



This document is scheduled to be published in the Federal Register on 08/26/2013 and available online at <http://federalregister.gov/a/2013-20769>, and on FDsys.gov

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113792-13]

RIN 1545-BL55

Tax Credit for Employee Health Insurance Expenses of Small Employers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations provide guidance on the tax credit available to certain small employers that offer health insurance coverage to their employees under section 45R of the Internal Revenue Code (Code), enacted by the Patient Protection and Affordable Care Act. These proposed regulations affect certain taxable employers and certain tax-exempt employers.

DATES: Comments and request for a public hearing must be received by **INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-113792-13), Internal Revenue Service, room 5205, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-113792-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent

electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS113792-13).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, call Stephanie Caden at (202) 927-9639; concerning submission of comments, and/or to request a hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 45R of the Internal Revenue Code (Code) offers a tax credit to certain small employers that provide insured health coverage to their employees. Section 45R was added to the Code by section 1421 of the Patient Protection and Affordable Care Act, enacted March 23, 2010, Public Law No. 111-148 (as amended by section 10105(e) of the Patient Protection and Affordable Care Act, which was amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029)) (collectively, the “Affordable Care Act”).

I. Section 45R

Section 45R(a) provides for a health insurance tax credit in the case of an eligible small employer for any taxable year in the credit period. Section 45R(d) provides that in order to be an eligible small employer with respect to any taxable year, an employer must have in effect a contribution arrangement that qualifies under section 45R(d)(4) and must have no more than 25 full-time equivalent employees (FTEs), and the average annual wages of its FTEs must not exceed an amount equal to twice the dollar amount determined under section 45R(d)(3)(B). The amount determined under section

45R(d)(3)(B) is \$25,000 (as adjusted for inflation for taxable years beginning after December 31, 2013).

Section 45R(d)(4) states that a contribution arrangement qualifies if it requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan (QHP) 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 QHP (referred to in this preamble as the uniform percentage requirement). For purposes of section 45R, an Exchange refers to a Small Business Health Options Program (SHOP) Exchange, established pursuant to section 1311 of the Affordable Care Act and defined in 45 CFR 155.20. For purposes of this preamble and the proposed regulations, a contribution arrangement that meets these requirements is referred to as a “qualifying arrangement.” See also the section of this preamble entitled “Explanation of Provisions.”

Section 45R(b) provides that, subject to the reductions described in section 45R(c), the amount of the credit 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 qualifying arrangement for premiums for QHPs offered by the employer to its employees through a SHOP Exchange, or (2) the aggregate amount of nonelective contributions the employer would have made during the taxable year under the arrangement if each employee taken into account under (1) of this sentence had enrolled in a QHP 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. Section 45R(c) phases out the credit based upon the number of the employer's FTEs in excess of 10 and the amount by which the average annual wages exceeds \$25,000 (as adjusted for inflation for taxable years beginning after December 31, 2013 pursuant to section 45R(d)(3)(B)).

Specifically, section 45R(c) provides that the credit amount determined under section 45R(b) is reduced (but not below zero) by the sum of: (1) the credit amount determined under section 45R(b) multiplied by a fraction, the numerator of which is the total number of FTEs of the employer in excess of 10 and the denominator of which is 15, and (2) the credit amount determined under section 45R(b) 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 section 45R(d)(3)(B) and the denominator of which is such dollar amount. Section 45R(d)(3) provides that the average annual wages of an eligible small employer for any taxable year is the amount determined by dividing the aggregate amount of wages that were paid by the employer to employees during the taxable year by the number of FTEs of the employer and rounding such amount to the next lowest multiple of \$1,000.

Section 45R(e)(2) provides that for taxable years beginning in or after 2014, the credit period means the two-consecutive-taxable year period beginning with the first taxable year in which the employer (or any predecessor) offers one or more QHPs to its employees through a SHOP Exchange.

For taxable years beginning in 2010, 2011, 2012, and 2013, section 45R(g) provides that the credit is determined without regard to whether the taxable year is in a credit period, and no credit period is treated as beginning with a taxable year beginning

before 2014. The amount of the credit is 35 percent (25 percent in the case of a tax-exempt eligible small employer) of 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. Section 45R(g)(3) provides that an employer does not become ineligible for the tax credit solely because it arranges for the offering of insurance outside of a SHOP Exchange.

The Treasury Department and the IRS have published two notices addressing the application of section 45R. Each notice provides guidance that taxpayers may rely upon for taxable years beginning before January 1, 2014. See Notice 2010-44 (2010-22 IRB 717 (June 10, 2010)) and Notice 2010-82 (2010-51 IRB 857 (December 20, 2010)). Notice 2010-44 also provided transition relief for taxable years beginning in 2010 with respect to the requirements for a qualifying arrangement under section 45R.

II. Notice 2010-44

Notice 2010-44 addresses the eligibility requirements for employers to claim the credit, provides guidance on how to calculate and claim the credit, and explains the effect on estimated tax, alternative minimum tax, and deductions. The notice specifically describes the rules for how employees are taken into account in determining an employer's FTEs, average wages, and premiums paid, with certain individuals excluded and with employees of certain related employers included.

III. Notice 2010-82

Notice 2010-82 expands on the guidance provided in Notice 2010-44 and provides additional guidance on determining whether to take into account spouses and leased employees (as defined in section 414(n)) in computing an employer's FTEs,

average annual wages, and premiums paid. The notice provides that employer contributions to health reimbursement arrangements (HRAs), health flexible spending arrangements (FSAs), and health savings accounts (HSAs) are not taken into account for purposes of the section 45R credit. The notice further explains the requirement that an eligible small employer must pay a uniform percentage (not less than 50 percent) of the premium for each employee enrolled in health insurance coverage offered by the employer. The notice provides rules for applying the uniform percentage requirement in taxable years beginning after December 31, 2009 and prior to 2014, and further provides that for taxable years beginning in 2010, an employer may satisfy the uniform percentage requirement either by meeting the requirements provided in Notice 2010-82 or by meeting the transition relief rules provided in Notice 2010-44. With respect to calculating the credit, the notice provides guidance on small group markets, taxpayers with employees in multiple States, the application of the average premium cap, and taxpayers with fiscal taxable years.

Explanation of Provisions

These proposed regulations generally incorporate the provisions of Notice 2010-44 and Notice 2010-82 as modified to reflect the differences between the statutory provisions applicable to years before 2014 and those applicable to years after 2013. As in Notices 2010-44 and 2010-82, these proposed regulations use the term “qualifying arrangement” to describe an arrangement under which an eligible small employer pays premiums for each employee enrolled in health insurance coverage offered by the employer in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the coverage. Section 45R(d)(4) and these proposed regulations

require that, for tax years beginning during or after 2014, the health insurance coverage described in a qualifying arrangement be a QHP offered by an employer to its employees through a SHOP Exchange (but see section II.I of this preamble for a description of certain transition guidance for 2014).

I. Eligibility for the Credit

A. Eligible small employer defined

Section 45R and these proposed regulations provide that an eligible small employer is defined as an employer that has no more than 25 FTEs for the taxable year, whose employees have average annual wages of less than \$50,000 per FTE (as adjusted for inflation for years after December 31, 2013), and that has a qualifying arrangement in effect that requires the employer to pay a uniform percentage (not less than 50 percent) of the premium cost of a QHP offered by the employer to its employees through a SHOP Exchange. A tax-exempt eligible small employer is an eligible small employer that is described in section 501(c) and that is exempt from tax under section 501(a). An employer that is an agency or instrumentality of the Federal government, or of a State, local or Indian tribal government, is not an eligible small employer for purposes of section 45R unless it is an organization described in section 501(a) (and otherwise meets the requirements for an eligible small employer). However, a farmers' cooperative described in section 521 that is subject to tax pursuant to section 1381 and otherwise meets the requirements of this section is an eligible small employer.

Section 45R does not require that, in order for an employer to be an eligible small employer, the employees perform services in a trade or business. Thus, an employer

that otherwise meets the requirements for the section 45R credit does not fail to be an eligible small employer merely because the employees of the employer are not performing services in a trade or business. For example, a household employer that otherwise satisfies the requirements of section 45R is an eligible small employer for purposes of the credit.

An employer located outside the United States (including a U.S. Territory) may be an eligible small employer if the employer has income effectively connected with the conduct of a trade or business in the United States, otherwise meets the requirements of this section and is able to offer a QHP to its employees through a SHOP Exchange.

B. Application of section 414 aggregation rules

In accordance with section 45R(e)(5), these proposed regulations provide that all employers treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer for purposes of section 45R. Thus, for example, all employees of the employers treated as a single employer are counted in computing the single employer's FTEs and average annual wages. This applies to employers that are corporations in a controlled group of corporations, employers that are members of an affiliated service group, and employers that are partnerships, sole proprietorships, etc. under common control under section 414(c). Section 414 also applies to tax-exempt eligible small employers under common control. See §1.414(c)-5.

C. Determining employees taken into account

The proposed rules for determining employees taken into account are the same as those in the previous notices. In general, all employees (determined under the common law standard) who perform services for the employer during the taxable year

are taken into account in determining FTEs and average annual wages, including those who are not performing services in the employer's trade or business. (But see special rules for seasonal employees described in this section of the preamble.) However, section 45R and these proposed regulations provide that certain individuals are not considered employees when calculating the credit, and hours and wages of these individuals are not counted when determining an employer's eligibility for the credit. The following individuals are not employees or are otherwise excluded for this purpose: independent contractors (including sole proprietors); partners in a partnership; shareholders owning more than two percent of an S corporation; owners of more than five percent of other businesses; family members of these owners and partners, including a child (or descendant of a child), a sibling or step sibling, a parent (or ancestor of a parent), a step-parent, a niece or nephew, an aunt or uncle, or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or a sister-in-law. A spouse is also considered a family member for this purpose, as is a member of the household who is not a family member but qualifies as a dependent on the individual income tax return of an excluded individual.

