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Internal Revenue Code Section 45E(e)(2)

Small employer pension plan startup costs

(a) General rule.

For purposes of section 38, in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

(b) Dollar limitation.

The amount of the credit determined under this section for any taxable year shall not exceed-

(1) for the first credit year and each of the taxable years immediately following the first credit year, the greater of-

(A) \$500, or

(B) the lesser of-

(i) \$250 for each employee of the eligible employer who is not a highly compensated employee (as defined in section 414(q)) and who is eligible to participate in the eligible employer plan maintained by the eligible employer, or

(ii) \$5,000, and

(2) zero for any other taxable year.

(c) Eligible employer.

For purposes of this section-

(1) In general.

The term "eligible employer" has the meaning given such term by section 408(p)(2)(C)(i).

(2) Requirement for new qualified employer plans.

Such term shall not include an employer if, during the 3-taxable year period immediately preceding the 1st taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

(d) Other definitions.

For purposes of this section-

(1) Qualified startup costs.

(A) In general. The term "qualified startup costs" means any ordinary and necessary expenses of an eligible employer which are paid or incurred in connection with-

- (i) the establishment or administration of an eligible employer plan, or
- (ii) the retirement-related education of employees with respect to such plan.

(B) Plan must have at least 1 participant. Such term shall not include any expense in connection with a plan that does not have at least 1 employee eligible to participate who is not a highly compensated employee.

(2) Eligible employer plan.

The term "eligible employer plan" means a qualified employer plan within the meaning of section 4972(d).

(3) First credit year.

The term "first credit year" means-

(A) the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective, or

(B) at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A).

(e) Special rules.

For purposes of this section-

(1) Aggregation rules.

All persons treated as a single employer under subsection (a) or (b) of section 52 , or subsection (m) or (o) of section 414 , shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

(2) Disallowance of deduction.

No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).

(3) Election not to claim credit.

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

