



**Empire State
Development**



NYS Restaurant Return-to-Work Tax Credit Program

A Tax Credit program for NYS Restaurants Impacted by COVID-19

Program Overview

- The Restaurant Return-to-Work Tax Credit Program provides an incentive to COVID-impacted restaurant businesses to bring restaurant staff back-to-work, and to increase hiring during 2021.
- **Businesses are eligible for a tax credit of \$5,000 per each net new employee hired** at its qualifying restaurant location(s) **up to a maximum of \$50,000 per business** (if 10 or more net new employees are added).
- The Program is open to eligible businesses with a restaurant location or locations in New York City, or in an area outside of New York City that was designated an Orange or Red Zone for at least thirty consecutive days. Outside of New York City qualifying locations include certain areas of Chemung, Erie, Monroe, Onondaga, Orange, Rockland and Westchester Counties.
- \$35 million is available for allocation to eligible businesses

Program Overview (continued)

- To be responsive to the needs of COVID-impacted restaurants, the Program provides a **Fast Track Option**, which allows a business to claim the credit before the end of the tax year.
- Businesses may claim the credit before November 15, 2021 (Fast Track Option) if the business can demonstrate a net employee increase of at least 1 full-time employee as measured from April 1, 2021 to August 31, 2021.
- Alternatively, businesses can choose to claim the tax credit on their 2021 NYS tax return if the business can demonstrate a net employee increase of at least 1 full-time employee as measured from April 1, 2021 to December 31, 2021.

Program Overview (continued)

- A business must increase its employment in NYS by at least one full time employee.

AND

In calculating the net new employee growth and tax credit amount for a business, **the average number of employees at the qualifying restaurant location(s) between January 1, 2021, and March 31, 2021 (the initial period), will be subtracted from the average number of employees at the same location(s) between one of two employment growth periods:**

- **April 1, 2021, to August 31, 2021 (Fast Track Option); or**
- **April 1, 2021, to December 31, 2021 (Year-End Option).**

To claim the credit, businesses must first apply to ESD to receive a tax credit certificate and must then submit their tax credit certificate to the New York State Department of Tax and Finance (DTF).

The Fast Track Option

- **Under the Fast-Track Option, businesses must choose August 31, 2021,** as the ending date for measuring their employment growth and submit all completed materials by **October 15, 2021.** Businesses utilizing this option may claim a tax credit prior to filing their 2021 tax return and will be eligible to receive an advance payment from DTF.
- Up to \$35 million in tax credits will be awarded by ESD to businesses until the conclusion of the Year-End Option application period **or until funds are fully allocated, whichever comes first.**
- If credits still remain after all awards under the Fast-Track Option, **under the Year-End Option, businesses may choose December 31, 2021,** as the ending date for measuring employment growth and must submit all completed application materials by the Year-End Option deadline. Businesses utilizing this option may claim the tax credit on their 2021 tax return and will be issued a credit against taxes owed and/or a refund payment from DTF.

Eligible Businesses

Eligible businesses are full-service and limited-service food and beverage establishments in New York State that operate predominantly as and make significant accommodations for on-premises, in-person dining, such as:

- **Bars, taverns, nightclubs**, or drinking places primarily engaged in preparing and serving alcoholic beverages for immediate consumption.
- **Full-service restaurants** primarily engaged in providing food services to patrons who order and are served while seated (i.e. waiter/waitress service) and paying after eating.
- **Limited-service restaurants** engaged in providing food services (except snack and nonalcoholic beverage bars) where patrons generally order or select items and pay before eating. Some establishments in this industry may provide these food services in combination with selling alcoholic beverages.
- **Breweries/wineries/cideries/distilleries/meaderies** with a tasting room and for which on-premise sales represent at least thirty-three percent (33%) of gross receipts.

Additional Eligibility Requirements for Businesses

- **Businesses must be independently owned and operated** (excludes franchises) **with less than 100 employees.**
- Qualifying restaurant locations must **be located in NYC or in an area formerly or currently designated an orange or red zone.**
- Businesses **must demonstrate either a 40% decline in gross receipts or a 40% decline in employment.** The 40% decline may be shown by comparing gross receipts or employment in either the 2nd or 3rd quarter of 2019 and the same quarter of 2020.
- **Businesses must achieve a net employee increase** (i.e., add at least one full time employee during the employment growth period) **AND** there must be a net employee increase at a qualifying restaurant location.
- Businesses and qualifying restaurant locations **must be in substantial compliance with State health laws** and directives.
- **Businesses must not owe past due state taxes or local property taxes** unless the business is making payments and complying with an approved binding agreement with the taxing authority.
- Businesses authorized to sell alcohol **must hold an active New York State Liquor License.**

Ineligible Businesses

- **Ineligible food service-related businesses** are those that operate predominantly as take-out or quick service establishments and **do not offer on-premises, in-person dining, or only offer incidental seating capacity for on-premises consumption.**
- **Ineligible businesses generally include caterers, mobile food services, supermarkets and groceries, and other specialty shops that fail to meet the above business definitions.**



Required Documents

- **EVIDENCE OF ECONOMIC HARM FROM COVID-19:**

- **2019 and 2020 Business Income Tax returns:**

- *For partnerships – include IRS Form 1065 and Schedule K-1*
 - *For sole proprietors – include IRS Form 1040 Schedule C*
 - *For Corporations – include IRS Form 1120 or 1120-S*

- **EVIDENCE OF BUSINESS LOCATION AND CURRENT OPERATION:**

- **Two of the following documents** demonstrating that the business is operating at the qualifying location(s):

- *Current lease; or*
 - *Utility bill; or*
 - *Current business bank statement; or*
 - *Current business mortgage statement; or*
 - *Business credit card statement; or*
 - *Professional insurance bill; or*
 - *Payment processing statement*
 - *NYS ST-809 or ST-100 sales tax collection documentation.*

- **SCHEDULE OF OWNERSHIP:**

- Listing of names, social security number or federal employer identification number, and percentage ownership for ALL owners of the business.*



Required Documents (continued)

- **EVIDENCE OF NUMBER OF EMPLOYEES:**

NYS-45 documents for the following periods:

- *April 1, 2019, to June 30, 2019*
- *July 1, 2019, to September 30, 2019*
- *April 1, 2020, to June 30, 2020*
- *July 1, 2020, to September 30, 2020*
- *January 1, 2021, to March 31, 2021*

**NOTE* By October 15, 2021, employment data for April 1, 2021, through August 31, 2021, will be due for businesses applying for the advance payment option. If funds remain after the advance payment are made, businesses will have until January 14, 2022, to submit employment data for the April 1, 2021, to December 31, 2021, period.*

- **EVIDENCE FOR WINERIES AND BREWERIES WITH TASTING ROOMS:**

Documents evidencing that onsite sales to the public comprise at least 33% of gross receipts for 2019 to include Tax and Trade Bureau (TTB) Form 5130.9 for breweries and Form F5120.17 for wineries.



How to Apply:

- **Go to the Empire State Development Program webpage and complete the eligibility questionnaire.**
<https://esd.ny.gov/restaurant-return-work-tax-credit>
- If you have a restaurant location in a qualifying area and meet the eligibility requirements, you will be invited to submit an application via email.
- For a list of Technical Assistance providers to help you complete your application visit:
<https://esd.ny.gov/organizations-available-assist-businesses>
- If you have additional questions, please email ESD at NYSRestauranttaxcredit@esd.ny.gov