Section 45R(d)(5) and these proposed regulations provide that seasonal employees who work for 120 or fewer days during the taxable year are not considered employees when determining FTEs and average annual wages, but premiums paid on behalf of seasonal workers may be counted in determining the amount of the credit. Seasonal workers include retail workers employed exclusively during holiday seasons and workers employed exclusively during the summer.

Compensation paid to a minister performing services in the exercise of his or her ministry generally is subject to tax under the Self-Employment Contributions Act (SECA) and not under the Federal Insurance Contributions Act (FICA), whether the minister is an employee or self-employed under the common law. See sections 1402(c)(2)(d), 1402(c)(4), and 3121(b)(8)(A). For purposes of income taxes generally, including the credit under section 45R, whether a minister is an employee is determined under the common law standard for determining worker status. If under the common law a minister is not an employee, the minister is not taken into account in determining an employer's FTEs. If under the common law a minister is an employee, the minister is taken into account in determining an employer's FTEs. However, because a minister performing services in the exercise of his or her ministry is treated as not engaged in employment for purposes of FICA, compensation paid to a minister is not wages as defined under section 3121(a), and so is not included for purposes of computing an employer's average annual wages.

D. Determining hours of service

These proposed regulations provide that an employee's hours of service for a year include hours for which the employee is paid, or entitled to payment, for the performance of duties for the employer during the employer's taxable year. Hours of service also include hours for which the employee is paid for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. Hours of service do not include the hours of seasonal employees who work for 120 or fewer days during the taxable year, nor do they include hours worked for a year in excess of 2,080 for a single employee.

These proposed regulations describe three methods for calculating the total number of hours of service for a single employee for the taxable year: actual hours worked; days-worked equivalency; and weeks-worked equivalency. Employers need not use the same method for all employees and may apply different methods for different classifications of employees if the classifications are reasonable and consistently applied. For example, an employer may use the actual hours worked method for all hourly employees and the weeks-worked equivalency method for all salaried employees. These proposed rules are the same as those in the previous notices.

E. Determining FTEs

In accordance with section 45R(d)(2), these proposed regulations provide that FTEs are calculated by computing the total hours of service for the taxable year using a method described in section 1.D of this preamble, and dividing the total hours of service by 2,080. If the result is not a whole number (0, 1, 2, etc.), the result is rounded down to the next lowest whole number. The only exception to this rule is when the result is less than one; in this case, the employer rounds up to one FTE. In some circumstances, an employer with 25 or more employees may qualify for the credit if some of its employees work less than full-time. For example, an employer with 46 employees that each are paid wages for 1,040 hours per year has 23 FTEs and, therefore, may qualify for the credit. These proposed rules are the same as those in the previous notices.

F. Determining average annual FTE wages

In accordance with section 45R(e)(4), these proposed regulations define wages, for purposes of the credit, as wages defined under section 3121(a) for purposes of

FICA, determined without considering the social security wage base limitation. To calculate average annual FTE wages, an employer must figure the total wages paid during the taxable year to all employees, divide the total wages paid by the number of FTEs, and if the result is not a multiple of \$1,000, round the result to the next lowest multiple of \$1,000. For example, \$30,699 is rounded down to \$30,000. But see special rules for seasonal employees described in section I.C of this preamble. These proposed rules are the same as those in the previous notices.

II. Calculating the Credit

A. Maximum credit

Under section 45R and these proposed regulations, for taxable years beginning during or after 2014, the maximum credit for an eligible small employer other than a tax-exempt eligible small employer is 50 percent of the eligible small employer's premium payments made on behalf of its employees under a qualifying arrangement for QHPs offered through a SHOP Exchange. For a tax-exempt eligible small employer for those years, the maximum credit is 35 percent. The employer's tax credit is subject to several adjustments and limitations as set forth in this preamble.

B. Average premium limitation

Under section 45R and these proposed regulations, for purposes of calculating the credit for taxable years beginning after 2013, the employer's premium payments are limited by the average premium in the small group market in the rating area in which the employee enrolls for coverage through a SHOP Exchange. The credit will be reduced by the excess of the credit calculated using the employer's premium payments over the credit calculated using the average premium. For example, if an employer pays 50

percent of the \$7,000 premium for family coverage for its employees (\$3,500), but the average premium for family coverage in the small group market in the rating area in which the employees enroll is \$6,000, for purposes of calculating the credit the employer's premium payments are limited to 50 percent of \$6,000 (\$3,000).

C. Credit phaseout

Under section 45R and these proposed regulations, the credit phases out for eligible small employers if the number of FTEs exceeds 10, or if the average annual wages for FTEs exceed \$25,000 (as adjusted for inflation for taxable years beginning after December 31, 2013). For an employer with both more than 10 FTEs and average annual FTE wages exceeding \$25,000, the credit will be reduced based on the sum of the two reductions. This may reduce the credit to zero for some employers with fewer than 25 FTEs and average annual FTE wages of less than double the \$25,000 dollar amount (as adjusted for inflation).

D. State subsidy and tax credit limitation

Some States offer tax credits to a small employer that provides health insurance to its employees. Some of these credits are refundable credits and others are nonrefundable credits. In addition, some States offer premium subsidy programs for certain small employers under which the State makes a payment equal to a portion of the employees' health insurance premiums. Generally, the State pays this premium subsidy either directly to the employer or to the employer's insurance company (or another entity licensed under State law to engage in the business of insurance).

Under these proposed regulations, and consistent with previous notices, if the employer is entitled to a State tax credit or premium subsidy that is paid directly to the

employer, the amount of employer premiums paid is not reduced for purposes of calculating the section 45R credit, but the amount of the credit cannot exceed the net premiums paid, which are the employer premiums paid minus the amount of any State tax credits or premium subsidies received. If a State makes premium payments directly to the insurance company, the State is treated as making these payments on behalf of the employer for purposes of determining whether the employer has satisfied the “qualifying arrangement” requirement to pay an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of coverage. Also, these premium payments by the State are treated as an employer contribution under section 45R for purposes of calculating the credit, but the amount of the credit cannot exceed the premiums actually paid by the employer. Finally, if a State-administered program, such as Medicaid, makes payments on behalf of individuals and their families who meet certain eligibility requirements, these payments do not reduce the amount of employer premiums paid for purposes of calculating the credit.

E. Payroll tax limitation for tax-exempt employers

Section 45R and these proposed regulations define the term “payroll taxes” as (1) amounts required to be withheld under section 3402¹ and (2) the employee’s and employer’s shares of Medicare tax required to be withheld and paid under sections 3101(b) and 3111(b) on employees’ wages for the year. For a tax-exempt eligible small employer, the amount of the credit cannot exceed the amount of the payroll taxes of the employer during the calendar year in which the taxable year begins.

F. Two-consecutive-taxable year credit period limitation

¹ Although section 45R(f)(3)(A)(i) cites to section 3401(a)(1) as imposing the obligation on employers to withhold income tax from employees, it is actually section 3402 that imposes the withholding obligation. We have cited to section 3402 throughout this preamble and in the proposed regulation.

These proposed regulations provide that the first year for which an eligible small employer files Form 8941, "Credit for Small Employer Health Insurance Premiums," claiming the credit, or files Form 990-T, "Exempt Organization Business Income Tax Return," with an attached Form 8941, is the first year of the two-consecutive-taxable year credit period. Even if the employer is only eligible to claim the credit for part of the first year, the filing of Form 8941 begins the first year of the two-consecutive-taxable year credit period. For application of the two-consecutive-taxable year credit period under the transition relief related to taxable years beginning in 2014, see §1.45R-3(i) of these proposed regulations and section II.I of the Explanation of Provisions section of this preamble.

Section 45R(i) provides that regulations shall be prescribed as necessary to prevent the avoidance of the two-year limit on the credit period through the use of successor entities and the avoidance of the credit phaseout limitations through the use of multiple entities. For purposes of identifying successor entities, these proposed regulations generally apply the rules for identifying successor employers applicable under the employment tax provisions for determining when wages paid by a predecessor may be attributed to a successor employer (see §31.3121(a)(1)-1(b)). Accordingly, under the proposed regulations, an entity that would be treated as a successor employer for employment tax purposes will also be treated as a successor employer for purposes of the two-consecutive-taxable year credit period under section 45R. Therefore, if the predecessor employer had previously claimed the credit under section 45R for a period, that period will count towards the successor employer's two-consecutive-taxable year credit period.

G. Premium payments by the employer

In general, only premiums paid by the employer for employees enrolled in a QHP offered through a SHOP Exchange are counted when calculating the credit.² If the employer pays a portion of the premiums and the employees pay the rest, only the portion paid by the employer is taken into account. For this purpose, any premium paid through a salary reduction arrangement under a section 125 cafeteria plan is not treated as an employer-paid premium. Premiums paid with employer-provided flex credits that employees may elect to receive as cash or as a taxable benefit are treated as paid pursuant to a salary reduction arrangement under a section 125 cafeteria plan. See Notice 2012-40 (2012-26 IRB 1046 (June 25, 2012)). The proposed regulations further provide that amounts made available by an employer under or contributed by an employer to HRAs, FSAs and HSAs are not taken into account for purposes of determining premium payments by the employer.

The proposed regulations provide that if a minister is a common law employee and is taken into account in an employer's FTEs, the premiums paid by the employer for health insurance may be counted in calculating the credit.

