Small Business Tax Credit for Employee Health Expenses

**Summary:** Provides a sliding scale tax credit to small employers with fewer than 25 employees and average annual wages of less than $40,000 that purchase health insurance for their employees. The full credit will be available to employers with 10 or fewer employees and average annual wages of less than $20,000. To be eligible for a tax credit, the employer must contribute at least 50 percent of the total premium cost or 50 percent of a benchmark premium. In 2010 through 2013, eligible employers can receive a small business tax credit for up to 35 percent of their contribution toward the employee’s health insurance premium. Tax-exempt small businesses meeting the above requirements are eligible for tax credits of up to 25 percent of their contribution. In 2014 and beyond, eligible employers who purchase coverage through the State Exchange can receive a tax credit for two years of up to 50 percent of their contribution. Tax-exempt small businesses meeting the above requirements are eligible for tax credits of up to 35 percent of their contribution.

**Status Updates:**
- On March 21, 2011, the Small Business Administration released a memo on this topic.

**Next steps:**
- January 1, 2010 – Provision goes into effect
- May 17, 2010 – Internal Revenue Service (IRS) issues new guidance regarding the credit
- December 2, 2010 – IRS released final guidance regarding this program
- January 14, 2011 – *Health Affairs* released a health policy brief on this topic
- March 21, 2011 – Small Business Administration released a memo on this topic
- January 1, 2014 – Credit limited to two taxable years; changes regarding the computation of the credit occur

**Additional information:**
- Information from the IRS regarding the credit -- [http://www.irs.gov/newsroom/article/0,,id=223666,00.html](http://www.irs.gov/newsroom/article/0,,id=223666,00.html)
Long summary:
Sec. 1421. Credit for employee health insurance expenses of small businesses (as modified by sec. 10105).
Small businesses and eligible tax-exempt employers who are required to make certain non-elective contributions toward the costs of employee health benefits will be eligible for a small business credit to offset the cost of employee health insurance.

Total amount of credit. When fully effective, the new credit will be up to 50 percent of the lesser of: (1) the employer's aggregate contributions towards premiums paid to a qualified health plan offered by the employer through an exchange; or (2) the aggregate contributions an employer would have made if the employee had enrolled in a qualified health plan having a premium equal in value to the average premium for the small group market in which the employee enrolls. For years 2010 through 2013, the credit is 35 percent of the lesser of: (1) employer's nonelective contributions for premiums paid for health insurance coverage; or (2) the average premium for the small group market in the employer state.

Qualifications. To qualify, the business must have no more than 25 full-time equivalent employees (FTEs), pay average annual wages of less than $50,000, provide qualifying coverage, and pay at least 50% of the premium amount. Amounts contributed pursuant to a salary reduction arrangement are not counted as employer contribution.

Full credit amount. The full amount of the credit will be available to employers with 10 or fewer employees and average annual wages of less than $25,000, and will phase out when those thresholds are exceeded. Wage limits indexed to the CPI-U beginning in 2014. For tax-exempt employers, the maximum credit is 25 percent for years 2010 through 2013, increasing to 35 percent in 2014.

Determination of the number of FTEs and average wages. Full-time equivalents (FTEs) calculated by dividing total hours worked by all employees during a tax year by 2,080. Hours worked by an employee in excess of 2,080 are not counted. The Secretary of Treasury, in consultation with the Labor Secretary to determine hours for employees not paid by the hour. Average wages equal to total wages divided by FTEs, rounded to
the next lowest $1,000.

**Employees not covered.** Employers will not be eligible to use the credit for certain employees, including defined “seasonal workers,” self-employed individuals, 2 percent shareholders of an S corporation (as defined by section 1372(b)), 5 percent owners of a small business (as defined by section 416(i)(1)(B)(i)), and dependents or other household members. However, leased employees are eligible employees for the credit.

**Effect on deduction and other issues.** Employers receiving credits will be denied any deduction for health insurance costs equal to the credit amount. The credit is treated as a general business credit. The credit is also available for tax liability under the alternative minimum tax. For tax exempt employers, the credit counts against payroll tax contributions and may not exceed the employer’s total payroll tax obligation.

**Limitation on credit.** Credits limited to 2 years, but periods prior to 2014 are not counted toward the two-year limit.

