



Instructions for Forms IT-639 and IT-639-ATT

Minimum Wage Reimbursement Credit and Attachment Tax law – Article 1, Section 38 and Article 22, Section 606(aaa)

General information

For tax years beginning on or after January 1, 2014, and before January 1, 2019, the New York State Tax Law provides a credit to eligible employers or owners of an eligible employer who are subject to tax under Article 9 (section 185), 9-A, 22, or 33. Individuals (including sole proprietors), estates and trusts, shareholders of an S corporation, partners in a partnership (including a member of a limited liability company (LLC) who is treated as a partnership for federal income tax purposes), and beneficiaries of an estate or trust may claim the credit on Form IT-639.

Eligibility

To be eligible for this credit, you must meet **all** of the following requirements:

- you are subject to tax under Tax Law Article 9 (section 185), 9-A, 22, or 33;
- you are an eligible employer or an owner of an eligible employer; and
- you employ eligible employees.

Definitions

An *eligible employer* is a corporation (including an S corporation), a sole proprietorship, an LLC, or a partnership.

The credit may be claimed by an eligible employer or an owner of an eligible employer (for example, a partner in a partnership or a shareholder of an S corporation) who is subject to tax under Tax Law Article 9 (section 185), 9-A, 22, or 33.

An *eligible employee* is an employee who is:

- employed by an eligible employer in New York State (NYS);
- paid at the NYS minimum wage rate, as defined in Labor Law Article 19 during some part of the tax year by the eligible employer;
- at least 16 but not yet 20 years of age; and
- a student during the period he or she is paid at the NYS minimum wage rate by the eligible employer.

For purposes of this credit:

A *student* is an individual who is currently enrolled full-time or part-time in an eligible educational institution located inside or outside NYS.

An *eligible educational institution* is one that maintains a regular faculty and curriculum, and has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on. Examples of eligible educational institutions include secondary schools, colleges and universities, and any institution that offers a program of training to prepare students for gainful employment in a recognized occupation such as trade, technical, and vocational schools. Eligible educational institutions do not include correspondence schools, schools offering courses only through the Internet, or on-the-job training courses.

Hours worked by a student during scheduled school breaks will qualify for the credit provided the student is enrolled at an eligible educational institution and has not completed or discontinued his or her education.

An employer must obtain documentation to verify that the individual is currently enrolled as a student at an eligible

educational institution. The employer must retain a copy of the student's documentation for their records and make it available to the Tax Department upon request. For examples of acceptable documentation, visit our website (www.tax.ny.gov).

A *food service worker*, as defined by the NYS Department of Labor (DOL), is an employee primarily engaged in the serving of food and beverages to guests, patrons, or customers in the hospitality industry. They include, but are not limited to, wait staff, bartenders, captains, and busing personnel. They regularly receive tips from guests, patrons, or customers.

An *employer tip credit* is the amount of tips earned by an employee that the Labor Law allows his or her employer to take against the minimum wage requirement for that industry.

A *fast food establishment*, as defined by the NYS DOL, is any business that meets the following criteria:

- primarily serves food or drinks, including coffee shops, juice bars, donut shops, and ice cream parlors; and
- offers limited service where customers order and pay before eating, including restaurants with tables but without full table service, and places that only provide take-out service; and
- is part of a chain of 30 or more locations, including individually owned establishments associated with a brand that has 30 or more locations nationally.

For more information, see the Hospitality Industry Regulations available at the NYS DOL website (www.labor.ny.gov).

A *fast food employee*, as defined by the NYS DOL, is any person employed or permitted to work at or for a fast food establishment by any employer where such person's job duties include at least one of the following:

- customer service,
- cooking,
- food or drink preparation,
- delivery,
- security,
- stocking supplies or equipment,
- cleaning, or
- routine maintenance.