A leased employee is defined in section 414(n)(2) as a person who is not an employee of the service recipient and who provides services to the service recipient pursuant to an agreement with the leasing organization. The person must have performed services for the service recipient on a substantially full-time basis for a period of at least one year under the primary direction and control of the service recipient.

² In general a stand-alone dental health plan will be considered a qualified health plan. Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, 77 Fed. Reg. 18310, 18315 (March 27, 2012).

Leased employees are counted in computing a service recipient's FTEs and average annual wages. See section 45R(e)(1)(B).

See section II.I of this preamble for special rules related to taxable years beginning in 2014.

H. Trusts, estates, regulated investment companies, real estate investment trusts and cooperative organizations

Section 45R(e)(5)(B) provides that rules similar to the rules of section 52(c), (d) and (e) will apply. Because section 45R(f) explicitly provides that a tax-exempt eligible small employer may be eligible for the credit, these proposed regulations do not adopt a rule similar to section 52(c). However, these proposed regulations provide that rules similar to the rules of section 52(d) and (e) and the regulations thereunder apply in calculating and apportioning the credit with respect to trusts, estates, regulated investment companies, real estate investment trusts, and cooperative organizations.

I. Transition rules

If an eligible small employer's plan year begins on a date other than the first day of its taxable year, it may not be practical or possible for the employer to offer insurance to its employees through a SHOP Exchange at the beginning of its first taxable year beginning in 2014. These proposed regulations provide that if: (1) as of **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**, a small employer offers coverage in a plan year that begins on a date other than the first day of its taxable year, (2) the employer offers coverage during the period before the first day of the plan year beginning in 2014 that would have qualified the employer for the credit under the rules otherwise applicable to the period before January 1, 2014, and (3) the

employer begins offering coverage through a SHOP Exchange as of the first day of its plan year that begins in 2014, then it will be treated as offering coverage through a SHOP Exchange for its entire 2014 taxable year for purposes of eligibility for, and calculation of, a credit under section 45R. Thus, for an employer that meets these requirements, the credit will be calculated at the 50 percent rate (35 percent rate for tax-exempt eligible small employers) for the entire 2014 taxable year and the 2014 taxable year will be the start of the two-consecutive-taxable year credit period.

III. Application of Uniform Percentage Requirement

A. Uniform premium

Section 45R and these proposed regulations require that to be eligible for the credit, an eligible small employer must generally pay a uniform percentage (not less than 50 percent) of the premium for each employee enrolled in a QHP offered to its employees through a SHOP Exchange. These proposed regulations set forth rules for applying this requirement in separate situations depending upon (1) whether the premium established for the QHP is based upon list billing or is based upon composite billing, (2) whether the QHP offers only self-only coverage, or other coverage (such as family coverage) for which a higher premium is charged, and (3) whether the employer offers one QHP or more than one QHP. The uniform percentage rule applies only to the employees offered coverage and does not impose a coverage requirement.

B. Composite billing and list billing

These proposed regulations define the term “composite billing” to mean a system of billing under which a health insurer charges a uniform premium for each of the employer’s employees or charges a single aggregate premium for the group of covered

employees that the employer may then divide by the number of covered employees to determine the uniform premium. In contrast, the term “list billing” is defined as a billing system under which a health insurer lists a separate premium for each employee based on the age of the employee or other factors.

C. Employers offering one QHP

For an employer offering one QHP under a composite billing system with one level of self-only coverage, these proposed regulations provide that the uniform percentage requirement is met if an eligible small employer pays the same amount for each employee enrolled in coverage and that amount is equal to at least 50 percent of the premium for self-only coverage. For employers offering one QHP under a composite billing system with different tiers of coverage (for example, self-only, self plus one, and family coverage) for which different premiums are charged, the uniform percentage requirement is satisfied if the eligible small employer either: (1) pays the same amount for each employee enrolled in that tier of coverage and that amount is equal to at least 50 percent of the premium for that tier of coverage, or (2) pays an amount for each employee enrolled in the more expensive tiers of coverage that is the same for all employees and is no less than the amount that the employer would have contributed toward self-only coverage for that employee (and is equal to at least 50 percent of the premium for self-only coverage).

For an employer offering one QHP under a list billing system that offers only self-only coverage, the uniform percentage requirement is satisfied if the eligible small employer either: (1) pays an amount equal to a uniform percentage (not less than 50 percent) of the premium charged for each employee, or (2) determines an “employer-

computed composite rate” and, if any employee contribution is required, each enrolled employee pays a uniform amount toward the self-only premium that is no more than 50 percent of the employer-computed composite rate for self-only coverage. The proposed regulations define “employer-computed composite rate” as the average rate determined by adding the premiums for that tier of coverage for all employees eligible to participate in the employer’s health insurance plan (whether or not the eligible employee enrolls in coverage under the plan or in that tier of coverage under the plan) and dividing by the total number of such eligible employees.

For eligible small employers offering one QHP under list billing with different tiers of coverage for which different premiums are charged, the uniform percentage requirement is satisfied if the eligible small employer pays toward the premium for each employee covered under each tier of coverage an amount equal to or exceeding the amount the employer would have contributed with respect to that employee for self-only coverage, calculated either based on the actual premium that would have been charged by the insurer for that employee for self-only coverage, or based on the employer-computed composite rate for self-only coverage, and the employer premium payments within the same tier are uniform in percentage or amount. Alternatively, the eligible small employer may satisfy the uniform percentage requirement by meeting the uniform percentage requirement separately for each tier of coverage and substituting the employer-computed composite rate for that tier of coverage for the employer-computed composite rate for self-only coverage.

The proposed regulations provide examples of how the uniform percentage requirement is applied in all of these situations.

D. Employers offering more than one plan

As set forth in these proposed regulations, if an employer offers more than one QHP through a SHOP Exchange, the uniform percentage requirement may be satisfied in one of two ways. The first is on a plan-by-plan basis, meaning that the employer's premium payments for each plan must individually satisfy the uniform percentage requirement stated above. The amounts or percentages of premiums paid toward each QHP do not have to be the same, but they must each satisfy the uniform percentage requirement if each QHP is tested separately. The other permissible method to satisfy the uniform percentage requirement is through the reference plan method. Under the reference plan method, the employer designates one of its QHPs as a reference plan. Then the employer either determines a level of employer contributions for each employee such that, if all eligible employees enrolled in the reference plan, the contributions would satisfy the uniform percentage requirement as applied to that reference plan, or the employer allows each employee to apply the minimum amount of employer contribution determined necessary to meet the uniform percentage requirement toward the reference plan or toward coverage under any other available QHP.

E. Employers complying with State law

The Treasury Department and the IRS understand that at least one State requires employers to contribute a certain percentage (50%) to an employee's premium cost, but also requires that the employee's contribution not exceed a certain percentage of monthly gross earnings so that, in some instances, the employer's required

contribution for a particular employee may exceed 50 percent of the premium.³ To satisfy the uniform percentage requirement under section 45R, that employer generally would be required to increase the employer contribution to all its employees' premiums to match the increase for that one employee, which may be difficult especially if the percentage increase is substantial. Accordingly, for taxable years beginning in 2014, an employer will be treated as meeting the uniform percentage requirement if the failure to satisfy the uniform percentage requirement is attributable to additional employer contributions made to certain employees solely to comply with an applicable State or local law.

IV. Claiming the Credit

A. Form 8941, Credit for Small Employer Health Insurance Premiums

For an eligible small employer that is not a tax-exempt eligible small employer, the credit is calculated on Form 8941, "Credit for Small Employer Health Insurance Premiums," and can be applied against both regular and alternative minimum tax. For tax-exempt eligible small employers, the credit is also calculated on Form 8941 and attached to Form 990-T, "Exempt Organization Business Income Tax Return." Filing Form 990-T with an attached Form 8941 is required for a tax-exempt eligible small employer to claim the credit, even if it is not otherwise required to file Form 990-T.

B. Estimated tax payments and alternative minimum tax (AMT) liability

These proposed regulations provide that the section 45R credit may be reflected in an eligible small employer's estimated tax payments in accordance with the estimated tax rules. The credit can also be used to offset an eligible small employer's AMT liability for the year, subject to certain limitations based on the amount of an employer's regular

³ See Hawaii Prepaid Health Care Act, Hawaii Revised Statutes Chapter 393 (1974).

tax liability, AMT liability and other allowable credits. See section 38(c)(1), as modified by section 38(c)(4)(B)(vi), for these limitations.

C. Reduced section 162 deduction

No deduction is allowed under section 162 for that portion of the premiums paid equal to the amount of the credit claimed under section 45R. See section 280C(h).

Proposed Effective/Applicability Dates

These regulations are proposed to be effective the date the final regulations are published in the **Federal Register**, and apply to taxable years beginning after December 31, 2013. To assist with any preparation needed for transition to the requirements applicable to taxable years beginning after December 31, 2014, employers may also rely on these proposed regulations for guidance for taxable years beginning after December 31, 2013, and before December 31, 2014. If and to the extent future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect and employers will be provided with time to come into compliance with the final regulations (and will in any case not be required to comply for taxable years beginning prior to January 1, 2015).

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive

Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. While the number of small entities affected is substantial, the economic impact on the affected small entities is not significant. The information required to determine a small employer's eligibility for, and amount of, an applicable credit, generally consisting of the annual hours worked by its employees, the annual wages paid to its employees, the cost of the employees' premiums for qualified health plans and the employer's contribution towards those premiums, is information that the small employer generally will retain for business purposes and be readily available to accumulate for purposes of completing the necessary form for claiming the credit. In addition, this credit is available to any eligible small employer only twice (because the credit can be claimed by a small employer only for two consecutive taxable years beginning after December 31, 2013, beginning with the taxable year for which the small employer first claims the credit). Accordingly, no small employer will calculate the credit amount or complete the process for claiming the credit under this regulation more than two times.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the “Addresses” heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Stephanie Caden, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART I—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.45R-0 is added to read as follows:

§1.45R-0 Table of contents

This section lists the table of contents for §§1.45R-1 through 1.45R-5.

