Department of Taxation and Finance

Instructions for Form IT-661
Farm Employer Overtime Credit
(including instructions for Form IT-661-ATT)

IT-661-I

2024
NEW YORK STATE

General information

The farm employer overtime credit is available to *farmers* who paid *overtime* to *farm employees*.

Eligible taxpayers may request an advance payment for the portion of the credit allowed from January 1 to July 31. For more information, visit our website at *www.tax.ny.gov* (search: *overtime).*

Eligibility

You are eligible for this credit if you or your business during the tax year:

• is a *farm employer;* **and**
• employs *eligible farm employees* that you paid *eligible overtime.*

Credit calculation

• The credit amount is 118% (1.18) of the *eligible overtime* hours worked multiplied by the difference of the employees' regular rate of pay and their overtime rate of pay.
• Do not use any farm employees used in the calculation of the farm employer overtime credit to claim any other tax credit **except** for on Form IT-647, *Farm Workforce Retention Credit.*
• If you received an advance payment for this tax year that you are no longer eligible for, you must repay the amount you received.
• If you do not use the full amount of the credit against your tax liability this year, you may request a refund or apply the overpayment to next year's tax. However, the Tax Department will not pay interest on the refund or overpayment.

Definitions

A *farm employer* is a corporation (including a New York S corporation), a sole proprietorship, a limited liability company (LLC), or a partnership that is an *eligible farmer.*

An *eligible farmer* is a taxpayer whose federal gross income from farming for the tax year is at least two-thirds of *excess federal gross income.* To determine if you meet the income test, see *Farm employer overtime credit: eligible farmers income test* on our website at *www.tax.ny.gov* (search: *overtime).*

Excess federal gross income is the amount of federal gross income from all sources for the tax year in excess of $30,000.

An *eligible farm employee* is an individual who meets the definition of a farm laborer under Labor Law § 2, who is employed by a farm employer in New York State. A general executive officer of the farm employer is **not** an eligible farm employee.

Qualified agricultural property means:

• land located in this state which is used in agricultural production;
• land improvements, structures, and buildings (excluding buildings used for the taxpayer's residential purpose) located on such land which are used or occupied to carry out such production;
• land set aside or retired under a federal supply management or soil conservation program; or
• land that at the time it becomes subject to a conservation easement, as defined under Tax Law § 606(kk), met the requirements under this paragraph.

Eligible overtime is the total number of hours your employee worked in a week that exceeds the overtime work threshold shown below, **not** including **hours in excess of 60 hours** in a calendar week.

Starting on	Hours in excess of	And no more than
January 1, 2024	56 hours	
January 1, 2026	52 hours	
January 1, 2028	48 hours	60 hours
January 1, 2030	44 hours	
January 1, 2032	40 hours	

How to claim the credit

If you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in a partnership (including members of an LLC treated as a partnership for federal tax purposes), or a shareholder of an S corporation, and you are claiming the farm employer overtime credit, file Form IT-661.

A **married couple** in a business enterprise that made an IRC 761(f) election to file **two federal Schedule C forms** instead of a partnership return: If you file jointly, calculate your credit amount as if you were filing one federal Schedule C for the business.

An **estate or trust** that divides the credit between itself and its beneficiaries must submit Form IT-661 with Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit.

A **partnership** must file Form IT-661 with Form IT-204, *Partnership Return*, showing the total credit.

A **New York S corporation** does not file Form IT-661. It must file Form CT-661, *Farm Employer Overtime Credit.*

If you are a **shareholder of an S corporation,** obtain your share of the farm employer overtime credit from the S corporation and follow the instructions on this form for claiming the credit on your personal return.

Line instructions

Line A: If you or your business were issued a certificate of advance payment from the Department of Agriculture and Markets, and you received an advance payment for this tax year from the Tax Department, mark an **X** in the *Yes* box. Enter the certificate number **and** include the amount on line 12. If you are no longer eligible for the credit, you must add this amount back to your tax return.

Line B: Mark an *X* in the appropriate box to determine the parts of this form you need to complete. If you are claiming this credit **both** as an individual (sole proprietor), partnership, or fiduciary of an estate or trust that earned the credit **and** as a partner, shareholder, or beneficiary receiving a share of the credit, mark an *X* in the *Yes* box and complete all appropriate schedules on one Form IT-661.