Credit information

The amount of the credit is equal to the total number of hours worked by eligible employees during the tax year, for which they are paid the NYS minimum wage, multiplied by the applicable tax rate for that year, as follows:

Tax years	Tax credit rate
Tax years beginning on or after January 1, 2014, and before January 1, 2015	\$0.75
Tax years beginning on or after January 1, 2015, and before January 1, 2016	\$1.31
Tax years beginning on or after January 1, 2016, and before January 1, 2019	\$1.35

If the federal minimum wage is increased to more than 85% of the NYS minimum wage, the above tax credit rates will be reduced to an amount equal to the difference between the NYS

minimum wage and the federal minimum wage. The reduction will be effective on the first day that the eligible employer is required to pay the increased federal minimum wage.

Unless otherwise noted, references in these instructions to the NYS minimum wage rate are to the rate in effect for the period December 31, 2015, through December 30, 2016. The NYS minimum wage increased effective December 31, 2016.

For information about the NYS minimum wage rates currently in effect, see the NYS DOL website at www.labor.ny.gov.

For information about the federal minimum wage rates currently in effect, see the U.S. Department of Labor website at www.dol.gov.

Note: If an employee is paid the NYS minimum wage for part of a year and paid a higher wage for the remainder of the year, the taxpayer can only receive the credit for the number of hours worked by eligible employees for which they were paid the NYS minimum wage rate.

An eligible employer who discharges an ineligible employee and replaces that employee with an eligible employee solely for the purpose of qualifying for the credit does not qualify to claim the credit for any eligible employee. In addition, an eligible employee who is used as the basis for this credit may not be used as the basis for any other credit allowed under the Tax Law.

Effective December 31, 2015, a new minimum wage for workers employed in fast food establishments has been established. An eligible employer may claim the minimum wage reimbursement credit for an eligible employee who is a fast food employee paid at the minimum wage rate for such employee as defined under Labor Law Article 19.

An employer may claim the minimum wage reimbursement credit for tipped food service worker employees under the following two circumstances:

- An employee is paid the statutory minimum cash wage rate for tipped employees (\$7.50 per hour), provided that the employer tip credit, when added to the cash wage, equals the minimum wage in effect under Labor Law section 652.1; or
- An employee is paid at an hourly cash wage rate greater than the statutory minimum cash wage rate for tipped food service worker employees (\$7.50 per hour), but not more than the basic minimum wage rate (\$9.00 per hour; the rate increased on December 31, 2016) because the total cash wages plus tips received by the employee did not meet the basic minimum wage required for all workers, provided that the employer tip credit, when added to the cash wage, equals the minimum wage in effect under Labor Law section 652.1.

For more information regarding the current statutory minimum cash wage rate for tipped employees, see the NYS DOL website at www.labor.ny.gov.

Example 1: A bartender who is a tipped employee earns \$8.00 per hour in cash wages from his employer and \$4.00 per hour in tips. The employer may not claim the credit for this employee because his cash wage rate plus tips exceeds the minimum wage rate of \$9.00 per hour.

Example 2: A waitress who is a tipped employee earns less than \$9.00 per hour in wages and tips. The employer must pay a cash wage greater than \$7.50 per hour (the current minimum cash wage) to bring the waitress's total hourly rate to \$9.00 per hour required for all employees. The employer may claim the credit for those hours he is required to pay more than \$7.50 per hour to bring the employee's wages up to the statutory minimum wage of \$9.00 per hour.

If the amount of the eligible employee's base pay per hour on which overtime pay is calculated equals the statutory minimum wage per hour, then the hours of overtime work qualify to be counted for calculation of the minimum wage reimbursement credit. Commissions and bonuses are not structured as payment for an hourly wage and would not become part of the calculation of the credit.

If the federal minimum wage exceeds the NYS minimum wage, no credit may be claimed for the hours eligible employees work at the higher federal minimum wage rate.

Any unused amount of credit for the current tax year will be treated as a refund or overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

Who must file

File Form IT-639 if you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in a partnership, or a shareholder of an S corporation, and you are claiming the minimum wage reimbursement credit.

An estate or trust that divides the credit amongst itself and its beneficiaries must submit Form IT-639 with Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit.

A partnership must submit Form IT-639 with Form IT-204, *Partnership Return*, showing the total credit.

An S corporation does not file Form IT-639; it must file Form CT-639, *Minimum Wage Reimbursement Credit*. If you are a shareholder of an S corporation, obtain your share of the S corporation's credit from the S corporation and follow the instructions on this form for claiming your credit on your personal income tax return.

