

Labor & Employment N.Y. ("LENY")

The Official Blog of the New York State Bar Association's Labor and Employment Law Section

New Tax Credit is Now in Effect for Eligible New York Employers of Student Employees Who Earn Minimum Wage

On January 1, 2014, the newly created minimum wage reimbursement tax credit went into effect and could result in significant tax reductions for some New York employers. The tax credit allows eligible employers to receive a refundable credit on their New York state taxes for hours worked by student employees paid the minimum wage. The credit is in effect from 2014 until 2019. On December 30, 2013, the New York Department of Taxation and Finance released [Technical Memorandum TSB-M-13\(8\) C. \(7\)I](#) to provide guidance on the credit. The Memorandum outlines who qualifies as an eligible employer and an eligible employee, the amount of the credit, and limitations on the credit.

Eligible Employers: An employer or business owner is eligible for the tax credit if the employer is "a corporation (including a New York S corporation), a sole proprietorship, a limited liability company, or a partnership" and the employer or owner is subject to one of the following taxes: franchise tax on agricultural corporations organized and operated on a cooperative basis (Article 9 § 185); franchise tax on business corporations (Article 9-A); personal income tax (Article 22); franchise tax on banking corporations (Article 32), or franchise taxes on insurance corporations (Article 33).

Eligible Employees: An employee's work hours may count toward the tax credit if the employee is (1) employed in New York by an eligible employer; (2) paid at the New York minimum wage rate by the eligible employer for at least part of the tax year; (3) at least 16 but under 20 years of age; and (4) a student during the period of time they are paid at the minimum wage rate.

"Students" include employees that are attending secondary school and most post-secondary schools located inside or outside New York State. Qualifying schools include "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" but not "correspondence schools, schools offering courses only through the Internet, or on-the-job training courses." Work done during scheduled

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school breaks still qualifies for the credit if the employee will return to school.

Importantly, employers are required to obtain documentation of student status and be prepared to make the documentation available to the New York Tax Department upon request. Adequate documentation could be "a student's identification card, a student's current or future course schedule issued by the school, a letter from the student's school verifying his or her current or future enrollment, or working papers" issued by the New York Department of Labor.

Credit Amount: Eligible employers and owners can take a tax credit at the rate of \$0.75 per hour worked at the minimum wage rate by eligible employees for tax years starting in 2014. The rate goes up to \$1.31 for tax years starting in 2015 and \$1.35 for tax years starting in 2016-2018. However, these amounts will be reduced "if the federal minimum wage is increased to more than 85% of New York's minimum wage...to an amount equal to the difference between New York's minimum wage and the federal minimum wage."

Limitations: The credit cannot reduce the tax below the minimum tax listed for taxpayers under Article 9 § 185, Article 9-A, Article 32, or Article 33. But, for Article 22 taxpayers (personal income tax), the tax due may be reduced to zero.

Employers should note that this tax credit is not available if an ineligible employee is fired solely so the employer can hire an eligible employee. Employers cannot use the same eligible employee as the basis for the minimum wage tax credit and another tax credit. The minimum wage reimbursement tax credit is refundable, with any excess credit treated as a tax overpayment to be either credited or refunded without interest.

This post was authored by [Matt Lampe](#), [Emilie Hendee](#), and Laura Jean Eichten of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.

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