



HR & BENEFITS UPDATE

Read White Paper on New Guidance Clarifying Requirements For Small Employers To Claim Tax Credit For Health Premiums Paid For Employees

December 5, 2010

New Internal Revenue Service (IRS) guidance to be published in the Federal Register on December 20, 2010 clarifies the conditions that a small employer providing employee health insurance coverage must meet to claim a tax credit for health insurance premiums paid for employees under new Internal Revenue Code (Code) § 45R. An advance copy of Notice 2010-82 is available for review [here](#). You can access a detailed summary of this guidance [here](#).

Code § 45R Tax Credit

Part of the sweeping health care reforms enacted as part of the Patient Protection and Affordable Care Act (Affordable Care Act) the tax credit generally is available from January 1, 2010 to December 31, 2013 to a small employer that provides employee health care coverage if it meets the following requirements (“qualified employers”):

- The employer had fewer than 25 full-time equivalent employees (“FTEs”) for the tax year;
- The average annual wages of its employees for the year must be less than \$50,000 per FTE; and
- The employer pays premiums to provide employee health care coverage under a “qualifying arrangement.”

For purposes of Code § 45R, the IRS says a “qualifying arrangement” is an arrangement under which a qualifying 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.

While previously published IRS guidance provides helpful relief and insights for businesses interested in claiming this tax credit, many questions and issues remained unclear. Notice 2010-82 helps answer questions about the treatment of various special categories of employees, how they are counted, what premiums count for purposes of the tax credit and other matters. (For information on previous guidance, see [here](#).)

Among other things, Notice 2010-82 provides additional guidance about:

- The eligibility to claim the tax credit and other Code § 45R implications for tax exempt employers;
- When the tax credit is available for coverage provided for, and other special rules relating to, owner-employees and their spouses, leased employees, terminated employees, collectively bargained employees, household employees and others not employed in the conduct of a trade or business, employees working outside the continental United States, and religious ministers;
- The calculation of average annual wages, number of hours worked, and number of full-time employees;
- The eligibility and treatment of contributions paid to a Health Saving Account, Health Flexible Spending Arrangement, Health Reimbursement Arrangements or Other Self-Insured Plan, Multiple Employer Plan, and church welfare benefit arrangement;
- The applicability of the uniformity requirements of Code § 45R when the employer pays premiums for different types of premium billing arrangements;
- The implications of the small group market coverage limit and average premium cap on the amount of the credit; and
- The effective date of the tax credit for fiscal year taxpayers during 2010.

For a detailed summary of this guidance, see [here](#).

Employers Urged To Seek Advice To Determine Tax Eligibility, Manage Legal Risks

Given the high cost of health insurance coverage, the Code § 45R credit offers valuable savings for qualifying small employer. Before providing coverage or estimating tax liabilities in reliance on the expectation of claiming the

credit, however, an employer interested in claiming the credit should seek guidance from qualified tax counsel familiar with the Code § 45R rules and guidance as well as other applicable federal mandates impacting employer provided coverage. The clarifications set forth in Notice 2010-82 illustrate that the rules for determining if an employer qualifies to claim a tax credit for health insurance premiums paid for employees under Code § 45R are anything but simple. In addition to meeting these conditions, employers offering or contributing to health coverage for employees can face a broad range of other legal and financial risk if they fail to properly understand and manage the organizational and personal responsibilities that can arise under applicable federal laws. Accordingly, small and other employers offering health coverage should seek advice about understanding and managing their health benefit related risks and responsibilities whether or not they qualify for and plan to claim the credit under Code § 45R.

For More Information Or Assistance

You can learn more about these and other federal health plan mandates by listening to the recording of the [2010 Health Plan Update Briefing](#) or reviewing other resources available [here](#). If you need help with these or other employee benefit, compensation or employment regulations or other related matters please contact Cynthia Marcotte Stamer [here](#) or (469)767-8872.