File a separate Form IT-639 for each eligible employer completing Schedule A.

Line instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Line A – Mark an **X** in the appropriate box to determine the parts of this form you need to complete.

Individuals (including sole proprietors): Complete Schedules A and D and Form IT-639-ATT, *Eligible Employee Information for the Minimum Wage Reimbursement Credit*, if applicable.

Fiduciaries: Complete Schedules A, C, and D and Form IT-639-ATT, if applicable.

Partnerships: Complete Schedules A and D and Form IT-639-ATT, if applicable.

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, compute your credit amount as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Complete Schedules A and D and Form IT-639-ATT, if applicable.

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust: Complete Schedules B and D.

Note: If more than one set of instructions applies, follow all the instructions that apply to you.

Schedule A – Individual (including sole proprietor), partnership, and fiduciary

Parts 1 and 2

Enter the information for each eligible employee in Part 1 or Part 2, as applicable. If you have more employees to report than will fit in either part, complete the required information for the additional employees on Form IT-639-ATT, in the applicable part. Use the instructions below for each applicable part to complete Form IT-639-ATT, Parts 1 and 2.

Enter your name and identifying number as shown on your return and the business name and EIN on Form IT-639-ATT and submit it with Form IT-639.

Part 1 – Credit for hours worked when the federal minimum wage does not exceed 85% of the New York State (NYS) minimum wage

Complete Part 1 for hours worked when the federal minimum wage rate does not exceed 85% of the NYS minimum wage.

Example 3: *The federal minimum wage rate does not exceed 85% of the NYS basic minimum wage of \$9.00 (\$7.65). Qualified employee A was paid the NYS basic minimum wage of \$9.00 per hour. The employer should complete Part 1.*

Column D – Enter the total number of hours (including partial hours) worked by an eligible employee during the tax year for which they are paid the NYS minimum wage rate. Do not round the hours.

Do not enter any hours for which the employee was paid at a rate greater than the NYS minimum wage. No credit is allowed for those hours.

Example 4: *Employee A worked 300 hours during 2016 for which she was paid the NYS minimum wage of \$9.00 per hour. She received an increase in pay to \$9.50 per hour and worked 100 hours during 2016 earning that rate. Her employer should enter 300 hours in column D. Credit cannot be claimed for the 100 hours for which her regular pay rate exceeded the NYS minimum wage rate.*

Example 5: *A food service worker worked 600 hours during 2016 for which he was paid \$7.50 per hour in cash wages and his employer took a tip credit of \$1.50 per hour. His employer should enter 600 hours in column D since the worker's hourly cash wage rate and employer tip credit equals the NYS basic minimum hourly cash wage rate for food service workers.*

Example 6: *Employee B worked 500 hours during 2016 for which she was paid the NYS minimum wage of \$9.00 per hour. She also received overtime pay for 30 hours and a \$100 bonus. Since she received the NYS minimum wage as her regular rate, her employer should enter 530 hours (500 regular hours + 30 overtime hours) in column D. The \$100 bonus is not considered in the computation of the credit.*

Part 2 – Credit for hours worked when the federal minimum wage exceeds 85% of the NYS minimum wage

If the federal minimum wage is increased to an amount greater than 85% of the NYS minimum wage, complete Part 2 to calculate the credit for any hours worked after the increase in the federal rate goes into effect.

Example 7: *The federal minimum wage rate is increased to \$8.50 which exceeds 85% of the basic NYS minimum wage rate of \$9.00 (\$7.65). Qualified employee B was paid the NYS basic minimum wage rate of \$9.00 per hour. The employer should complete Part 2 for any hours worked after the increased federal minimum wage rate went into effect.*

Column D – Enter the total number of hours (including partial hours) worked by an eligible employee during the tax year for which they are paid the NYS minimum wage rate. Do not round the hours.

Do not enter any hours for which the employee was paid at a rate greater than the NYS minimum wage. No credit is allowed for those hours (see *Example 4*).