§1.45R-1 Definitions

- (a) Definitions.
 - (1) Average premium.
 - (2) Composite billing.
 - (3) Credit period.
 - (4) Eligible small employer.
 - (5) Employee.
 - (6) Employer-computed composite rate.
 - (7) Exchange.
 - (8) Family member.
 - (9) Full-time equivalent employee (FTE).
 - (10) List billing.
 - (11) Net premium payments.
 - (12) Nonelective contribution.
 - (13) Payroll taxes.
 - (14) Qualified health plan QHP.
 - (15) Qualifying arrangement.
 - (16) Seasonal worker.
 - (17) Small Business Health Options Program (SHOP).
 - (18) State.
 - (19) Tax-exempt eligible small employer.
 - (20) Tier.
 - (21) United States.
 - (22) Wages.
- (b) Effective/applicability date.

§1.45R-2 Eligibility for the credit.

- (a) Eligible small employer.
- (b) Application of section 414 employer aggregation rules.
- (c) Employees taken into account.
- (d) Determining the hours of service performed by employees.
 - (1) In general.
 - (2) Permissible methods.
 - (3) Examples.
- (e) FTE calculation.
 - (1) In general.

- (2) Example.
- (f) Determining the employer's average annual wages.
 - (1) In general.
 - (2) Example.
- (g) Effective/applicability date.

§1.45R-3 Calculating the credit.

- (a) In general.
- (b) Average premium limitation.
 - (1) In general.
 - (2) Examples.
- (c) Credit phaseout.
 - (1) In general.
 - (2) \$25,000 dollar amount adjusted for inflation.
 - (3) Examples
- (d) State credits and subsidies for health insurance.
 - (1) Payments to employer.
 - (2) Payments to issuer.
 - (3) Credits may not exceed net premium payment.
 - (4) Examples.
- (e) Payroll tax limitation for tax-exempt eligible small employers.
 - (1) In general.
 - (2) Example.
- (f) Two-consecutive-taxable year credit period limitation.
- (g) Premium payments by the employer for a taxable year.
 - (1) In general.
 - (2) Excluded amounts.
- (h) Rules applicable to trusts, estates, regulated investment companies, real estate investment trusts and cooperative organizations.
- (i) Transition rule for 2014.
 - (1) In general.
 - (2) Example.
- (j) Effective/applicability date.

§1.45R-4 Uniform percentage of premium paid.

- (a) In general.
- (b) Employers offering one QHP.
 - (1) Employers offering one QHP, self-only coverage, composite billing.
 - (2) Employers offering one QHP, other tiers of coverage, composite billing.
 - (3) Employers offering one QHP, self-only coverage, list billing.
 - (4) Employers offering one QHP, other tiers of coverage, list billing.
- (c) Employers offering more than one QHP.
 - (1) QHP-by-QHP method.
 - (2) Reference QHP method.

- (d) Special rules regarding employer compliance with applicable State and local law.
- (e) Examples.
- (f) Effective/applicability date.

§1.45R-5 Claiming the credit.

- (a) Claiming the credit.
- (b) Estimated tax payments and alternative minimum tax (AMT) liability.
- (c) Reduction of section 162 deduction.
- (d) Effective/applicability date.

Par. 2 Sections 1.45R-1, 1.45R-2, 1.45R-3, 1.45R-4 and 1.45R-5 are added to read as follows:

§1.45R-1 Definitions.

(a) Definitions. The definitions in this section apply to this section and §§1.45R-2, 1.45R-3, 1.45R-4, and 1.45R-5.

(1) Average premium. The term average premium means an average premium for the small group market in the rating area in which the employee enrolls for coverage. The average premium for the small group market in a rating area is determined by the Secretary of Health and Human Services.

(2) Composite billing. The term composite billing means a system of billing under which a health insurer charges a uniform premium for each of the employer's employees or charges a single aggregate premium for the group of covered employees that the employer then divides by the number of covered employees to determine the uniform premium.

(3) Credit period—(i) In general. The term credit period means, with respect to any eligible small employer (or any predecessor employer), the two-consecutive-taxable year period beginning with the first taxable year beginning after December 31, 2013, for which the eligible small employer files an income tax return with an attached Form

8941, “Credit for Small Employer Health Insurance Premiums” (or files a Form 990-T, “Exempt Organization Business Income Tax Return,” with an attached Form 8941 in the case of a tax-exempt eligible employer). For a transition rule for 2014, see §1.45R-3(i).

(ii) Examples. The following examples illustrate the provisions of paragraph (a)(3)(i) of this section:

Example 1. (i) Facts. In 2014, an eligible small employer (Employer) that uses a calendar year as its taxable year begins to offer insurance through a SHOP Exchange. Employer has 4 employees and otherwise qualifies for the credit, but none of the employees enroll in the coverage offered by Employer through the SHOP Exchange. In mid-2015, the 4 employees enroll for coverage through the SHOP Exchange but Employer does not file Form 8941 or claim the credit. In 2016, Employer has 20 employees and all are enrolled in coverage offered through the SHOP Exchange. Employer files Form 8941 with Employer’s 2016 tax return to claim the credit.

(ii) Conclusion. Employer’s taxable year 2016 is the first year of the credit period. Accordingly, Employer’s two-year credit period is 2016 and 2017.

Example 2. (i) Facts. Same facts as Example 1, but Employer files Form 8941 with Employer’s 2015 tax return.

(ii) Conclusion. Employer’s taxable year 2015 is the first year of the credit period. Accordingly, Employer’s two-year credit period is 2015 and 2016 (and does not include 2017). Employer is entitled to a credit based on a partial year of SHOP Exchange coverage for Employer’s taxable year 2015.

(4) Eligible small employer. (i) The term eligible small employer means an employer that meets the requirements set forth in §1.45R-2.

(ii) For the definition of tax-exempt eligible small employer, see paragraph (a)(19) of this section.

(iii) A farmers’ cooperative described under section 521 that is subject to tax pursuant to section 1381, and otherwise meets the requirements of this paragraph (a)(4) and §1.45R-2, is an eligible small employer.

(5) Employee—(i) In general. Except as otherwise specifically provided in this paragraph (a)(5), the term employee means an individual who is an employee of the eligible small employer under the common law standard. See §31.3121(d)-1(c).

(ii) Leased employees. For purposes of this paragraph (a)(5), the term employee also includes a leased employee (as defined in section 414(n)).

(iii) Certain individuals excluded. The term employee does not include independent contractors (including sole proprietors), partners in a partnership, shareholders owning more than two percent of an S corporation, and any owners of more than five percent of other businesses. The term employee also does not include family members of these owners and partners including the employee-spouse of a shareholder owning more than two percent of the stock of an S corporation, the employee-spouse of an owner of more than five percent of a business, the employee-spouse of a partner owning more than a five percent interest in a partnership, and the employee-spouse of a sole proprietor.

(iv) Seasonal employees. The term employee does not include seasonal workers unless the seasonal worker provides services to the employer on more than 120 days during the taxable year.

(v) Dependents. The term employee does not include any other member of the household of owners and partners who qualifies as a dependent under section 152(d)(2)(H).

(vi) Ministers. Whether a minister is an employee is determined under the common law standard for determining worker status. If, under the common law standard, a minister is not an employee, the minister is not an employee for purposes of

this paragraph (a)(5) and is not taken into account in determining an employer's FTEs, and premiums paid for the minister's health insurance coverage are not taken into account in computing the credit. If, under the common law standard, a minister is an employee, the minister is an employee for purposes of this paragraph (a)(5), and is taken into account in determining an employer's FTEs, and premiums paid by the employer for the minister's health insurance coverage can be taken into account in computing the credit. Because the performance of services by a minister in the exercise of his or her ministry is not treated as employment for purposes of the Federal Insurance Contributions Act (FICA), compensation paid to the minister is not wages as defined under section 3121(a), and is not counted as wages for purposes of computing an employer's average annual wages.

(6) Employer-computed composite rate. The term employer-computed composite rate refers to a rate for a tier of coverage (such as self-only or family) of a QHP that is the average rate determined by adding the premiums for that tier of coverage for all employees eligible to participate in the QHP (whether or not they actually receive coverage under the plan or under that tier of coverage) and dividing by the total number of such eligible employees. The employer-computed composite rate is used in list billing to convert individual premiums for a tier of coverage into an employer-computed composite rate for that tier of coverage.

(7) Exchange. The term Exchange means an exchange as defined in 45 CFR 155.20.

(8) Family member. The term family member is defined with respect to a taxpayer as a child (or descendant of a child); a sibling or step-sibling; a parent (or

ancestor of a parent); a step-parent; a niece or nephew; an aunt or uncle; or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law. A spouse of any of these family members is also considered a family member.

(9) Full-time equivalent employee (FTE). The number of full-time equivalent employees (FTEs) is determined by dividing the total number of hours of service for which wages were paid by the employer to employees during the taxable year by 2,080. See §1.45-2(d) and (e) for permissible methods of calculating hours of service and the method for calculating the number of an employer's FTEs.

(10) List billing. The term list billing refers to a system of billing under which a health insurer lists a separate premium for each employee based on the age of the employee or other factors.

(11) Net premium payments. The term net premium payments means, in the case of an employer receiving a State tax credit or State subsidy for providing health insurance to its employees, the excess of the employer's actual premium payments over the State tax credit or State subsidy received by the employer. In the case of a State payment directly to an insurance company (or another entity licensed under State law to engage in the business of insurance), the employer's net premium payments are the employer's actual premium payments. If a State-administered program (such as Medicaid or another program that makes payments directly to a health care provider or insurance company on behalf of individuals and their families who meet certain eligibility guidelines) makes payments that are not contingent on the maintenance of an employer-provided group health plan, those payments are not taken into account in determining the employer's net premium payments.