**Effective date.** The provision is effective for amounts paid or incurred after December 31, 2009, and to the determination of AMT credits after that date and their carryback.

**Legislative text:**

SEC. 1421. CREDIT FOR EMPLOYEE HEALTH INSURANCE EXPENSES OF SMALL BUSINESSES.
(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by inserting after section 45Q the following:
“SEC. 45R. EMPLOYEE HEALTH INSURANCE EXPENSES OF SMALL EMPLOYERS.
“(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)—
‘‘(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 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 ‘tax-exempt 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).

‘‘(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

‘‘(g) APPLICATION OF SECTION FOR CALENDAR YEARS 2010, 2011, 2012, AND 2013.—In the case of any taxable year beginning in 2010, 2011, 2012, or 2013, the following modifications to this section shall apply in determining the amount of the credit under subsection (a):

‘‘(1) NO CREDIT PERIOD REQUIRED.—The credit shall be determined without regard to whether the taxable year is in a credit period and for purposes of applying this section to taxable years beginning after 2013, no credit period shall be treated as beginning with a taxable year beginning before 2014.

‘‘(2) AMOUNT OF CREDIT.—The amount of the credit determined under subsection (b) shall be determined—

(A) by substituting ‘35 percent (25 percent in the case of a tax-exempt eligible small employer)’ for ‘50 percent (35 percent in the case of a tax-exempt eligible small employer)’,

(B) by reference to an eligible small employer’s nonelective contributions for premiums paid for health insurance coverage (within the meaning of section 9832(b)(1)) of an employee, and

(C) by substituting for the average premium determined under subsection (b)(2) the amount the Secretary of Health and Human Services determines is the average premium for the small group market in the State in which the employer is offering health insurance coverage (or for such area within the State as is specified by the Secretary).

‘‘(3) CONTRIBUTION ARRANGEMENT.—An arrangement shall not fail to meet the requirements of subsection (d)(4) solely because it provides for the offering of insurance outside of an Exchange.

‘‘(h) INSURANCE DEFINITIONS.—Any term used in this section which is also used in the Public Health Service Act or subtitle A of title I of the Patient Protection and Affordable Care Act shall have the meaning given such term by such Act or subtitle.

‘‘(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of the 2-year limit on the credit period through the use of successor entities and the avoidance of the limitations under subsection (c) through the use of multiple entities.’’

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking ‘‘plus’’ at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting ‘‘, plus’’, and by inserting after paragraph (35) the following:

‘‘(36) the small employer health insurance credit determined under section 45R.’’

(c) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—Section 38(c)(4)(B) of the Internal Revenue Code of 1986 (defining specified credits) is amended by redesignating clauses (vi), (vii), and (viii) as clauses (vii), (viii), and (ix), respectively, and by inserting after clause (v) the following new clause:

‘‘(vi) the credit determined under section 45R,’’

(d) DISALLOWANCE OF DEDUCTION FOR CERTAIN EXPENSES FOR WHICH CREDIT ALLOWED.—

(1) IN GENERAL.—Section 280C of the Internal Revenue Code of 1986 (relating to disallowance of deduction for certain expenses for which credit allowed), as amended by section 1401(b), is amended by adding at the end the following new subsection:

‘‘(h) CREDIT FOR EMPLOYEE HEALTH INSURANCE EXPENSES OF SMALL EMPLOYERS.—No deduction shall be allowed for that portion of the premiums for qualified health plans (as defined in section 1301(a) of the Patient Protection
and Affordable Care Act), or for health insurance coverage in the case of taxable years beginning in 2010, 2011, 2012, or 2013, paid by an employer which is equal to the amount of the credit determined under section 45R(a) with respect to the premiums.”.

(2) DEDUCTION FOR EXPIRING CREDITS.—Section 196(c) of such Code is amended by striking ‘‘and’’ at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting ‘‘, and’’, and by adding at the end the following new paragraph:

‘‘(14) the small employer health insurance credit determined under section 45R(a).’’.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

‘‘Sec. 45R. Employee health insurance expenses of small employers.’’.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009.

(2) MINIMUM TAX.—The amendments made by subsection (c) shall apply to credits determined under section 45R of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2009, and to carrybacks of such credits.