



# Instructions for Form DTF-625

# DTF-625-I

## Low-Income Housing Credit Allocation and Certification

### General information

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

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 apply to the credit except where the provisions of the New York State low-income housing tax credit program under Article 2-A of the Public Housing Law (PHL) provide for a different rule.

### Transferability of low-income housing credit

For tax years beginning on or after January 1, 2019, PHL § 22(8)(a) allows a taxpayer (owner) of a building that received an allocation of low-income housing credit on or after May 12, 2018, to transfer the credit, in whole or in part, to another person or entity (transferee). Transfer of the credit will not affect the period for claiming the credit.

A transferee may **not** transfer any portion of its credit.

Transfer of the credit **must** be pre-authorized by DHCR. Any credit claimed without proper authorization will be denied in full.

**Note:** Transferees are not required to compute recapture.

### 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 a limited liability company (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; **or**
- an insurance corporation subject to tax under Article 33.

### Purpose of form

Form DTF-625 is used by DHCR to report a New York State housing credit allocation. A separate Form DTF-625 must be issued for each building in a multiple building project, or if you receive more than one allocation for the same building. Form DTF-625 is also used to certify certain information.

**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*). 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*), 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 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.

**Note:** for certain calendar year 2021 or 2022 allocations to buildings in qualified disaster areas replace *second calendar year* with *third calendar year* and *1 year* with *2 years* (for more information, contact the DHCR and see the federal Taxpayer Certainty and Disaster Tax Relief Act of 2020, §§ 301(2) and 305(a)(3); for other extensions, see *Carryover allocations* below); **or**

- The allocation is made for a project that includes more than one building if:
  - a. the allocation is made during the project period, and
  - b. the allocation applies only to buildings placed in service during or after the calendar year in which the allocation is made, and
  - c. each building in the project to which the allocation applies is identified by a separate BIN.

For more information, see IRC sections 42(h)(1)(E) and 42(h)(1)(F); federal Taxpayer Certainty and Disaster Act of 2020, §§ 301(2) and 305(a)(3); and Treasury Regulations section 1.42-6.

**Carryover allocations** – if the last day for an owner of a building with a carryover allocation to meet the 10% test is on or after April 1, 2020, and before September 30, 2021, the last day for the owner to meet the 10% test is postponed to the earlier of one year from the original due date or September 30, 2021. For buildings meeting the 10% test, if the deadline for the building to be placed in service is December 31, 2020, the last day for the owner to place the building in service is December 31, 2021. See IRS Notice 2021-12, section IV.A and C.

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 if principal payments on the financing are applied within a reasonable period to redeem obligations, the proceeds of which were used to provide the financing, or the financing is refunded as described in IRC section 146(i)(6). 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 below) is financed with tax-exempt bonds described in the preceding sentence. However, the owner must still get a Form DTF-625 from DHCR (with the applicable items completed, including an assigned 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 Treasury 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:** Complete and sign Form DTF-625, Part 1. Keep a copy of the form, and issue the original signed Form DTF-625 (including these instructions) to the building owner.

**Building owner:** You are not required to submit Form DTF-625 with your tax returns each year during the 15-year compliance period. Instead, make a one-time submission of Form DTF-625 to the Tax Department. File Form DTF-625 no later than the due date (including extensions) for the first tax return with which you are claiming the New York State low-income housing credit for this housing credit allocation.

To make your one-time submission of Form DTF-625 to the Tax Department, complete and sign Part 2 on the Form DTF-625 received from DHCR (see *Where to file*). You must complete and sign Part 2 even if an allocation of credit by a housing credit agency is not required (such as in the case of a building financed by tax-exempt bonds).

**Note:** If the **only** credit you are claiming is from a flow-through entity (partnership, New York S corporation, estate, or trust), you do not need to complete or file Form DTF-625 or DTF-625-ATT, *Low-Income Housing Credit Annual Statement*. To claim a credit from a flow-through entity, complete Form DTF-624, *Claim for Low-Income Housing Credit*, and submit it with your franchise tax or income tax return.

### Where to file

Send your properly completed Form(s) DTF-625 to the following address:

**INCOME TAX AUDIT ADMINISTRATOR 1  
IFDAB  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-4299**

Additionally, you must file Form DTF-625-ATT with your return for each year of the 15-year compliance period. Use Form DTF-624 to claim the credit. See the instructions for these forms for filing information.