(12) Nonelective contribution. The term nonelective contribution means an employer contribution other than a contribution pursuant to a salary reduction arrangement under section 125.

(13) Payroll taxes. For purposes of section 45R, the term payroll taxes means amounts required to be withheld as tax from the employees of a tax-exempt eligible small employer under section 3402, amounts required to be withheld from such employees under section 3101(b), and amounts of tax imposed on the tax-exempt eligible small employer under section 3111(b).

(14) Qualified health plan (QHP). The term qualified health plan (QHP) means a qualified health plan as defined in Affordable Care Act section 1301(a) (see 42 U.S.C. 18021(a)), but does not include a catastrophic plan described in Affordable Care Act section 1302(e) (See 42 U.S.C. 18022(e)).

(15) Qualifying arrangement. The term qualifying arrangement means an arrangement that requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a QHP offered to employees by the employer through a SHOP Exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the QHP.

(16) 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 (but not limited to) workers covered by 29 CFR 500.20(s)(1), and retail workers employed exclusively during holiday seasons.

(17) Small Business Health Options Program (SHOP). The term Small Business Health Options Program (SHOP) means an Exchange established pursuant to section 1311 of the Affordable Care Act and defined in 45 CFR 155.20.

(18) State. The term State means a State as defined in section 7701(a)(10), including the District of Columbia.

(19) Tax-exempt eligible small employer. The term tax-exempt eligible small employer means an eligible small employer that is exempt from federal income tax under section 501(a) as an organization described in section 501(c).

(20) Tier. The term tier refers to a category of coverage under a benefits package that varies only by the number of individuals covered. For example, self-only coverage, self plus one coverage, and family coverage would constitute three separate tiers of coverage.

(21) United States. The term United States means United States as defined in section 7701(a)(9).

(22) Wages. The term wages for purposes of section 45R means wages as defined under section 3121(a) for purposes of the Federal Insurance Contributions Act (FICA), determined without regard to the social security wage base limitation under section 3121(a)(1).

(b) Effective/applicability date. This section is applicable for periods after December 31, 2013.

§1.45R-2 Eligibility for the credit.

(a) Eligible small employer. To be eligible for the credit, an employer must be an eligible small employer. In order to be an eligible small employer, with respect to any taxable year, an employer must have no more than 25 full-time equivalent employees (FTEs), must have in effect a qualifying arrangement, and the average annual wages of its FTEs must not exceed an amount equal to twice the dollar amount in effect under §1.45R-3(c)(2). To claim the credit for taxable years beginning in or after 2014, the qualifying arrangement is an arrangement that requires an employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan (QHP) offered to employees through a small business health options program (SHOP) Exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the QHP. Notwithstanding the foregoing, an employer that is an agency or instrumentality of the federal government, or of a State, local or Indian tribal government, is not an eligible small employer unless it is an organization described in section 501(c) that is exempt from tax under section 501(a). An employer does not fail to be an eligible small employer merely because its employees are not performing services in a trade or business of the employer. An employer located outside the United States (including a U.S. Territory) must have income effectively connected with the conduct of a trade or business in the United States, and otherwise meet the requirements of this section, to be an eligible small employer. For eligibility standards for SHOP related to foreign employers, see 45 CFR 155.710. Paragraphs (b) through (f) of this section provide the rules for determining whether the requirements to be an eligible small employer are met, including rules related to identifying and

counting the employer's number of the employer's FTEs, counting the employees' hours of service, and determining the employer's average annual FTE wages for the taxable year. For rules on determining whether the uniform percentage requirement is met, see §1.45R-4.

(b) Application of section 414 employer aggregation rules. All employers treated as a single employer under section 414(b), (c), (m) or (o) are treated as a single employer for purposes of this section. Thus, all employees of a controlled group under section 414(b), (c) or (o), or an affiliated service group under section 414(m), are taken into account in determining whether any member of the controlled group or affiliated service group is an eligible small employer. Similarly, all wages paid to, and premiums paid for, employees by the members of the controlled group or affiliated service group are taken into account when determining the amount of the credit for a group treated as a single employer under these rules.

(c) Employees taken into account. To be eligible for the credit, an employer must have employees as defined in §1.45R-1(a)(5) during the taxable year. All employees of the eligible small employer are taken into account for purposes of determining the employer's FTEs and average annual FTE wages. Employees include former employees who terminated employment during the year for which the credit is being claimed, employees covered under a collective bargaining agreement, and employees who do not enroll in a QHP offered by the employer through a SHOP Exchange.

(d) Determining the hours of service performed by employees—(1) In general. An employee's hours of service for a year include each hour for which an employee is

paid, or entitled to payment, for the performance of duties for the employer during the employer's taxable year. It also includes each hour for which an employee is paid, or entitled to payment, by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence (except that no more than 160 hours of service are required to be counted for an employee on account of any single continuous period during which the employee performs no duties).

(2) Permissible methods. In calculating the total number of hours of service that must be taken into account for an employee during the taxable year, eligible small employers need not use the same method for all employees, and may apply different methods for different classifications of employees if the classifications are reasonable and consistently applied. Eligible small employers may change the method for calculating employees' hours of service for each taxable year. An eligible small employer may use any of the following three methods.

(i) Actual hours worked. An employer may use the actual hours of service provided by employees including hours worked and any other hours for which payment is made or due (as described in paragraph (d)(1) of this section).

(ii) Days-worked equivalency. An employer may use a days-worked equivalency whereby the employee is credited with 8 hours of service for each day for which the employee would be required to be credited with at least one hour of service under paragraph (d)(1) of this section.

(iii) Weeks-worked equivalency. An employer may use a weeks-worked equivalency whereby the employee is credited with 40 hours of service for each week

for which the employee would be required to be credited with at least one hour of service under paragraph (d)(1) of this section.

(3) Examples. The following examples illustrate the rules of paragraph (d) of this section:

Example 1. Counting hours of service by hours actually worked or for which payment is made or due. (i) Facts. An eligible small employer (Employer) has payroll records that indicate that Employee A worked 2,000 hours and that Employer paid Employee A for an additional 80 hours on account of vacation, holiday and illness. Employer uses the actual hours worked method described in paragraph (d)(2)(i) of this section.

(ii) Conclusion. Under this method of counting hours, Employee A must be credited with 2,080 hours of service (2,000 hours worked and 80 hours for which payment was made or due).

Example 2. Counting hours of service under days-worked equivalency. (i) Facts. Employee B worked from 8:00am to 12:00pm every day for 200 days. Employer uses the days-worked equivalency method described in paragraph (d)(2)(ii) of this section.

(ii) Conclusion. Under this method of counting hours, Employee B must be credited with 1,600 hours of service (8 hours for each day Employee B would otherwise be credited with at least 1 hour of service x 200 days).

Example 3. Counting hours of service under weeks-worked equivalency. (i) Facts. Employee C worked 49 weeks, took 2 weeks of vacation with pay, and took 1 week of leave without pay. Employer uses the weeks-worked equivalency method described in paragraph (d)(2)(iii) of this section.

(ii) Conclusion. Under this method of counting hours, Employee C must be credited with 2,040 hours of service (40 hours for each week during which Employee C would otherwise be credited with at least 1 hour of service x 51 weeks).

Example 4. Excluded employees. (i) Facts. Employee D worked 3 consecutive weeks at 32 hours per week during the holiday season. Employee D did not work during the remainder of the year. Employee E worked limited hours after school from time to time through the year for a total of 350 hours. Employee E does not work through the summer. Employer uses the actual hours worked method described in paragraph (d)(2)(i) of this section.

(ii) Conclusion. Employee D is a seasonal employee who worked for 120 days or less for Employer during the year. Employee D's hours are not counted when

determining the hours of service of Employer's employees. Employee E works throughout most of the year and is not a seasonal employee. Employer counts Employee E's 350 hours of service during the year.

(e) FTE Calculation--(1) In general. The number of an employer's FTEs is determined by dividing the total hours of service, determined in accordance with paragraph (d) of this section, credited during the year to employees taken into account under paragraph (c) of this section (but not more than 2,080 hours for any employee) by 2,080. The result, if not a whole number, is then rounded to the next lowest whole number. If, however, after dividing the total hours of service by 2,080, the resulting number is less than one, the employer rounds up to one FTE.

(2) Example. The following example illustrates the provisions of paragraph (e) of this section:

Example. Determining the number of FTEs. (i) Facts. A sole proprietor pays 5 employees wages for 2,080 hours each, pays 3 employees wages for 1,040 hours each, and pays 1 employee wages for 2,300 hours. One of the employees working 2,080 hours is the sole proprietor's nephew. The sole proprietor's FTEs would be calculated as follows: 8,320 hours of service for the 4 employees paid for 2,080 hours each (4 x 2,080); the sole proprietor's nephew is excluded from the FTE calculation; 3,120 hours of service for the 3 employees paid for 1,040 hours each (3 x 1,040); and 2,080 hours of service for the 1 employee paid for 2,300 hours (lesser of 2,300 and 2,080). The sum of the included hours of service equals 13,520 hours of service.

(ii) Conclusion. The sole proprietor's FTEs equal 6 (13,520 divided by 2,080 = 6.5, rounded to the next lowest whole number).

