Internal Revenue Code Section 45R(e)(1)

Description

(a) General rule. For purposes of section 38 , in the case of an eligible small employer, the small employer health insurance credit determined under this section for any taxable year in the credit period is the amount determined under subsection (b) .

(b) Health insurance credit amount. Subject to subsection (c) , the amount determined under this subsection with respect to any eligible small employer is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of—

(1) the aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the arrangement described in subsection (d)(4) for premiums for qualified health plans offered by the employer to its employees through an Exchange, or

(2) the aggregate amount of nonelective contributions which the employer would have made during the taxable year under the arrangement if each employee taken into account under paragraph (1) had enrolled in a qualified health plan which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage.

(c) Phaseout of credit amount based on number of employees and average wages. The amount of the credit determined under subsection (b) without regard to this subsection shall be reduced (but not below zero) by the sum of the following amounts:

(1) Such amount multiplied by a fraction the numerator of which is the total number of full-time equivalent employees of the employer in excess of 10 and the denominator of which is 15.

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is such dollar amount.

(d) Eligible small employer. For purposes of this section —

(1) In general.
The term "eligible small employer" means, with respect to any taxable year, an employer—

(A) which has no more than 25 full-time equivalent employees for the taxable year,

(B) the average annual wages of which do not exceed an amount equal to twice the dollar amount in effect under paragraph (3)(B) for the taxable year, and

(C) which has in effect an arrangement described in paragraph (4) .

(2) Full-time equivalent employees.

(A) In general. The term "full-time equivalent employees" means a number of employees equal to the number determined by dividing—

(i) the total number of hours of service for which wages were paid by the employer to employees during the taxable year, by

(ii) 2,080.

Such number shall be rounded to the next lowest whole number if not otherwise a whole number.

(B) Excess hours not counted. If an employee works in excess of 2,080 hours of service during any taxable year, such excess shall not be taken into account under subparagraph (A) .

(C) Hours of service. The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(3) Average annual wages.

(A) In general. The average annual wages of an eligible small employer for any taxable year is the amount determined by dividing—

(i) the aggregate amount of wages which were paid by the employer to employees during the taxable year, by

(ii) the number of full-time equivalent employees of the employee determined under paragraph (2) for the taxable year.

Such amount shall be rounded to the next lowest multiple of $1,000 if not otherwise such a multiple.

(B) Dollar amount. For purposes of paragraph (1)(B) and subsection (c)(2) —

(i) 2010, 2011, 2012, and 2013. The dollar amount in effect under this paragraph for taxable years beginning in 2010, 2011, 2012, or 2013 is $25,000.

(ii) Subsequent years. In the case of a taxable year beginning in a calendar year after 2013, the dollar amount in effect under this paragraph shall be equal to $25,000, multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2012" for "calendar year 1992" in subparagraph (B) thereof .

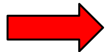
(4) Contribution arrangement.
An arrangement is described in this paragraph if it requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan offered to employees by the employer through an exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the qualified health plan.

(5) Seasonal worker hours and wages not counted.
For purposes of this subsection —

(A) In general. The number of hours of service worked by, and wages paid to, a seasonal worker of an employer shall not be taken into account in determining the full-time equivalent employees and average annual wages of the employer unless the worker works for the employer on more than 120 days during the taxable year.

(B) Definition of seasonal worker. The term "seasonal worker" means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

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



(1) Employee.

(A) Certain employees excluded. The term "employee" shall not include—

(i) an employee within the meaning of section 401(c)(1) ,

(ii) any 2-percent shareholder (as defined in section 1372(b)) of an eligible small business which is an S corporation,

(iii) any 5-percent owner (as defined in section 416(i)(1)(B)(i)) of an eligible small business, or

(iv) any individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to, or is a dependent described in section 152(d)(2)(H) of, an individual described in clause (i) , (ii) , or (iii) .

(B) Leased employees. The term “employee” shall include a leased employee within the meaning of section 414(n) .

(2) Credit period.
The term “credit period” means, with respect to any eligible small employer, the 2-consecutive-taxable year period beginning with the 1st taxable year in which the employer (or any predecessor) offers 1 or more qualified health plans to its employees through an Exchange.

(3) Nonelective contribution.
The term “nonelective contribution” means an employer contribution other than an employer contribution pursuant to a salary reduction arrangement.

(4) Wages.
The term “wages” has the meaning given such term by section 3121(a) (determined without regard to any dollar limitation contained in such section).

(5) Aggregation and other rules made applicable.

(A) Aggregation rules. All employers treated as a single employer under subsection (b) , (c) , (m) , or (o) of section 414 shall be treated as a single employer for purposes of this section .

(B) Other rules. Rules similar to the rules of subsections (c) , (d) , and (e) of section 52 shall apply.

(f) Credit made available to tax-exempt eligible small employers.

(1) In general.
In the case of a tax-exempt eligible small employer, there shall be treated as a credit allowable under subpart C (and not allowable under this subpart) the lesser of—

(A) the amount of the credit determined under this section with respect to such employer, or

(B) the amount of the payroll taxes of the employer during the calendar year in which the taxable year begins.

(2) Tax-exempt eligible small employer.
For purposes of this section , the term “taxexempt eligible small employer” means an eligible small employer which is any organization described in section 501(c) which is exempt from taxation under section 501(a) .

(3) Payroll taxes.
For purposes of this subsection —

(A) In general. The term “payroll taxes” means—

(i) amounts required to be withheld from the employees of the tax-exempt eligible small employer under section 3401(a) ,

(ii) amounts required to be withheld from such employees under section 3101(b) , and

(iii) amounts of the taxes imposed on the tax-exempt eligible small employer under section 3111(b) .