**Private delivery service** – See Publication 55, *Designated Private Delivery Services*.

### Record keeping requirements for building owner

Keep the following items, if applicable, in your records for at least three years after the due date (including extensions) of your tax return for the tax year that includes the end of the 15-year compliance period:

- Copies of the original Form DTF-625 received from DHCR and all related Forms DTF-625-ATT, Forms DTF-624, and any Forms DTF-626, *Recapture of Low-Income Housing Credit*;
- A copy of the election statement if the maximum applicable credit percentage allocated to the building on line 2 reflects an election under IRC section 42(b)(1)(ii) (or former IRC section 42(b)(2)(A)(ii), for buildings placed in service before July 31, 2008);
- A copy of the binding agreement if the binding agreement specifying the housing credit dollar amount is contained in a separate document;
- A copy of the allocation document if the housing credit dollar amount allocated on line 1b reflects an allocation made under IRC section 42(h)(1)(E) or 42(h)(1)(F); and
- A copy of the transfer contract if you made the election under PHL Article 2-A to transfer the credit (for buildings that received an allocation of credit on or after May 12, 2018).

### Definitions

*Eligible low-income building* means a building located in New York State that is either a qualified 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 section 42 subsection (g)(1) 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 that would be determined under such section if the 40-90 test referred to in the definition of *Eligible low-income building* above, applied under IRC 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 1 – Allocation of credit

#### Completed by DHCR only

**Addition to qualified basis.** Mark an **X** in this box if an allocation relates to an increase in qualified basis under IRC 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.** Mark an **X** in 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 low-income housing credit (LIHC).** Mark an **X** in this box if a federal Form 8609, *Low-Income Housing Credit Allocation and Certification*, has been issued for this same building.

Identify the building and building owner 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, where Form DTF-625 is the allocating document, the date of allocation is the date the Form DTF-625 is completed, signed, and dated by an authorized official of DHCR during the year the building is placed in service.

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. DHCR is required to allocate only the amount that is necessary to assure project feasibility. To accomplish this, DHCR can, to the extent permitted by law, lower the percentage on line 2 and the amount on line 3a. See the instructions for these lines for the limits that apply. For tax-exempt bond projects for which no allocation is required, enter the housing credit dollar amount allowable under IRC section 42(h)(4).

**Line 2** – The maximum applicable credit percentage allowable is determined in part by the date the building was placed in service. Follow the instructions pertaining to the date the building was placed in service.

Enter the maximum applicable credit percentage allowable to the building for the month the building was placed in service or, if applicable, for the month determined under IRC

section 42(b)(1)(ii). This percentage may be less than the applicable percentage published by the Internal Revenue Service (IRS).

A minimum applicable credit percentage of:

- 4% is in effect for new federally subsidized building, and for existing buildings, placed into service after December 31, 2020. For the minimum 4% rate to apply, a building must also receive an allocation of housing credit dollar amount after December 31, 2020, or have a portion of the building financed with an obligation described in IRC § 42(h)(4)(A) that is issued after December 31, 2020. If these circumstances apply, do not enter less than 4% on this line. See IRC § 42(b)(3) and the federal Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 201.
- 9% is in effect for new non-federally subsidized buildings placed in service after July 30, 2008. The 9% minimum also applies to new non-federally subsidized buildings even if the taxpayer made an irrevocable election under former IRC section 42(b)(1)(A)(ii). If this circumstance applies, do not enter less than 9% on this line. See IRC section 42(b).

If an election was made under IRC section 42(b)(1)(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 Treasury Regulations section 1.42-8 must be met. DHCR must keep the original binding agreement. The applicable percentage is published monthly in the Internal Revenue Bulletin. For new buildings that are not federally subsidized under IRC section 42(i)(2)(A) and are placed in service after July 30, 2008, use the applicable percentage for the 70% present value credit, but do not enter less than 9%, unless the housing credit agency determines that a lesser amount is necessary to assure project feasibility. For new buildings that are federally subsidized or existing buildings, use the applicable percentage for the 30% present value credit but do **not** enter less than 4% if they meet the criteria in the first bullet under the minimum applicable credit percentage in this line's instructions. See the instructions for line 6 for the definition of *federally subsidized*, and the time period for which the definition applies. A taxpayer may elect under IRC section 42(i)(2)(B) to reduce eligible basis by the proceeds of any tax-exempt obligation in order to obtain the higher credit percentage.