(f) Determining the employer's average annual FTE wages--(1) In general. All wages paid to employees (including overtime pay) are taken into account in computing an eligible small employer's average annual FTE wages. The average annual wages paid by an employer for a taxable year is determined by dividing the total wages paid by the eligible small employer during the employer's taxable year to employees taken into account under paragraph (c) of this section by the number of the employer's FTEs for

the year. The result is then rounded down to the nearest \$1,000 (if not otherwise a multiple of \$1,000). For purposes of determining the employer's average annual wages for the taxable year, only wages that are paid for hours of service determined under paragraph (d) of this section are taken into account.

(2) Example. The following example illustrates the provision of paragraphs (e) and (f) of this section:

Example. (i) Facts. An employer has 26 FTEs with average annual wages of \$23,000. Only 22 of the employer's employees enroll for coverage offered by the employer through a SHOP Exchange.

(ii) Conclusion. The hours of service and wages of all employees are taken into consideration in determining whether the employer is an eligible small employer for purposes of the credit. Because the employer does not have fewer than 25 FTEs for the taxable year, the employer is not an eligible small employer for purposes of this section, even if less than 25 employees (or FTEs) enroll for coverage through the SHOP Exchange.

(g) Effective/applicability date. This section is applicable for periods after December 31, 2013.

§1.45R-3 Calculating the credit.

(a) In general. The tax credit available to an eligible small employer equals 50 percent of the eligible small employer's premium payments made on behalf of its employees under a qualifying arrangement, or in the case of a tax-exempt eligible small employer, equals 35 percent of the employer's premium payments made on behalf of its employees under a qualifying arrangement. The employer's tax credit is subject to the following adjustments and limitations:

(1) The average premium limitation for the small group market in the rating area in which the employee enrolls for coverage, described in paragraph (b) of this section;

- (2) The credit phaseout described in paragraph (c) of this section;
 - (3) The net premium payment limitation in the case of State credits or subsidies described in paragraph (d) of this section;
 - (4) The payroll tax limitation for a tax-exempt eligible small employer described in paragraph (e) of this section;
 - (5) The two-consecutive-taxable year credit period limitation, described in paragraph (f) of this section;
 - (6) The rules with respect to the premium payments taken into account, described in paragraph (g) of this section;
 - (7) The rules with respect to credits applicable to trusts, estates, regulated investment companies, real estate investment trusts and cooperatives described in paragraph (h) of this section; and
 - (8) The transition relief for 2014 described in paragraph (i) of this section.
- (b) Average premium limitation—(1) In general. The amount of an eligible small employer's premium payments that are taken into account in calculating the credit is limited to the premium payments the employer would have made under the same arrangement if the average premium for the small group market in the rating area in which the employee enrolls for coverage were substituted for the actual premium.
- (2) Examples. The following examples illustrate the provisions of paragraph (b)(1) of this section:

Example 1. Comparing premium payments to average premium for small group market. (i) Facts. An eligible small employer (Employer) offers a health insurance plan with self-only and family coverage through a small business options program (SHOP) Exchange. Employer has 9 full-time equivalent employees (FTEs) with average annual wages of \$23,000 per FTE. All 9 employees are employees as defined under §1.45R-1(a)(5). Four employees are enrolled in self-only coverage and 5 are enrolled in family

coverage. Employer pays 50% of the premiums for all employees enrolled in self-only coverage and 50% of the premiums for all employees enrolled in family coverage (and the employee is responsible for the remainder in each case). The premiums are \$4,000 a year for self-only coverage and \$10,000 a year for family coverage. The average premium for the small group market in Employer's rating area is \$5,000 for self-only coverage and \$12,000 for family coverage. Employer's premium payments for each FTE (\$2,000 for self-only coverage and \$5,000 for family coverage) do not exceed 50 percent of the average premium for the small group market in Employer's rating area (\$2,500 for self-only coverage and \$6,000 for family coverage).

(ii) Conclusion. The amount of premiums paid by Employer for purposes of computing the credit equals \$33,000 ((4 x \$2,000) plus (5 x \$5,000)).

Example 2. Premium payments exceeding average premium for small group market. (i) Facts. Same facts as Example 1, except that the premiums are \$6,000 for self-only coverage and \$14,000 for family coverage. Employer's premium payments for each employee (\$3,000 for self-only coverage and \$7,000 for family coverage) exceed 50% of the average premium for the small group market in Employer's rating area (\$2,500 for self-only coverage and \$6,000 for family coverage).

(ii) Conclusion. The amount of premiums paid by Employer for purposes of computing the credit equals \$40,000 ((4 x \$2,500) plus (5 x \$6,000)).

(c) Credit phaseout--(1) In general. The tax credit is subject to a reduction (but not reduced below zero) if the employer's FTEs exceed 10 or average annual FTE wages exceed \$25,000. If the number of FTEs exceeds 10, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction, the numerator of which is the number of FTEs in excess of 10 and the denominator of which is 15. If average annual FTE wages exceed \$25,000, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction, the numerator of which is the amount by which average annual FTE wages exceed \$25,000 and the denominator of which is \$25,000. In both cases, the result of the calculation is subtracted from the otherwise applicable credit to determine the credit to which the employer is entitled. For an employer with both more than 10 FTEs and average annual FTE wages exceeding \$25,000, the total reduction is the sum of the two reductions.

(2) \$25,000 dollar amount adjusted for inflation. For taxable years beginning in a calendar year after 2013, each reference to “\$25,000” in paragraph (c)(1) of this section is replaced with a dollar amount 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 section 1(f)(3)(B).

(3) Examples. The following examples illustrate the provisions of paragraph (c) this section. For purposes of these examples, no employer is a tax-exempt organization and no other adjustments or limitations on the credit apply other than those adjustments and limitations explicitly set forth in the example.

Example 1. Calculating the maximum credit for an eligible small employer without an applicable credit phaseout. (i) Facts. An eligible small employer (Employer) has 9 FTEs with average annual wages of \$23,000. Employer pays \$72,000 in health insurance premiums for those employees (which does not exceed the total average premium for the small group market in the rating area), and otherwise meets the requirements for the credit.

(ii) Conclusion. Employer’s credit equals \$36,000 (50% x \$72,000).

Example 2. Calculating the credit phaseout if the number of FTEs exceeds 10 or average annual wages exceed \$25,000, as adjusted for inflation. (i) Facts. An eligible small employer (Employer) has 12 FTEs and average annual FTE wages of \$30,000 in a year when the amount in paragraph (c)(1) of this section, as adjusted for inflation, is \$25,000. Employer pays \$96,000 in health insurance premiums for its employees (which does not exceed the average premium for the small group market in the rating area) and otherwise meets the requirements for the credit.

(ii) Conclusion. The initial amount of the credit is determined before any reduction (50% x \$96,000) = \$48,000. The credit reduction for FTEs in excess of 10 is \$6,400 (\$48,000 x 2/15). The credit reduction for average annual FTE wages in excess of \$25,000 is \$9,600 (\$48,000 x \$5,000/\$25,000), resulting in a total credit reduction of \$16,000 (\$6,400 + \$9,600). Employer’s total tax credit equals \$32,000 (\$48,000 - \$16,000).

(d) State credits and subsidies for health insurance--(1) Payments to employer.

If the employer is entitled to a State tax credit or a premium subsidy that is paid directly

to the employer, the premium payment made by the employer is not reduced by the credit or subsidy for purposes of determining whether the employer has satisfied the requirement to pay an amount equal to a uniform percentage (not less than 50 percent) of the premium cost. Also, except as described in paragraph (d)(3) of this section, the maximum amount of the credit is not reduced by reason of a State tax credit or subsidy or by reason of payments by a State directly to an employer.

(2) Payments to issuer. If a State makes payments directly to an insurance company (or another entity licensed under State law to engage in the business of insurance) to pay a portion of the premium for coverage of an employee enrolled for coverage through a SHOP Exchange, the State is treated as making these payments on behalf of the employer for purposes of determining whether the employer has satisfied the requirement to pay an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of coverage. Also, except as described below in paragraph (d)(3) of this section, these premium payments by the State are treated as an employer contribution under this section for purposes of calculating the credit.

(3) Credits may not exceed net premium payment. Regardless of the application of paragraphs (d)(1) and (d)(2) of this section, in no event may the amount of the credit exceed the amount of the employer's net premium payments as defined in §1.45R-1(a)(11).

(4) Examples. The following examples illustrate the provisions of paragraphs (d)(1) through (d)(3) of this section. For purposes of these examples, the eligible small employer's taxable year and plan year begin during or after 2014. No other adjustments

or limitations on the credit apply other than those adjustments and limitations explicitly set forth in the example.

Example 1. State premium subsidy paid directly to employer. (i) Facts. The State in which an eligible small employer (Employer) operates provides a health insurance premium subsidy of up to 40% of the health insurance premiums for each eligible employee. The State pays the subsidy directly to Employer. Employer has one employee, Employee D. Employee D's health insurance premiums are \$100 per month and are paid as follows: \$80 by Employer and \$20 by Employee D through salary reductions to a cafeteria plan. The State pays Employer \$40 per month as a subsidy for Employer's payment of insurance premiums on behalf of Employee D. Employer is otherwise an eligible small employer that meets the requirements for the credit.

(ii) Conclusion. For purposes of calculating the credit, the amount of premiums paid by the employer is \$80 per month (the premium payment by the Employer without regard to the subsidy from the State). The maximum credit is \$40 ($\$80 \times 50\%$).

Example 2. State premium subsidy paid directly to insurance company. (i) Facts. The State in which Employer operates provides a health insurance premium subsidy of up to 30% for each eligible employee. Employer has one employee, Employee E. Employee E is enrolled in self-only coverage through a qualified health plan (QHP) offered by Employer through a SHOP Exchange. Employee E's health insurance premiums are \$100 per month and are paid as follows: \$50 by Employer; \$30 by the State and \$20 by the employee. The State pays the \$30 per month directly to the insurance company and the insurance company bills Employer for the employer and employee's share, which equal \$70 per month. Employer is otherwise an eligible small employer that meets the requirements for the credit.

