Farm Employer Overtime Credit

Frequently Asked Questions

Updated July 31, 2026

Q1. When did the farm employer overtime tax credit become effective?

A. The credit became effective starting January 1, 2024.

Q2. How do I know if my farm qualifies for this credit?

A. You are entitled to this refundable credit if you are or your business is an eligible farmer **and** employs eligible farm employees that you, or a Professional Employer Organization (PEO) that you use, paid eligible overtime.

Q3. 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 x (eligible overtime hours) x (overtime rate - regular rate) = 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.

Q4. *What records will I need to provide to get the overtime credit advance payment? 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.

Q5. If my farm has multiple owners/partners/members/shareholders, will we each receive the advance payment? 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 individual taxpayer identification number (ITIN) 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.**

Q6. 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.

Q7. 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.

Q8. 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 https://flflpa-frequently-asked-questions-june-2020.pdf (ny.gov).

Q9. 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.

Q10. 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.**

Q11. If I have questions, where can I get help?

A. Farm employers are encouraged to first review the steps outlined at https://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.

For questions regarding the tax credit forms - Form CT-661 (for corporations) and Form IT-661 (for all other business types) – visit the New York State Tax Department's webpage at tax.ny.gov and search *overtime*.

Questions regarding the Farm Employer Overtime Credit Advance Payment Certificate may be directed to farmOTadvance@agriculture.ny.gov or (518) 457-3956.

Q12. 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.

Q13. When do I apply for my advance payment if I am a fiscal year versus calendar year filer?

A. Both fiscal year and calendar filers may request one advance payment certificate each calendar year from the Department of Agriculture and Markets during the open advance certificate application period (August 1 – September 30). An advance payment is not mandatory. Eligible farm employers may choose to wait until filing their annual tax return to claim the overtime credit.

Q14. 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.

Q15. 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 2026 is 52 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.

Q16. 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. However, it is best practice to reach out to your representative separately to ensure they are aware you have designated them and that they will receive 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.

Q17. 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: flflpa-frequently-asked-questions-june-2020.pdf (ny.gov)

Q18. ***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 (52 hours in 2026). 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.

Q19. ***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.

Q20. ***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.

Q21. ***If a farmer asked me to be their representative, can I go into the system and fill out the "I am the farmer" information for them before I complete my "I represent the farmer" information?***

A. No, the farmer must complete their portion in the system using their My.NY.gov ID and grant permission for a representative to enter information on their behalf. It is vital for the correct role to be selected and matched with the appropriate My.NY.gov ID. Otherwise, it could jeopardize an application from being approved and processed on a timely basis.

Q22. ***I am associated with multiple farms as an owner, shareholder or partner. Should I create separate My.NY.gov accounts for each farm?***

A. No. You can add multiple farms to a single My.NY.gov account. In the Farm Employer Overtime Credit Advance online system, use the "Add Farm" button on the "Farm Listing" page to register multiple farms that you are associated with.

~~Q23. If my farm uses a Professional Employer Organization (PEO), am I eligible to receive a credit for eligible overtime wages paid in 2024 and/or overtime wages paid in 2025?~~

~~A. If you are a farm that paid overtime through a PEO, you are eligible to receive a "catch up" credit that will cover calendar years 2024 and 2025 (January 1, 2024 – December 31, 2025). The entirety of this 2024 and 2025 "catch-up" credit will be taken on your return that includes December 31, 2025.~~

~~A. You may request an advance payment for overtime paid between January 1, 2024 and July 31, 2025. The Department of Agriculture and Markets will initially issue separate certificates for advance payments of credit for overtime~~

~~paid in 2024 and 2025, respectively. These certificates will be subsequently merged by the Department of Agriculture and Markets into a single advance payment certificate dated 2025. You must use this merged certificate that captures both 2024 and 2025 when requesting an advance payment from the Department of Taxation and Finance. If you do not request a credit for eligible overtime paid in 2024 on your return that includes December 31, 2025, you will not be able to claim it in the future.~~

A. This question is no longer applicable for 2026.

Q24. ***My farm uses a Professional Employer Organization (PEO) for payroll and HR services. What information will I need to provide?***

A. In addition to the items listed in Q4, farms using a PEO will need to provide the PEO business name, a contact person's name, a phone number, and an email address when they register in the system. To demonstrate eligibility, farms using a PEO will need to provide documentation verifying the relationship/organizational structure between the farm and PEO. (e.g., contract, service agreement, MOU, etc.) that details the agreed upon services for the time period of eligible overtime expenses being claimed.