For allocations to buildings for additions to qualified basis under IRC section 42(f)(3), do not reduce the applicable 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. However, in computing qualified basis, DHCR should use only the amount of eligible basis necessary to result in a qualified basis which, multiplied by the percentage on line 2, equals the credit amount on line 1b. However, DHCR is not required to reduce maximum qualified basis and can lower the maximum applicable percentage on line 2. To compute qualified basis, multiply the eligible basis of the qualified low-income building by the smaller of:

1. the fractional amount of low-income units to all residential rental units in the building (the *unit fraction*); or
2. the fractional amount of floor space of the low-income units to the floor space of all residential rental units in the building (the *floor-space fraction*).



**Note:** If the close of the first year of the credit period with respect to a building is on or after April 1, 2020, and on or before June 30, 2021, then, for purposes of IRC § 42(f)(3)(A)(ii), the qualified basis for the building for the first year of the credit period is calculated by taking into account any increase in the number of low-income units by the close of the 6-month period following the close of that first year. See IRS Notice 2021-12, section IV.E, as clarified by IRS Notice 2021-17.

Generally, the term *low-income unit* means any unit in a building if the unit is rent-restricted and the individuals occupying the unit meet the income limitation applicable to the project of which the building is a part (see IRC section 42(i)(3)(A)).

Generally, a unit is not treated as a low-income unit unless it is suitable for occupancy and used other than on a transient basis. IRC section 42(i)(3)(B) 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. If individuals are medical personnel or other essential workers (as defined by state or local governments) that provided services during the COVID-19 pandemic, then, for purposes of emergency housing provided from April 1, 2020, through September 30, 2021, owners of low-income housing projects may treat these individuals as if they were *displaced individuals*. That is, owners could have provided emergency housing for these individuals during this period per the provisions of IRS Rev. Proc. 2014-49, 2014-37 I.R.B. 535, and IRS Rev. Proc. 2014-50, 2014-37 I.R.B. 540, as applicable. See IRS Notice 2021-12, section V.E.

Except as explained in the instructions for line 3b, 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 certain existing buildings, 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 line 3b, 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 regard to 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**.

IRC Section 42(d)(5)(B)(v) permits a similar increase in basis for any non-federally subsidized building designated by the state agency to need the basis increase to be financially feasible as part of a qualified low-income housing project.

See IRC section 42(d)(5)(B) 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. For buildings placed in service

after July 30, 2008, the eligible basis cannot include any costs financed with federal grant proceeds.

**Line 4** – Enter the percentage of the aggregate basis of the building and land on which the building is located that is financed by certain tax-exempt bonds. If this amount is zero, enter **0** (do not leave this line blank).

**Line 5a** – 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.

However, for purposes of IRC § 42(e)(3)(A)(ii), if the last day of the 24-month period for a building is on or after April 1, 2020, and before September 30, 2021, the last day to incur the minimum rehabilitation expenditures for the building is postponed to the earlier of one year from the original end date or September 30, 2021. See IRS Notice 2021-12, section IV.B.

**Note:** The placed-in-service date for an existing building is determined separately from the placed-in-service date of rehabilitation expenditures treated as a separate new building.

**Line 5b** – If the:

- date of allocation on line 1a is in calendar year 2021 or 2022;
- building is located in a qualified disaster zone; and
- allocation is discussed under *Purpose of form, Allocation of credit* in the third bullet;

mark an **X** in the box.

**Line 6**

Not more than 90% of the state housing credit ceiling for any calendar year can be allocated to projects other than projects involving qualified nonprofit organizations. A project involves a qualified nonprofit organization if that qualified nonprofit organization owns an interest in the project (directly or through a partnership) and materially participates (within the meaning of IRC section 469(h)) in the development and operation of the project throughout the compliance period. See IRC section 42(h)(5) for more details.

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) that were in effect on the date the allocation was made. **Do not** issue Form DTF-625 for acquisition of an existing building unless substantial rehabilitation under IRC section 42(e) is placed in service.

**Lines 6a and 6d** – A building is treated as federally subsidized if at any time during the tax year or prior tax year there is outstanding any tax-exempt bond financing, the proceeds of which are used (directly or indirectly) for the building or its operation. If a building is federally subsidized, then box 6a or 6d must be checked regardless of whether the taxpayer has informed DHCR that the taxpayer intends to make the election under IRC section 42(i)(2)(B) to reduce eligible basis by the proceeds of any tax exempt obligation.

## Part 2 – First-year certification

### Completed by building owner with respect to the first year of the credit period.

Form DTF-625 is invalid unless Part 1 is completed by DHCR.