Management attorney and consultant Cynthia Marcotte Stamer has more than 23 years experience advising and representing employers, employee benefit plans, their sponsors, fiduciaries, plan administrators, service providers, consultants, vendors, outsourcers, insurers, financial services providers, governments and others about health and other employee benefit, compensation, employment, insurance and financial services, and a wide range of other performance, legal and operational risk management practices and concerns. Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization, Chair of the American Bar Association (ABA) RPTE Employee Benefit & Other Compensation Group, a Council Member of the ABA Joint Committee on Employee Benefits, and Past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group, Ms. Stamer is nationally recognized for her work helping clients to design, document, administer and defend health and other employee benefit plans and other related financial and insurance products and to manage risks associated with the offering and administration of these arrangements. Her experience includes extensive work advising and representing employers, plans, plan fiduciaries, trustees, investors, and others about managing and resolving risks relating to fiduciary, contracting and other risks and responsibilities involved in the design, selection and administration of investments for employee benefit plans, and other fiduciary responsibility matters. She also has extensive experience assisting these and other clients to investigate and determine the appropriateness of retirement plan investment selections to comply with ERISA and other fiduciary responsibility rules, as well as to defend challenges to investment offerings or decisions against complaints or actions brought by private plaintiffs, the Labor Department, state and federal securities regulators, insurers and others. A prolific author and popular speaker, Ms. Stamer also publishes, conducts client and other training, speaks and consults extensively on employee benefit, compensation and human resources practices and concerns for the ABA, World At Work, SHRM, American Health Lawyers Association, Institute of Internal Auditors, Society for Professional Benefits Administrators, HCCA, Southwest Benefits Association and many other organizations. Her insights on these and related topics have appeared in Atlantic Information Service, Bureau of National Affairs, World At Work, The Wall Street Journal, Business Insurance, Managed Healthcare, Health Leaders, various ABA publications and a many other national and local publications. To learn more about Ms. Stamer, her experience, involvements, programs and publications, see [here](#) or contact Ms. Stamer.

Other Resources & Developments

If you found this information of interest, you also may be interested in reviewing other recent updates by Ms. Stamer about the tax credit on Code §45R or other benefits, compensation or human resources matters including:

- [Small Employers Sponsoring Health Coverage May Qualify For New Tax Credit, Must Act Quickly To Comply With Other New Federal Health Plan Mandates Under Affordable Care Act & Other Laws](#)
- [2011 Standard Mileage Rates Announced](#)
- [Proposed New Defined Benefit Plan Annual Funding Notice Rule Reminder of Need to Carefully Manage Pension Plan Responsibilities](#)
- [Affordable Care Act Grandfathered Plan Rules Loosened To Allow Insured Plans Making Some Insurance Changes To Qualify](#)
- [Update Employment Practices To Manage Genetic Info Discrimination Risks Under New EEOC Final GINA Regulations](#)
- [Blockbuster & Health Delivery Disability Discrimination Settlements Highlight Need For Tightened Disability Discrimination Risk Management](#)
- [DOL Proposes To Expand Investment Related Services Giving Rise to ERISA Fiduciary Status As Investment Fiduciary](#)
- [EEOC Attacks Medical Leave Denials As Prohibited Disability Discrimination](#)

- [ICE Invites Comments On Information Required For IMAGE Program Employers](#)
- [Affordable Care Act's Health Plan External & Internal Review Safe Harbor & Other Regulations Require Health Plan Updates](#)
- [New Regulations & Court Decisions Require Health Plan Claims & Appeal Updates](#)
- [Rite Aid Pays \\$1 Million HIPAA Privacy Settlement As OCR Tightens HIPAA Regulations](#)
- [New Affordable Care Act Mandated High Risk Pre-Existing Condition Insurance Pool Program Regulations Prohibit Plan Dumping of High Risk Members, Set Other Rules](#)
- [Congress & Labor Department Considering Tightening of Retirement Plan Regulations](#)
- [Testimony Highlights Growing Exposure of Businesses Misclassifying Workers; Businesses Should Act to Minimize Risks](#)
- [Businesses Employing Children Should Review & Tighten Practices In Light of Tightened Rules & Increased Penalties](#)
- [Amended Rule Requires Federal Government Contractors To Post New "Employee Rights Under The National Labor" Poster](#)

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