



Farm Workforce Retention Credit

Part RR of Chapter 60 of the Laws of 2016 established the farm workforce retention credit for eligible farm employers taxable under Article 9-A (franchise tax on business corporations) and Article 22 (personal income tax) of the Tax Law.

Part RR of Chapter 60 of the Laws of 2016 established the farm workforce retention credit for farm employers and owners of farm employers.¹ The refundable credit is equal to a fixed dollar amount for each eligible farm employee. The credit may be claimed in a tax year that begins on or after January 1, 2017, and before January 1, 2022.

Farm employer

For purposes of the farm workforce retention credit, a *farm employer* is a taxpayer subject to tax under Article 9-A or Article 22 that:

- is a corporation (including a New York S corporation), a sole proprietorship, a limited liability company (LLC), or a partnership, **and**
- is also an *eligible farmer*.

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.

Excess federal gross income is the amount of federal gross income from all sources for the tax year in excess of \$30,000. For purposes of this credit, farmers must include payments from the state's Agricultural and Farmland Protection Program administered by the New York State Department of Agriculture and Markets in federal gross income from farming.

Farming includes the operation or management of livestock, dairy, poultry, fish, fruit, fur-bearing animal, and vegetable (commonly referred to as truck) farms. *Farming* also includes the operation or management of plantations, ranches, ranges, and orchards.

For example, *farming* includes, but is not limited to, the raising or production of the following commodities:

- field crops, including corn, wheat, oats, rye, barley, hay, potatoes, and dry beans;

¹ Owners of farm employers include shareholders of a New York S corporation, partners in a partnership, members of an LLC, or beneficiaries of an estate or trust.

- fruits, including apples, peaches, grapes, cherries, and berries;
- vegetables, whether raised conventionally or hydroponically, including tomatoes, snap beans, cabbage, carrots, beets, and onions;
- horticultural specialties, including nursery stock, ornamental shrubs and ornamental trees, and flowers;
- livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, ostrich, emus, fur-bearing animals, milk, and eggs;
- aquaculture products, including fish, fish products, water plants, and shellfish (provided the aquaculture products are grown and raised as opposed to merely being harvested or caught); **and**
- honey and beeswax produced from the farmer's own bees.

Eligible farm employee

An *eligible farm employee* is an individual who is employed for 500 hours or more per tax year by a farm employer in New York State, but excluding general executive officers of the farm employer. Workers who are part of the H-2A Temporary Agricultural Worker Program that meet the definition of an eligible farm employee may be included in the computation of this credit.

If an individual employed by a farm employer in New York State becomes unable to work due to a documented illness or disability, the farmer may combine the hours the individual was employed during the tax year with the hours of another individual hired to replace the ill or disabled individual in the same tax year when determining the 500 hour per tax year threshold for an eligible farm employee. The ill or disabled worker and the worker hired to replace him or her are considered one eligible farm employee for purposes of computing the credit.

The farm employer must obtain proof of illness or disability for the ill or disabled worker in the form of a written statement from a physician or other health care provider licensed, certified, or otherwise permitted by law to diagnose or treat the physical or mental condition that led to the claimed illness or disability. The statement must include:

- the name and a description of the farm employee's illness or disability;
- the physician's or health care provider's medical opinion that the illness or disability prevented the individual from working;
- to the best of the physician's or health care provider's knowledge, the specific time period during which the individual is or was unable to work due to illness or disability; and
- the following certification signed by the physician or health care provider: "*I hereby certify that, to the best of my knowledge and belief, the above representations are true, correct, and complete.*"

Note: A farm employer must retain documentation of the hours worked (and proof of illness or disability, if applicable) for all eligible farm employees and make it available to the Tax Department upon request.

Amount of credit

The farm workforce retention credit is equal to a fixed dollar amount per eligible farm employee. The credit amounts per eligible farm employee by tax year are shown in the table below:

Tax years beginning on or after	Credit amount per eligible farm employee
January 1, 2017	\$250
January 1, 2018	\$300
January 1, 2019	\$500
January 1, 2020	\$400
January 1, 2021, and before January 1, 2022	\$600

A farm employer may not use any farm employees used in the computation of the farm workforce retention credit to claim any other tax credit.

Rules for New York S corporation shareholders, partners, members of limited liability companies (LLCs), and beneficiaries of estates and trusts.

A shareholder, partner, LLC member, or beneficiary of an estate or trust that is taxable under Article 9-A or Article 22 is allowed to claim a pro-rata share of the credit passed through from a New York S corporation, partnership, LLC, estate, or trust that is a farm employer eligible for the credit. The credit amount is determined at the entity level.

Credit limitation

For Article 9-A taxpayers, the credit cannot reduce the tax due to less than the applicable fixed dollar minimum tax under Tax Law section 210(1)(d). However, if the credit allowed for any tax year reduces the tax to the minimum amount, any excess credit may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund.

For Article 22 taxpayers, the credit may reduce the tax to zero. If the credit allowed exceeds the tax, the excess may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund.

(Tax Law sections 42, 210-B(51), 606(i)(1)(B)(xli), and 606(ff))

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.