Internal Revenue Code Section 45A(c)(5)(A)

Indian employment credit

(a) Amount of credit.
For purposes of section 38 , the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of-

(1) the sum of-

(A) the qualified wages paid or incurred during such taxable year, plus

(B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

(b) Qualified wages; qualified employee health insurance costs.
For purposes of this section-

(1) Qualified wages.

(A) In general. The term "qualified wages" means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

(B) Coordination with work opportunity credit. The term "qualified wages" shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51 . If any portion of wages are taken into account under subsection (e)(1)(A) of section 51, the preceding sentence shall be applied by substituting "2-year period" for "1-year period".

(2) Qualified employee health insurance costs.

(A) In general. The term "qualified employee health insurance costs" means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

(B) Exception for amounts paid under salary reduction arrangements. No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A) .

(3) Limitation.
The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed $20,000.

(c) Qualified employee.
For purposes of this section-

(1) In general.
Except as otherwise provided in this subsection, the term "qualified employee" means, with respect to any period, any employee of an employer if-

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

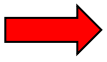
(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

(2) Individuals receiving wages in excess of $30,000 not eligible.
An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

(3) Inflation adjustment.
The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d) , except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993.

(4) Employment must be trade or business employment.
An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2) .

(5) Certain employees not eligible.
The term "qualified employee" shall not include-



(A) any individual described in subparagraph (A) , (B) , or (C) of section 51(i)(1) ,

(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the

Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

(6) Indian tribe defined.
The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) Indian reservation defined.
The term "Indian reservation" has the meaning given such term by section 168(j)(6) .

(d) Early termination of employment by employer.
(1) In general.
If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer-

(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

(2) Carrybacks and carryovers adjusted.
In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

(3) Subsection not to apply in certain cases.
(A) In general. Paragraph (1) shall not apply to-
(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business. For purposes of paragraph (1) , the employment relationship between the taxpayer and an employee shall not be treated as terminated-

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(4) Special rule.
Any increase in a tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of-

(A) determining the amount of any credit allowable under this chapter, and

(B) determining the amount of the tax imposed by section 55 .

(e) Other definitions and special rules.
For purposes of this section-

(1) Wages.
The term "wages" has the same meaning given to such term in section 51 .

(2) Controlled groups.

(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

(3) Certain other rules made applicable.
Rules similar to the rules of section 51(k) and subsections (c) , (d) , and (e) of section 52 shall apply.

(4) Coordination with nonrevenue laws.
Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph.

(5) Special rule for short taxable years.
For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

(f) Termination.
This section shall not apply to taxable years beginning after December 31, 2021.