

# Farm Employer Overtime Credit -- Advance Payment Certificate

## Frequently Asked Questions

**Updated August 1, 2024**

### **Q1. How do I know if my farm qualifies for this new credit?**

- A. You are entitled to this refundable credit if you or your business is an [eligible farmer](#) and employs eligible farm employees that you paid eligible overtime.

### **Q2. How much is the credit?**

- A. The credit amount is based on the eligible overtime you or your business pay to eligible farm employees. The credit is 118% (1.18) of the eligible overtime hours you or your business paid, multiplied by the difference between the employees' overtime rate of pay and their regular rate of pay.

Calculation:  $1.18 \times (\text{eligible overtime hours}) \times (\text{overtime rate} - \text{regular rate}) = \text{credit amount}$

Eligible overtime hours are the total number of hours an eligible farm employee works in a week that exceeds the [overtime work threshold](#). These do not include hours over 60 hours in a calendar week.

### **Q3. What records will I need to provide to get the overtime credit advance? When should I start keeping them?**

- A. For each eligible farm employee who has worked qualifying overtime, farm employers will need to provide the following information when requesting an advance payment certificate:
- the employee's full name and social security number or taxpayer identification number,
  - the pay period start and end date(s) for any pay period(s) during which eligible overtime was completed,
  - the base rate of pay and overtime rate of pay, and
  - the number of regular hours and eligible overtime hours worked by that employee.

This information can be manually entered in the online application or farms can download an Excel spreadsheet from within the system, fill it in with their employee information offline, and then upload the completed spreadsheet back into the system (must be .xls or .csv file format).

**Note:** During the course of an audit you may be required to supply documentation to substantiate this information. See [Recordkeeping: farm employer overtime credit](#) for more information.

**Q4. If my farm has multiple owners/partners/members/shareholders, will we each receive the credit? How is the amount for each owner determined? Will we get separate advance checks?**

- A. If the farm has multiple owners, partners, members, or shareholders, the entity applying for the advance payment certificate will need to provide the social security number (SSN) or taxpayer identification number (TPIN) for each owner/partner/member/shareholder, along with documentation showing their percentage of ownership.

The advance payment certificate that the New York State Department of Agriculture and Markets will issue to the farm employer will include all owners' names that were provided, along with the credit amount for each. The farm will be responsible for sharing the certificate with each owner/partner/member/shareholder so they can each request their advance credit payment from the New York State Department of Taxation and Finance. The requests to the Department of Taxation and Finance must be made **no later than November 1**.

**Q5. How do I know if an employee is eligible to be counted towards the overtime credit? Does it matter what they do on the farm or if they are family members?**

- A. An eligible farm employee is an individual who meets the definition of a farm laborer under Labor Law § 2 and who is employed by a farm employer in New York State. A general executive officer of the farm is **not** an eligible farm employee. If you are a licensed farm cidery or winery, see question 7 for special rules.

**Q6. What happens if an employee is paid different hourly rates for different jobs or if their rate changes during the year? How should their "regular pay" be calculated?**

- A. If an employee was paid different rates during the tax year, a separate pay period entry will need to be made for each hourly pay rate for that employee. The online system allows applicants to report the same employee multiple times within the same period if their rates changed, including employees who work in multiple roles and have different pay rates.

**Q7. Can I claim the overtime credit for farm laborers that work in our tasting room?**

- A. Licensed farm wineries/cideries whose sale of wine/cider accounts for more than 50% of farm income may only claim the credit for eligible farm employees who are employed directly on the agricultural property. Tasting rooms do not qualify as agricultural property. Additional guidance regarding eligible employees can be found at [fifpa-frequently-asked-questions-june-2020.pdf \(ny.gov\)](#).

**Q8. Do I have to apply for the mid-year advance credit payment if I plan to apply at the end of the year?**

- A. No, you do not have to apply for the mid-year advance. The mid-year advance is an optional service provided to farm employers by the Department of Agriculture and Markets and the Department of Taxation and Finance. If no advance payment is claimed or authorized for the January 1 through July 1 period, the entire year's overtime may be claimed when the year-end tax return is filed.

**Q9. What are the deadlines to apply for the overtime credit advance payment?**

- A. The deadline to apply for an advance payment certificate from the Department of Agriculture and Markets is **September 30**.

In order to receive a credit advance payment, each owner, partner, member, or shareholder must apply to [New York State Department of Taxation and Finance's Online Services](#) no later than **November 1**.

**Q10. If I have questions, where can I get help?**

- A. Farm employers are encouraged to first review the steps outlined at [agriculture.ny.gov/farming/farm-employer-overtime-credit-advance](http://agriculture.ny.gov/farming/farm-employer-overtime-credit-advance).

Additionally, the *Farm Employer Overtime Credit Advance User Guide* provides in depth information about the online system, including step by step guidance on the registration and application process.