(ii) Conclusion. For purposes of calculating the amount of the credit, the amount of premiums paid by Employer is \$80 per month (the sum of Employer's payment and the State's payment). The maximum credit is \$40 ($\$80 \times 50\%$).

Example 3. Credit limited by employer's net premium payment. (i) Facts. Employer is an eligible small employer that is not a tax-exempt organization. The State in which Employer operates provides a health insurance premium subsidy of up to 50% for each eligible employee. Employer has one employee, Employee F. Employee F is enrolled in self-only coverage under the QHP offered to Employee F by Employer through a SHOP Exchange. Employee F's health insurance premiums are \$100 per month and are paid as follows: \$20 by Employer; \$50 by the State and \$30 by Employee F. The State pays the \$50 per month directly to the insurance company and the insurance company bills Employer for the employer's and employee's shares, which total \$50 per month. Employer is otherwise an eligible small employer that meets the requirements for the credit. The amount of premiums paid by Employer (the sum of Employer's payment and the State's payment) is \$70 per month, which is more than

50% of the \$100 monthly premium payment. The amount of the premium for calculating the credit is also \$70 per month.

(ii) Conclusion. The maximum credit without adjustments or limitations is \$35 (\$70 x 50%). Employer's net premium payment is \$20 (the amount actually paid by Employer excluding the State subsidy). Because the credit may not exceed Employer's net premium payment, the credit is \$20 (the lesser of \$35 or \$20).

(e) Payroll tax limitation for tax-exempt eligible small employers—(1) In general.

For a tax-exempt eligible employer, the amount of the credit claimed cannot exceed the total amount of payroll taxes (as defined in §1.45R-1(a)(13)) of the employer during the calendar year in which the taxable year begins.

(2) Example. The following example illustrates the provisions of paragraph (e)(1) of this section. For purposes of this example, the eligible small employer's taxable year and plan year begin during or after 2014. No other adjustments or limitations on the credit apply other than those adjustments and limitations explicitly set forth in the example.

Example. Calculating the maximum credit for a tax-exempt eligible small employer. (i) Facts. Employer is a tax-exempt eligible small employer that has 10 FTEs with average annual wages of \$21,000. Employer pays \$80,000 in health insurance premiums for its employees (which does not exceed the average premium for the small group market in the rating area) and otherwise meets the requirements for the credit. The total amount of Employer's payroll taxes equals \$30,000.

(ii) Conclusion. The initial amount of the credit is determined before any reduction: $(35\% \times \$80,000) = \$28,000$, and Employer's payroll taxes are \$30,000. The total tax credit equals \$28,000 (the lesser of \$28,000 and \$30,000).

(f) Two-consecutive-taxable year credit period limitation. The credit is only available to an eligible small employer, including a tax-exempt eligible small employer, during that employer's credit period. For a transition rule for 2014, see paragraph (i) of this section. To prevent the avoidance of the two-year limit on the credit period through the use of successor entities, a successor entity and a predecessor entity are treated as

the same employer. For this purpose, the rules for identifying successor entities under §31.3121(a)(1)-1(b) apply. Accordingly, for example, if an eligible small employer claims the credit for the 2014 and 2015 taxable years, that eligible small employer's credit period will have expired so that any successor employer to that eligible small employer will not be able to claim the credit for any subsequent taxable years.

(g) Premium payments by the employer for a taxable year--(1) In general. Only premiums paid by an eligible small employer or tax-exempt eligible small employer on behalf of each employee enrolled in a QHP or payments paid to the issuer in accordance with paragraph (d)(2) of this section are counted in calculating the credit. If an eligible small employer pays only a portion of the premiums for the coverage provided to employees (with employees paying the rest), only the portion paid by the employer is taken into account. Premiums paid on behalf of seasonal workers may be counted in determining the amount of the credit (even though seasonal worker wages and hours of service are not included in the FTE and average annual FTE wage calculation unless the seasonal worker works for the employer on more than 120 days during the taxable year).

(2) Excluded amounts--(i) Salary reduction amounts. Any premium paid pursuant to a salary reduction arrangement under a section 125 cafeteria plan is not treated as paid by the employer for purposes of section 45R and these regulations. For this purpose, premiums paid with employer-provided flex credits that employees may elect to receive as cash or other taxable benefit are treated as paid pursuant to a salary reduction arrangement under a section 125 cafeteria plan.

(ii) HSA, HRA, and FSA. Employer contributions to, or amounts made available under, health savings accounts, reimbursement arrangements, and health flexible spending arrangements are not taken into account in determining the premium payments by the employer for a taxable year.

(h) Rules applicable to trusts, estates, regulated investment companies, real estate investment trusts and cooperative organizations. Rules similar to the rules of section 52(d) and (e) and the regulations thereunder apply in calculating and apportioning the credit with respect to a trust, estate, a regulated investment company or real estate investment trusts or cooperative organization.

(i) Transition rule for 2014-- (1) In general. This paragraph (i) applies if as of **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]** an eligible small employer offers coverage on a plan year that begins on a date other than the first day of its taxable year. In such a case, if an eligible small employer has a health plan year beginning after January 1, 2014 but before January 1, 2015 (2014 health plan year) that begins after the start of its first taxable year beginning after January 1, 2014 (2014 taxable year), and the employer offers one or more QHPs to its employees through a SHOP Exchange as of the first day of its 2014 health plan year, then the eligible small employer is treated as offering coverage through a SHOP Exchange for its entire 2014 taxable year for purposes of section 45R if the health care coverage provided from the first day of the 2014 taxable year through the day immediately preceding the first day of the 2014 health plan year would have qualified for a credit under section 45R using the rules applicable to taxable years beginning before

January 1, 2014. If the eligible small employer claims the section 45R credit in the 2014 taxable year, the 2014 taxable year begins the first year of the credit period.

(2) Example. The following example illustrates the rule of paragraph (i) of this section. For purposes of this example, the eligible small employer is not a tax-exempt organization. No other adjustments or limitations on the credit apply other than those adjustments and limitations explicitly set forth in the example.

Example. (i) Facts. An eligible small employer (Employer) has a 2014 taxable year that begins January 1, 2014 and ends on December 31, 2014, and a 2014 health plan year that begins July 1, 2014 and ends June 30, 2015. Employer offers a QHP through a SHOP Exchange the coverage under which begins July 1, 2014. Employer provides coverage from January 1, 2014 through June 30, 2014 that would have qualified for a credit under section 45R using the rules applicable to taxable years beginning before January 1, 2014.

(ii) Conclusion. Employer may claim the credit at the 50% rate under section 45R for the entire 2014 taxable year using the rules under paragraph (i) of this section. Accordingly, in calculating the credit, Employer may count premiums paid for coverage from January 1, 2014 through June 30, 2014, as well as premiums paid from July 1, 2014 through December 31, 2014. If Employer claims the credit for the 2014 taxable year, that taxable year is the first year of the credit period.

(j) Effective/applicability date. This section is applicable for periods after December 31, 2013.

§1.45R-4 Uniform percentage of premium paid.

(a) In general. An eligible small employer must pay a uniform percentage (not less than 50 percent) of the premium for each employee enrolled in a qualified health plan (QHP) offered to employees by the employer through a small business health options program (SHOP) Exchange.

(b) Employers offering one QHP. An employer that offers a single QHP through a SHOP Exchange must satisfy the requirements of this paragraph (b).

(1) Employers offering one QHP, self-only coverage, composite billing. For an eligible small employer offering self-only coverage and using composite billing, the employer satisfies the requirements of this paragraph if it pays the same amount toward the premium for each employee receiving self-only coverage under the QHP, and that amount is equal to at least 50 percent of the premium for self-only coverage.

(2) Employers offering one QHP, other tiers of coverage, composite billing. For an eligible small employer offering one QHP providing at least one tier of coverage with a higher premium than self-only coverage and using composite billing, the employer satisfies the requirements of this paragraph (b)(2) if it either—

(i) Pays an amount for each employee enrolled in that more expensive tier of coverage that is the same for all employees and that is no less than the amount that the employer would have contributed toward self-only coverage for that employee, or

(ii) Meets the requirements of paragraph (b)(1) of this section for each tier of coverage that it offers.

(3) Employers offering one QHP, self-only coverage, list billing. For an eligible small employer offering one QHP providing only self-only coverage and using list billing, the employer satisfies the requirements of this paragraph (b)(3) if either—

(i) The employer pays toward the premium an amount equal to a uniform percentage (not less than 50 percent) of the premium charged for each employee, or

(ii) The employer converts the individual premiums for self-only coverage into an employer-computed composite rate for self-only coverage, and, if an employee contribution is required, each employee who receives coverage under the QHP pays a

uniform amount toward the self-only premium that is no more than 50 percent of the employer-computed composite rate for self-only coverage.

(4) Employers offering one QHP, other tiers of coverage, list billing. For an eligible small employer offering one QHP providing at least one tier of coverage with a higher premium than self-only coverage and using list billing, the employer satisfies the requirements of this paragraph (b)(4) if it either—

(i) Pays toward the premium for each employee covered under each tier of coverage an amount equal to or exceeding the amount that the employer would have contributed with respect to that employee for self-only coverage, calculated either based upon the actual premium that would have been charged by the insurer for that employee for self-only coverage or based upon the employer-computed composite rate for self-only coverage, or

(ii) Meets the requirements of paragraph (b)(3) of this section for each tier of coverage that it offers substituting the employer-computed composite rate for each tier of coverage for the employer-computed composite rate for self-only coverage.