Do not make any entries for hours worked if the federal minimum wage exceeds the NYS minimum wage. No credit is allowed for those hours.

Column E – Enter the NYS minimum hourly wage rate.

For fast food employees, enter **\$9.75** for eligible employees who work in NYS, but outside New York City (NYC), and **\$10.50** for eligible employees who work in NYC.

For food service workers, enter the NYS basic minimum hourly rate for cash wage and tip credits per hour (currently \$7.50 plus \$1.50 tip credit, for a total of \$9.00 to be entered in column E).

Note: The NYS minimum wage increased effective December 31, 2016.

Current NYS minimum hourly rates may be found at the NYS DOL website (www.labor.ny.gov).

Column F – Enter the federal minimum hourly wage rate.

For food service workers, enter the federal basic combined cash and tip minimum wage rate.

Current federal minimum hourly rates may be found at the U.S. Department of Labor website (www.dol.gov).

Example 8: *Employee C worked 200 hours during 2016 for which he was paid the NYS minimum wage of \$9.00 per hour. The federal minimum wage was increased to \$8.75. Employee C worked 100 hours after the federal rate increase went into effect. His pay rate remained at \$9.00 per hour. His employer should complete **Part 1** and enter 200 hours in column D for the hours worked before the federal rate increased. The employer should also complete **Part 2** and enter 100 hours in column D for the hours worked after the federal rate increased, \$9.00 in column E and \$8.75 in column F.*

The credit in Part 1 is calculated at \$1.35 per hour for the first 200 hours (\$270 total for Part 1). The credit in Part 2 is calculated at \$.25 per hour (\$9.00 - \$8.75) for the last 100 hours (\$25 total in Part 2). The total credit for this employee for 2016 is \$295.

Example 9: *Employee D worked 500 hours during 2016 for which he received the NYS minimum wage of \$9.00 per hour. He also received overtime pay for 30 hours and a \$100 bonus. Since he received the NYS minimum wage as his regular rate, his employer should enter 530 hours (500 regular hours + 30 overtime hours) in column D. The employer should enter \$9.00 in column E and the federal minimum wage rate in column F. The \$100 bonus is not considered in the computation of the credit.*

Example 10: *The federal minimum wage rate increased to \$8.50 on August 1, and then to \$9.25 on November 1. Employee E received \$9.00 per hour for 200 hours worked during August 1 to October 31. She received \$9.25 per hour for 100 hours worked from November 1 to December 15. Her employer should enter 200 hours in column D, \$9.00 in column E, and \$8.50 in column F. No credit may be claimed for the 100 hours she worked from November 1 to December 15 since the federal minimum wage rate exceeded the NYS minimum wage.*

Column G – This amount cannot exceed the current tax credit rate of \$1.35.

Schedule B – Partner’s, shareholder’s or beneficiary’s share of credit

Enter the appropriate information for each partnership, New York S corporation, or estate or trust from which you received a share of the minimum wage reimbursement credit. Obtain your share of the credit from your partnership, S corporation, estate or trust.

If you need more space, enter your name and taxpayer identification number as shown on your return, and complete only Schedule B on additional Form(s) IT-639. Place the additional forms behind the first Form IT-639. Include on line 9 of the first Form IT-639 the total of column D from all additional Form(s) IT-639.

Schedule C – Beneficiary’s and fiduciary’s share of credit

An estate or trust must complete this schedule. If an estate or trust allocates or assigns the credit to its beneficiaries, base the division on each beneficiary’s proportionate share of the income of the estate or trust. Provide the beneficiaries with their share of the credit. If you need more space, enter your name and taxpayer identification number as shown on your return, and complete only Schedule C on additional Form(s) IT-639. Place the additional forms behind the first Form IT-639. Include on line 12 of the first Form IT-639, the total of column C from all additional Form(s) IT-639.

Schedule D – Computation of credit

Fiduciaries: Do not enter any amounts on lines 15 or 16. Enter the amount from line 14, on line 17.

Line 18 – Enter this amount and code **639** on Form IT-201-ATT, line 12; or on Form IT-203-ATT, line 12; or on Form IT-204, line 147; or include it on Form IT-205, line 33.