By completing Part 2, you are certifying the date the building is placed in service corresponds to the date on line 5a. If the Form DTF-625 issued to you contains the wrong date or no date, obtain a new or amended Form DTF-625 from DHCR.

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

**Line 7b** – Enter the eligible basis (in dollars) of the building. Eligible basis does not include the cost of land. 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 IRC 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 on 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. If an amenity or common area in a low-income building or project was temporarily unavailable or closed during some or all of the period from April 1, 2020, through September 30, 2021, and the unavailability or closure was in response to the COVID-19 pandemic and not because of other noncompliance for IRC § 42 purposes, then this temporary unavailability or closure does not result in a reduction of the eligible basis of the building. See IRS Notice 2021-12, section V.C.

The eligible basis shall not include any costs paid by the proceeds of a federal grant. Also, reduce the eligible basis by the entire basis allocable to non-low-income units that are above 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 marking an **X** in the Yes box for line 9b. See IRC section 42(d)(3).

You may elect to reduce the eligible basis by the proceeds of any tax-exempt obligation to obtain a higher credit percentage. To make this election, mark an **X** in the Yes box at line 9a. Reduce the eligible basis by the obligation proceeds before entering the amount on line 7b. You must reduce the eligible basis by such obligation proceeds before

multiplying the eligible basis by the increased percentage on line 3b.

**Line 8a** – Multiply the eligible basis of the building shown on line 7b by the smaller of the unit fraction or the floor space fraction 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 line 3a.

**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 submitting a statement.

The statement must be submitted with Form DTF-625 and include:

- the name and address of the project and each building in the project; and
- the BIN of each building in the project; and
- the aggregate credit dollar amount for the project; and
- the credit allocated to each building in the project.

**Caution:** Notwithstanding a marked Yes box on line 8b, failure to submit a statement providing the required information will result in each building being considered a separate project under IRC section 42(g)(3)(D).

The minimum set-aside requirement (see the instructions for line 10c) is a project-based-test.

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

- are located on the same tract of land (including contiguous parcels), unless all of the dwelling units in all of the buildings being aggregated in the multiple building project are rent-restricted units (see IRC section 42(g)(7)); and
- are owned by the same person for federal tax purposes; and
- are financed under a common plan of financing; and
- 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** – Follow the instructions that apply for the date the building was placed in service.

You may elect to reduce the eligible basis by 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 tax-exempt obligation.

**Note:** The 9% and 4% minimum applicable credit percentages described in line 2 still apply.

**Line 9b** – See the instructions for line 7b.

**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. Mark an **X** in 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.

**Lines 10c and 10d –** You must meet the minimum set-aside requirements under IRC section 42(g)(1) (line 10c) or New York State PHL, Article 2-A, section 21(5)(b) (line 10d) 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**. Under the 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 IRC section 142(d)(6)).

3. **Average income test.** Forty percent (40%) or more (25% or more in the case of a project described in section 142(d)(6)) of the residential units in the project must be both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations designated must not be more than 60% of the area median gross income. The designated imputed income limitation of a unit can only be 20%, 30%, 40%, 50%, 60%, 70%, or 80% of the area median gross income. **Note:** The average income test is only available for elections made after March 23, 2018.
4. **40-90 test under PHL section 21(5)(b):** 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.

**Rural projects.** For purposes of tests 1 through 4, *national non-metropolitan median income* will be used for determining income if it exceeds *area median gross income*, but only for determinations of income made after July 30, 2008, and buildings with an allocation of credit. See IRC section 42(i)(8) for details.

**Caution:** The minimum set-aside requirement is a project-based test. To claim any credit for the first year or for any subsequent years, you must meet the minimum set-aside requirement by the close of the first year of the credit period.

**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)(1). 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.

If the 20-50, 40-60, or 25-60 test under the minimum set-aside rules described earlier in Line 10c and 10d has been elected, the applicable income limit generally is 50% or less or 60% or less of the area median gross income (or, when applicable, national non-metropolitan median income).

If the average income test in Line 10c and 10d has been elected, the applicable income limit generally is the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations designated must not exceed 60% of the area median gross income (or, when applicable, national non-metropolitan median income). Also, the designated imputed income limitation of any unit must be in 10% increments between the range of 20% and 80% of the area median gross income (or, when applicable, national non-metropolitan median income).

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 (or when applicable, national non-metropolitan median 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?



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### Telephone assistance

Automated income tax refund status:	518-457-5149
Personal Income Tax Information Center:	518-457-5181
Corporation Tax Information Center:	518-485-6027
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

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