreases during the tax year, the change must be taken into account in determining your share of the line 16 credit.

Note: The aggregate credit claimed by the owners of the building cannot exceed the line 16 credit amount for the building.

- C. If a flow-through entity is completing Form DTF-625-ATT as the sole owner of the building, enter the line 16 credit (after adjustment for any applicable special rule below).

Special rules – If a taxpayer is subject to recapture because, upon the disposition of a building or interest therein, it is not reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period (see *De minimis recapture rule* below), no credit is allowed to the taxpayer for that percentage of the interest disposed of by the taxpayer.

The credit allowed to the taxpayer for the tax year is determined by reference to the taxpayer's remaining interest in the building at the close of the tax year.

Example: Assume that a taxpayer owns 100% of a building for the first 275 days of the tax year and 40% of the building for the last 90 days of the tax year. (The taxpayer disposed of a 60% interest on day 276 of the tax year.) If it is not reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period, the taxpayer's credit on line 17 would be based on 40% of the line 16 credit for the building.

Although a taxpayer might not be subject to recapture upon a disposition of a *de minimis* portion (see below) of the taxpayer's interest in the building, no credit is allowed to the taxpayer for the percentage of the interest disposed of by the taxpayer. The credit allowed to the taxpayer for the tax year is determined by reference to the taxpayer's remaining interest in the building at the close of the tax year.

If, upon the disposition of the building or an interest therein, it is reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period, the taxpayer is allowed credit for the year both with respect to the ownership interest disposed of by the taxpayer and the interest retained by the taxpayer.

Example: Again assume that the taxpayer owns 100% of a building for the first 275 days of the tax year and 40% of the building for the last 90 days of the tax year. If it is reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period, the taxpayer's credit on line 17 would be based upon 275/365 of 100% (or 75%) of the line 16 credit for the building, plus 90/365 of 40% (or 10%) of the line 16 credit amount.

If, upon the disposition of the building or upon a disposition of the taxpayer's entire interest in the building, it is reasonably expected that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period, the taxpayer's line 17 credit amount is determined by multiplying the line 16 credit amount by the percentage interest in the building disposed of by the taxpayer.

Example: If a building is owned by individuals X and Y (60% by X and 40% by Y) and at the close of the fifth month of the tax year, Z buys X's 60% interest in the building and X reasonably expects that the building will continue to be operated as an eligible low-income building for the remainder of its compliance period, then X would enter 60% of line 16 on line 17. (Lines 4 and 8 have already taken into account the five months of the tax year that X held an interest in the building.)

De minimis recapture rule – Recapture shall not apply if the Commissioner of Taxation and Finance, in conjunction with the Commissioner of DHCR, determines a reduction in qualified basis is *de minimis* by reason of:

- a change in floor space devoted to low-income units in a building, if such building remains an eligible low-income building after such changes; or

- an error in complying with the low-income eligibility tests referred to in Public Housing Law section 21(5).

The Tax Department will conform to the IRS *de minimis recapture rule* for partners in a partnership. For administrative purposes, the IRS has adopted a *de minimis* rule that applies to partners in partnerships (other than partnerships described in IRC section 42(j)(5)(B)) owning interests in qualified low-income buildings. The rule allows a partner to elect to avoid or defer recapture resulting from a disposition of interest in a partnership without posting a bond or other security acceptable as collateral (in a situation where it was necessary to post bond to avoid or defer recapture), until the partner has disposed of more than 33⅓% of the partner's greatest total interest in the qualified low-income building through the partnership.

For more information on the *de minimis* rule, see IRS Rev. Rul. 90-60, 1990-2 C.B.3.

Upon application by the building owner, the Tax Department may waive any recapture of the low-income housing credit for any *de minimis* error in complying with the minimum set-aside requirements.

Line 18 – Deferred first-year credit. The first-year credit may have been reduced based on the number of full months the building was in service. The deferred balance of the credit for the first year is allowed in the 11th year. Include it on line 18 as a **positive** amount.

See the example under *First-year modified percentage*. If this is the 11th year, enter 0.8750 times the eligible basis of the building (line 1) times the credit percentage (line 5). The factor 0.8750 is 1.0000 minus 0.1250, the modified percentage figured for year one in the example.

(continued)

Line 11 Worksheet

Keep the completed *Line 11 Worksheet* for your records; do not file this worksheet with your return.

- 1 Enter the qualified basis of the building from this year's Form DTF-625-ATT, line 3
- 2 Multiply the amount of the previous year's Form DTF-625-ATT, line 1 by the amount of the previous year's Form DTF-625-ATT, line 2 and enter the result here
- 3 Increased qualified basis. Subtract line 2 from line 1 above. But if line 2 above is greater than zero but less than the original qualified basis of the building entered on Form DTF-625, line 8a, then enter on line 3 of this worksheet the amount from this Form DTF-625-ATT, line 7

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Note: If line 3 of this worksheet is zero or less, do not complete the worksheet. Instead, enter **0** on Form DTF-625-ATT, line 11 and go to line 12.

- 4 Modified percentage. For each month during the tax year, figure the increase, if any, in the low-income portion of the building for that month over the low-income portion of the building at the close of the previous tax year (the amount of the previous tax year's Form DTF-625-ATT, line 2).
Example: *If the previous tax year's low-income portion of 0.5000 remained at 0.5000 for the first 9 months of this tax year and then increased to 0.7500 for the months of October, November, and December of this tax year, then subtract 0.5000 from 0.7500 to get an increase of 0.2500 for each month of October through December.*
 Add these amounts together, divide by 12, and enter this amount.
 This amount must be shown as a decimal rounded to the fourth decimal place (for example, $0.2500 + 0.2500 + 0.2500 = 0.7500$, divided by 12 = 0.0625)
- 5 Increased qualified basis entitled to reduced credit. Multiply line 4 above by this year's Form DTF-625-ATT, line 1
- 6 Increased qualified basis not entitled to reduced credit. Subtract line 5 above from line 3 above
- 7 Form DTF-625-ATT, line 11 modification. Multiply the amount on line 6 of this worksheet by two-thirds of the amount from this year's Form DTF-625-ATT, line 5. Enter this amount here and on Form DTF-625-ATT, line 11.

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