Q25. ***If my farm uses a Professional Employer Organization (PEO), which business will receive the credit?***

A. The farm where the eligible employee performed the work will receive the credit.

~~**Q26.** ***If my farm uses a Professional Employer Organization (PEO) can I wait until the end of the year to receive a certificate of credit for 2024 and/or 2025?***~~

~~A. Yes, eligible farms using PEOs can wait to apply for a year-end certificate covering the entire 2024 -2025 period (January 1, 2024 – December 31, 2025). The PEO year-end application period for a certificate covering 2024 and 2025 will be open from January 1, 2026 to February 1, 2026. After this application period, there will not be an opportunity to claim a credit for eligible overtime paid in 2024 or 2025.~~

A. This question is no longer applicable for 2026.

~~**Q27.** ***If I am a farm that used a PEO, am I able to amend a past tax return to include the farm employer overtime credit?***~~

~~A. No. If you are a farm that uses a PEO, you must claim your credit for eligible overtime paid through a PEO during 2024 and 2025 on your 2025 tax return. You may not amend a prior year return to claim the farm overtime credit.~~

A. This question is no longer applicable for 2026.

~~**Q28. If I am a farm employer that used a PEO in 2024 and/or 2025, do I need to obtain a year-end certificate from AGM for my annual tax filing?**~~

~~A: Yes, farms that used a PEO in 2024 and/or 2025 that wish to receive the credit will need to obtain a year-end certificate from AGM. You will need information included on the certificate when you file your tax return. See questions #24, #25, #26 and #27 for additional details.~~

A. This question is no longer applicable for 2026.

~~**Q29. If my farm used a PEO in 2024 and/or 2025 and I received an advance payment, do I need to apply for a year-end certificate to receive the full credit?**~~

~~A: Yes, all farms that used a PEO in 2024 and/or 2025 that wish to receive the credit will need to apply for a year-end certificate and provide eligible overtime expense information for the entire period they are claiming. See questions #24, #25, #26 and #27 for additional details~~.

A. This question is no longer applicable for 2026.

Q30. What is the difference between a Professional Employer Organization (PEO) and a payroll processing company?

A. A payroll processing company processes the farm's payroll on behalf of the farm, but all the workers are the farm's own employees. A PEO is a business that employs farm workers who work on farms owned by third-party farmers. These farmers pay the PEO for the farm workers' labor. The PEO files and remits payroll taxes under its own EIN and not the farm EIN. If you are uncertain if you have a PEO or a payroll processing company, please reach out to your tax professional.

~~**Q31. If my farm uses a PEO and has multiple owners/partners/members/shareholders, how is the credit amount for each owner determined when filing taxes with the Department of Tax and Finance?**~~

~~A: See question 25. Like other credits, the amount is determined at the entity (farm) level and the farm shares it with the owners/partners/shareholders, based on their ownership percentage.~~

A. This question is no longer applicable for 2026.

Q32. Do I need to obtain a year-end certificate to claim the overtime credit on my annual tax return?

A. Yes. Beginning in 2026, all eligible farm employers wishing to claim the overtime credit, regardless if they received an advance payment or not, must apply to AGM for a year-end certificate covering eligible overtime paid between January 1 and December 31 each year. Credit for eligible farm overtime certificates issued for 2026 will be claimed when the farm files its return for the tax year that starts in 2026.

Q33. What is the application period to request a 2026 year-end certificate?

A. The application period to apply for a 2026 year-end certificate is January 1, 2027 – February 1, 2027.

Q34. If I miss the year-end certificate deadline, will I be able to apply at a later date or amend my tax return in the future?

A. No. After this application period, there will NOT be another opportunity to apply for a certificate for eligible overtime claim paid in 2026. Farm employers are NOT able to amend a prior year return to claim the farm employer overtime credit.