Line C: Complete Worksheet C if you are a Form IT-201 or Form IT-203 filer, Worksheet D if you are a Form IT-205 filer, or Worksheet E if you are a Form IT-204 filer. These worksheets are found online, visit *www.tax.ny*.gov (search: *overtime).*

Do not include any payments from the Farmland Protection Program (administered by the New York State Department of Agriculture and Markets) in Worksheet C, Worksheet D, or Worksheet E.

If the percentage shown on Worksheet C, line 25, Worksheet D, line 23, or Worksheet E, line 23, is at least 0.6667 (66.67%), mark an *X* in the *Yes* box on line C.

Line E: If you answered *Yes*, each eligible farm employee listed on submitted Forms IT-661-ATT, *Eligible Farm Employee Information for the Farm Employer Overtime Credit Attachment to Form IT-661,* must be employed on *qualified agricultural property.*

Line F: Enter the total number of different employees you entered on Forms IT-661-ATT. Count each employee once, even if you entered the employee on multiple lines because they worked at different locations, worked in different pay periods, or were paid different rates.

Additional forms: If you have more entries than will fit on the lines provided in Schedules B, C on Form IT-661 or the *Overtime information* table on Form IT-661-ATT, submit additional forms completing only the necessary schedules. Include your name and taxpayer identification number on each additional form. On the indicated lines of the first Form IT-661, include the totals from all additional Forms IT-661 and IT-661-ATT. Place the extra forms behind the first Form IT-661 and submit them with your return.

Schedule A: Individual (including sole proprietor), partnership, and estate or trust

Note: See the definition of *eligible overtime* above.

Line 1: Transfer the total amount from all Forms IT-661-ATT, column I. List each *eligible farm employee's* name, work location ZIP code, Social Security number, eligible overtime hours worked, overtime rate of pay, and normal rate of pay for the tax year on Form IT-661-ATT. If you answered *Yes* on Line E, each *eligible farm employee* must be employed on *qualified agricultural property*. Submit all Forms IT-661-ATT behind Form IT-661. If needed, see *Additional forms.*

Schedule B: Partner's, shareholder's, or beneficiary's share of credit

Enter the appropriate information for each partnership, New York S corporation, estate or trust from which you received a share of the credit. Obtain your share of the credit from your partnership, S corporation, estate or trust. If you as a partner, shareholder, or beneficiary received from the farm employer a certificate from the Department of Agriculture and Markets listing you as an owner of an eligible farm and you applied for **and you** received advance payment from the Department of Taxation and Finance, enter the certificate number in column D and the amount you received in column F. If needed, see *Additional forms.*

Note: If the eligible farm you received an advance payment from does **not** meet the two-thirds of excess federal gross income test, **you must repay** this amount to the Tax Department.

Schedule C: Beneficiary's and fiduciary's share of credit

An estate or trust must complete this schedule. If you allocate or assign the credit to your beneficiaries, base the division on each beneficiary's share of the income of the estate or trust. Provide your beneficiaries with their share of the credit amount. If needed, see *Additional forms.*

Schedule D: Calculation of credit

Lines 8 through 10: Complete the lines that apply to you.

Line 12: Enter the total amount of any advance payments you applied for and received. If you did not receive an advance payment*, enter 0.*

Partnerships: Do **not** make an entry on this line.

Fiduciaries: Only enter the amount **you** received, do **not** include any amount claimed by any beneficiaries.

Line 13
Partnerships: Enter the amount from line 11 here. Enter this amount and code *661* on Form IT-204, line 147.

If line 11 is **greater than** line 12, subtract line 12 from line 11 and enter the result. This is your farm employer overtime credit amount.

Individuals: Enter the amount from line 13 and code *661* on:
• Form IT-201-ATT, *Other Tax Credits and Taxes*, line 12; or
• Form IT-203-ATT, *Other Tax Credits and Taxes*, line 12.

Fiduciaries: Include the amount from line 13 and code *661* on Form IT-205, line 33.

If line 11 is **equal to** line 12, enter *0* on line 13. **Do not** carry this amount to another form.

If line 11 is **less than** line 12, subtract line 11 from line 12 and enter the result. You received an advance payment of more farm employer overtime credit than you were allowed.

Individuals: Enter the amount from line 13 and code *661* on:
• Form IT-201-ATT, *Other Tax Credits and Taxes,* line 20; or
• Form IT-203-ATT, *Other Tax Credits and Taxes,* line 19.

Fiduciaries: Include the amount from line 13 and code *661* on Form IT-205, line 12.