Questions regarding eligible agricultural employees may be directed to the New York State Department of Labor at (877) 466-9757.

Questions regarding New York State Department of Taxation and Finance Form CT-661 (for corporations) may be directed to (518) 485-6027.

Questions regarding Department of Taxation and Finance Form IT-661 (for all other business types) may be directed to (518) 457-5181.

Questions regarding the Farm Employer Overtime Credit Advance Payment Certificate may be directed to [farmOTadvance@agriculture.ny.gov](mailto:farmOTadvance@agriculture.ny.gov) or (518) 457-7076.

**Q11. What kind of documentation and level of detail is required for the advance certificate? Will I be required to provide weekly statements and/or paystubs?**

- A. See Question 3. Neither weekly statements nor payroll stubs are required for the advance payment application, but should be retained by the farm.

**Q12. *If I am a fiscal year filer, when do I apply for this credit? Am I eligible for an advance payment?***

- A. Fiscal year filers who paid overtime after January 1, 2024 are eligible to claim this credit and may request an advance payment of the credit for the overtime paid in the months of 2024 that are included in their tax year.

Beginning July 1, 2024, fiscal year filers may request one advance payment certificate per tax year from the Department of Agriculture and Markets. An advance payment is not mandatory. Eligible farmers may choose to wait until filing their year-end tax return to claim their credit with the Department of Taxation and Finance.

**Q13. *If I am a calendar year filer, when do I apply for this credit? Am I eligible for an advance payment?***

- A. Eligible calendar year filers who paid overtime after January 1, 2024 are eligible to claim this credit and may request an advance payment of the credit beginning in tax year 2024. They are not eligible in tax year 2023 because the overtime threshold will not be reduced from 60 hours to 56 hours until January 1, 2024.

Beginning July 1, 2024, calendar year filers may request an advance payment certificate from the Department of Agriculture and Markets. An advance payment is not mandatory. Farmers may choose to wait until filing their year-end tax return to claim their credit with the Department of Taxation and Finance.

**Q14. *My farm is structured where an umbrella management company provides payroll and HR services for several divisions of the farm (e.g., dairy corporation, crop corporation, trucking corporation). Is my farm eligible for this credit? Is there different documentation we need to provide?***

- A. The entity paying the overtime must itself qualify as an eligible farmer.

**Q15. *If an employee has different duties (e.g. packing, maintenance) do I have to track hours separately for each duty?***

- A. Yes, you may need to track hours separately if the employee performs both eligible and ineligible work. For instance, if an employee works in the tasting room of farm winery, those hours must be excluded for purposes of computing the credit.

**Q16. *I am not sure how many different overtime categories our farm needs to properly track for different programs/purposes (e.g. over 40 hours, FMLA, etc.). Can you advise?***

- A. For purposes of the Farm Employer Overtime Credit, you will need to track eligible hours exceeding the applicable threshold each week and not including hours over 60. The threshold in 2024 is 56 hours. Farm employers are encouraged to work with their tax preparers and payroll companies to ensure the specific needs and circumstances of their farm are properly addressed.

**Q17. When I registered in the online system, I added a tax preparer to be my farm's authorized representative. Will the system automatically inform them that they are designated to act on my behalf?**

A. The system will automatically email the representative based on the contact information provided for them. However, we recommend that you reach out to your representative separately to ensure they are aware you have designated them and that they will be receiving an email from the Department of Agriculture and Markets.

You should keep the following in mind:

- The representative must also register in the system and provide their My.NY.gov information.
- Both parties must confirm in the system and agree to the terms provided.
- Only one representative per farm may be active in the system at a time.
- The farm owner may change or remove their representative at any time in the application process.

**Q18. Are Foreign Guest Workers (H2A, J-1, etc.) covered under the overtime provisions?**

A. Yes, Foreign Guest Workers are covered under the overtime provisions unless they meet any of the exceptions of the Farm Laborers Fair Labor Practices Act (FLFLPA). More information on the FLFLPA can be found here: [fllpa-frequently-asked-questions-june-2020.pdf \(ny.gov\)](#)

**Q19. If an employee voluntarily works during their designated day of rest, how does that factor into the weekly overtime threshold and my overtime credit advance calculation?**

A. Farm laborers are permitted to voluntarily work during their designated day of rest provided that the employer pays the overtime rate, regardless of the current year credit advance threshold (56 hours in 2024). The hours for an eligible employee entered into the online credit advance system should correspond with the pre-established payroll calendar week for that employee.

**Q20. Does an employee's regular rate include their housing allowance?**

A. No, for purposes of the overtime credit a housing allowance should not be factored into an employee's regular or overtime rate of pay.

**Q21. How are piece earnings calculated as part of an employee's rate of pay?**

A. The regular rate of pay is calculated by adding together an employee's total earnings from their payroll calendar week and dividing that by the total number of hours they worked that week. The overtime rate is one and a half times their regular rate of pay.