(c) Employers offering more than one QHP. If an eligible small employer offers more than one QHP, the employer must satisfy the requirements of this paragraph (c). The employer may satisfy the requirements of this paragraph (c) in either of the following two ways:

(1) QHP-by-QHP method. The employer makes payments toward the premium with respect to each QHP for which the employer is claiming the credit that satisfy the uniform percentage requirement under paragraph (b) of this section on a QHP-by-QHP basis (so that the amounts or percentages of premium paid by the employer for each

QHP need not be identical, but the payments with respect to each QHP must satisfy paragraph (b) of this section); or

(2) Reference QHP method. The employer designates a reference QHP and makes employer contributions in accordance with the following requirements--

(i) The employer determines a level of employer contributions for each employee such that, if all eligible employees enrolled in the reference QHP, the contributions would satisfy the uniform percentage requirement under paragraph (b) of this section, or

(ii) The employer allows each employee to apply the minimum amount of employer contribution determined necessary to meet the uniform percentage requirement under paragraph (b) of this section either toward the reference QHP or toward the cost of coverage under any of the other available QHPs.

(d) Special rules regarding employer compliance with applicable State or local law. An employer will be treated as satisfying the uniform percentage requirement if the failure to otherwise satisfy the uniform percentage requirement is attributable solely to additional employer contributions made to certain employees to comply with an applicable State or local law.

(e) Examples. The following examples illustrate the provisions of paragraphs (a) through (d) of this section:

Example 1. (i) Facts. An eligible small employer (Employer) offers a QHP on a SHOP Exchange, Plan A, which uses composite billing. The premiums for Plan A are \$5,000 per year for self-only coverage, and \$10,000 for family coverage. Employees can elect self-only or family coverage under Plan A. Employer pays \$3,000 (60% of the premium) toward self-only coverage under Plan A and \$6,000 (60% of the premium) toward family coverage under Plan A.

(ii) Conclusion. Employer's contributions of 60% of the premium for each tier of coverage satisfy the uniform percentage requirement.

Example 2. (i) Facts. Same facts as Example 1, except that Employer pays \$3,000 (60% of the premium) for each employee electing self-only coverage under Plan A and pays \$3,000 (30% of the premium) for each employee electing family coverage under Plan A.

(ii) Conclusion. Employer's contributions of 60% of the premium toward self-only coverage and the same dollar amount toward the premium for family coverage satisfy the uniform percentage requirement, even though the percentage is not the same.

Example 3. (i) Facts. Employer offers two QHPs, Plan A and Plan B, both of which use composite billing. The premiums for Plan A are \$5,000 per year for self-only coverage and \$10,000 for family coverage. The premiums for Plan B are \$7,000 per year for self-only coverage and \$13,000 for family coverage. Employees can elect self-only or family coverage under either Plan A or Plan B. Employer pays \$3,000 (60% of the premium) for each employee electing self-only coverage under Plan A, \$3,000 (30% of the premium) for each employee electing family coverage under Plan A, \$3,500 (50% of the premium) for each employee electing self-only coverage under Plan B, and \$3,500 (27% of the premium) for each employee electing family coverage under Plan B.

(ii) Conclusion. Employer's contributions of 60% (or \$3,000) of the premiums for self-only coverage and the same dollar amounts toward the premium for family coverage under Plan A, and of 50% (or \$3,500) of the premium for self-only of coverage and the same dollar amount toward the premium for family coverage under Plan B, satisfy the uniform percentage requirement on a QHP-by-QHP basis; therefore the employer's contributions to both plans satisfy the uniform percentage requirement.

Example 4. (i) Facts. Same facts as Example 3, except that Employer designates Plan A as the reference QHP. Employer pays \$2,500 (50% of the premium) for each employee electing self-only coverage under Plan A and pays \$2,500 of the premium for each employee electing family coverage under Plan A or either self-only or family coverage under Plan B.

(ii) Conclusion. Employer's contribution of 50% (or \$2,500) toward the premium of each employee enrolled under Plan A or Plan B satisfies the uniform percentage requirement.

Example 5. (i) Facts. Employer receives a list billing premium quote with respect to Plan X, a QHP offered by Employer on a SHOP Exchange for health insurance coverage for each of Employer's four employees. For Employee L, age 20, the self-only premium is \$3,000 per year, and the family premium is \$8,000. For Employees M, N and O, each age 40, the self-only premium is \$5,000 per year and the family premium is \$10,000. The total self-only premium for the four employees is \$18,000 ($\$3,000 + (3 \times 5,000)$). Employer calculates an employer-computed composite self-only rate of \$4,500 ($\$18,000 / 4$). Employer offers to make contributions such that each employee would need to pay \$2,000 of the premium for self-only coverage. Under

this arrangement, Employer would contribute \$1,000 toward self-only coverage for L and \$3,000 toward self-only coverage for M, N, and O. In the event an employee elects family coverage, Employer would make the same contribution (\$1,000 for L or \$3,000 for M, N, or O) toward the family premium.

(ii) Conclusion. Employer satisfies the uniform percentage requirement because it offers and makes contributions based on an employer-calculated composite self-only rate such that, to receive self-only coverage, each employee must pay a uniform amount which is not more than 50% of the composite rate, and it allows employees to use the same employer contributions toward family coverage.

Example 6. (i) Facts. Same facts as Example 5, except that Employer calculates an employer-computed composite family rate of \$9,500 ($(\$8,000 + 3 \times 10,000) / 4$) and requires each employee to pay \$4,000 of the premium for family coverage.

(ii) Conclusion. Employer satisfies the uniform percentage requirement because it offers and makes contributions based on a calculated self-only and family rate such that, to receive either self-only or family coverage, each employee must pay a uniform amount which is not more than 50% of the composite rate for coverage of that tier.

Example 7. (i) Facts. Same facts as Example 5, except that Employer also receives a list billing premium quote from Plan Y with respect to a second QHP offered by Employer on a SHOP Exchange for each of Employer's 4 employees. Plan Y's quote for Employee L, age 20, is \$4,000 per year for self-only coverage or \$12,000 per year for family coverage. For Employees M, N and O, each age 40, the premium is \$7,000 per year for self-only coverage or \$15,000 per year for family coverage. The total self-only premium under Plan Y is \$25,000 ($\$4,000 + (3 \times 7,000)$). The employer-computed composite self-only rate is \$6,250 ($\$25,000 / 4$). Employer designates Plan X as the reference plan. Employer offers to make contributions based on the employer-calculated composite premium for the reference QHP (Plan X) such that each employee has to contribute \$2,000 to receive self-only coverage through Plan X. Under this arrangement, Employer would contribute \$1,000 toward self-only coverage for L and \$3,000 toward self-only coverage for M, N, and O. In the event an employee elects family coverage through Plan X or either self-only or family coverage through Plan Y, Employer would make the same contributions (\$1,000 for L or \$3,000 for M, N, or O) toward that coverage.

(ii) Conclusion. Employer satisfies the uniform percentage requirement because it offers and makes contributions based on the employer-calculated composite self-only premium for the Plan X reference QHP such that, in order to receive self-only coverage, each employee must pay a uniform amount which is not more than 50% of the self-only composite premium of the reference QHP; it allows employees to use the same employer contributions toward family coverage in the reference QHP or coverage through another QHPs.

Example 8. (i) Facts. Employer has five employees. Employer is located in a State that requires employers to pay 50% of employees' premium costs, but also requires that an employee's contribution not exceed a certain percentage of the employee's monthly gross earnings from that employer. Employer offers to pay 50% of the premium costs for all its employees, and to comply with the State law, Employer contributes more than 50% of the premium costs for two of its employees.

(ii) Conclusion. Employer satisfies the uniform percentage requirement because its failure to otherwise satisfy the uniform percentage requirement is attributable solely to compliance with the applicable State or local law.

(f) Effective/applicability date. This section is applicable for periods after December 31, 2013.

§1.45R-5 Claiming the credit.

(a) Claiming the credit. The credit is a general business credit and is claimed on an eligible small employer's annual income tax return and offsets an employer's actual tax liability for the year. The credit is claimed by attaching Form 8941, "Credit for Small Employer Health Insurance Premiums," to the eligible small employer's income tax return or, in the case of a tax-exempt eligible small employer, by attaching Form 8941 to the employer's Form 990-T, "Exempt Organization Business Income Tax Return." To claim the credit, a tax-exempt eligible small employer must file a form 990-T with an attached Form 8941, even if a Form 990-T would not otherwise be required to be filed.

(b) Estimated tax payments and alternative minimum tax (AMT) liability. An eligible small employer may reflect the credit in determining estimated tax payments for the year in which the credit applies in accordance with the estimated tax rules as set forth in section 6654 and 6655 and the applicable regulations. An eligible small employer may also use the credit to offset the employer's alternative minimum tax (AMT) liability for the year, if any, subject to certain limitations based on the amount of

an eligible small employer's regular tax liability, AMT liability and other allowable credits. See section 38(c)(1), as modified by section 38(c)(4)(B)(vi). However, an eligible small employer, including a tax-exempt eligible small employer, may not reduce its deposits and payments of employment tax (that is, income tax required to be withheld under section 3402, social security and Medicare tax under sections 3101 and 3111, and federal unemployment tax under section 3301) during the year in anticipation of the credit.

(c) Reduction of section 162 deduction. No deduction under section 162 is allowed for the eligible small employer for that portion of the health insurance premiums that is equal to the amount of the credit under §1.45R-2.

(d) Effective/applicability date. This section is applicable for periods after December 31, 2013.

Heather C. Maloy

Acting Deputy Commissioner for Services and Enforcement

[FR Doc. 2013-20769 Filed 08/23/2013 at 8:45 am; Publication Date:
08/26/2013]