

Computing the minimum wage credit for tipped employees and impact of layoffs on the 90-day requirement (This is a GIL).

May 25, 2023

NAME/ADDRESS

Dear NAME:

This letter is in response to your letter in which you requested information about computing the minimum wage credit. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We have several questions about figuring the minimum wage credit. We were advised by the IDOR representative to write the legal department for clarification on this matter.

How do you treat the employees that are tipped, do you use their pay rate or their total wages including their tips earned?

When we called the hotline they recommended using the tipped wage \$4.95-\$6.00 to figure the credit. However, employers are required to make up any shortfalls in earnings that the servers may have to make sure they are earning the minimum wage of \$8.25-\$10.00/hour. There are also employees that earn well over minimum wage when including their tips, and we don't want to take a credit if they are not allowed.

The other question is the 90-day requirement, if the employee was laid off due to Covid does that take away from their terms of employment, or do we consider them working if they were employed before the shutdowns?

DEPARTMENT'S RESPONSE:

IDOR regulation 86 Ill. Admin. Code 100.7390(f) provides that the minimum wage credit is computed by taking the sum of the total compensation paid in Illinois to eligible employees who earned no more than the current minimum wage during the reporting period less the total compensation paid in Illinois to employees earning less than the current minimum wage during the fourth quarter of the calendar year prior to the reporting period. Tips would not be considered compensation, but any amount paid by the employer to ensure the employee's wages plus tips reach the required minimum wage would be compensation. See 86 Ill. Admin. Code 100.3100.

In addition, no credit may be claimed for employees who have not worked for at least 90 consecutive days, but the credit still accrues, and those wages may be claimed in a future reporting period after the employee has worked 90 consecutive days. See 86 Ill. Admin. Code 100.7390(e)(2).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Brian Fliflet
Deputy General Counsel